BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. SD/AO/79/2009]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

Vijay Suryavanshi **PAN: AYNPS6546C**

In the matter of

M/s. Mega Corporation Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation in respect of buying, selling and dealing in the shares of M/s Mega Corporation Limited (hereinafter referred to as 'MCL') for the period from January 25, 2005 to September 16, 2005. The price of the scrip of MCL witnessed huge spurt in price and volume and wide fluctuations in the price ranging from Rs. 5.25/- to Rs. 41.10/- which represented a rise of around 683% accompanied by a sudden spurt in the average monthly volume thousand times over the previous period to around 1, 56, 22, 538 shares while average daily volume during the said period was 744740 shares as against the average volume of 2000 shares per day for the period from January 1-24, 2005 without any significant change in the fundamentals of MCL.

2. Therefore, the role of many entities that traded in the scrip of MCL was scrutinized. The investigation carried out by SEBI reveal the fact that these entities were found to be connected to each other by way of the common address, common contact number, off market

trades or association through companies of which the individuals are directors. There are 42 such entities who are allegedly involved in the manipulation of the scrip of MCL, out of which 33 entities were allegedly found to be connected to each other. These entities who transacted in the shares of MCL entered into synchronized and structured deals that led to creation of misleading appearance of trading in the scrip of MCL and artificial volumes in the scrip and distorted market equilibrium leading to sudden spurt in the volume and price of the scrip.

3. It was alleged that one of the connected entities, viz., Shri Vijay Suryavanshi (hereinafter referred to as **"Noticee"**), violated the provisions of Regulations 4(1), 4(2)(a), (b), (e), and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **"PFUTP"**) and therefore, liable for monetary penalty under section 15HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Babita Rayudu was appointed as Adjudicating Officer vide order dated June 19, 2007 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge the alleged violations of Regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations committed by the Noticee.

5. Consequent upon the transfer of Ms. Babita Rayudu, the undersigned was appointed as the Adjudicating Officer vide order dated November 23, 2007.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-2/SD/PM/126205/2008 dated May 21, 2008 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under section 15HA of SEBI Act for the alleged violation specified in the said SCN.

7. The Noticee did not reply to the said SCN till date neither did he intimate the reasons for his inability to file the reply to the same.

8. On considering the facts of the case, it was decided to conduct an inquiry in the matter and the Noticee was granted an opportunity of personal hearing and accordingly was advised to attend the hearing on January 12, 2009, subsequently another opportunity was granted and the Noticee was advised to appear on February 19, 2009. However, the Noticee outrightly refused to accept the notices though he was available at the said address on the envelope as the envelope returned to SEBI with remarks 'refused to accept the notice'. However, I find that the Noticee received the show cause notice which was sent to the same address where the Notices of hearing have been sent. According to me, such refusal by the Noticee shows non-cooperative attitude and thus amounts to delaying the adjudication proceedings and therefore I am inclined to take a serious note of the same.

9. As the Noticee failed to submit proper reply to the show cause notice despite being given sufficient time and also failed to accept the hearing notices twice for personal hearing, the inquiry is proceeded with taking into account the facts and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the present case are :

    a) Whether the Noticee has violated Regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations, 2003?

    b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of SEBI Act?

    c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

11. Regulation 4 reads thus, ***Prohibition of manipulative, fraudulent and unfair trade practices:*** *(1) 'Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

12. Regulation 4 (2) reads thus, '*Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;
(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(e) any act or omission amounting to manipulation of the price of security;

(g) entering into a transaction in securities without the intention of performing it or without intention of change of ownership of such security.

13. From the Investigation Report (IR) it is noted that the Noticee allegedly forms part of the said 42 entities and he has allegedly acted in tandem with the connected entities in manipulating the scrip of MCL. The names of the 42 entities are annexed to the show cause notice dated May 21, 2008 sent by the undersigned to the Noticee as Annexure 1, which contains the name of the Noticee as well. Annexure 2 to the show cause notice sent by SEBI contains the connections between these entities and their linkages. The Noticee is connected with many other entities through the common telephone number as can be inferred from Annexure 2 to the show cause notice dated May 21, 2008.

14. As far as other entities are concerned, the findings of investigation reveal that the entities viz., Nirmal Jain, Laxman Singh Saijari, Mahendra Gopal Gorivale, Patric Xess were found to be connected to MCL as they shared the same address with Crayons Advertising Limited, one of the associate companies of MCL as can be seen from the said IR which gathered the same from the Annual Report of MCL for the year 2004-05 during the period of investigation. Further, Patric Xess and Deepak Sharma were present as the members in the meeting of MCL held on July 29, 2005 relating to declaration of the result of the voting by postal ballot on certain resolutions passed.

15. A large number of off-market trades have been carried out amongst the connected entities in the scrip of MCL as has been brought out by the IR. The shares received in the off market were later used to complete the market obligations of the connected entities. The transfer of shares of MCL in the various off market deals between several entities further established the connections between the entities.

16. The entities viz., Nirmal Jain, Laxman Saijari, Mahendra Gopal Gorivale, Patric Xess, Sanjiv Kathuria, Deepak Sharma purchased around 1,77,05,000 shares of MCL on March 5, 2005 in physical form from the entities connected to MCL and transferred around 1.25 crore shares in the off market to the connected entities. The details of various off market trades are annexed as Annexure 3 to the said show cause notice sent by the undersigned to the Noticee.

17. The entities who received the shares from the other connected entities then traded amongst themselves in the market. The details of their trading are annexed as Annexure 4 to the said show cause notice issued by the undersigned to the Noticee.

18. The Noticee along with the other connected entities accounted for 66.67% of the total valid buy orders and 43.15% of the valid sell orders during the period March 18, 2005 to September 16, 2005. During the same period, this group of connected entities purchased 51326549 shares and sold 46534294 shares of MCL accounting for 67.71% and 58.70% of gross purchases and gross sales in the scrip of MCL respectively. The details of the buy and sell trade in the scrip of MCL by the said connected entities along with their contribution to the market volume is annexed as Annexure 5 to the said show cause notice sent by the undersigned to the Noticee. However, the relevant details relating to the Noticee's trade are given in the table below:

Client	**Member**	**Buy**	**% of Mkt Volume**	**Sell**	**% of Mkt Volume**	**Buy Among themselves**	**Sell among themselves**
Vijay Suryavanshi	CSL Stock Broking Pvt Ltd	500000	0.59%	265000	0.31%	424400	202890
TOTAL		500000	0.59%	265000	0.31%	424400	202890

19. Out of this, about 62.08% of gross purchases and 71.61% of gross sales of these connected entities were amongst themselves. 1324 trades for 93,28,008 shares among these entities accounting for 26.04% of trades amongst themselves were synchronized i.e., time difference between buy and sell orders was less than 1 minute.

20. The Noticee was also found to have entered into such synchronized trades with other connected entities, wherein the Noticee was the sell client and with rate difference of 0%, all the trades have been synchronized within less than a minute, which clearly shows the meeting of minds of the Noticee and the other client. The clients opposite the Noticee were viz., Ramdas Kshirsagar and Topflag Exports Ltd, who are connected to the Noticee through common telephone number as can be seen from the Annexure 2 annexed to the show cause notice sent by the undersigned to the Noticee. The details of such synchronized trades are given in the table on page 7 of this Order.

21. Further, the Investigation Report has brought out that the said group of connected entities were also involved in 62 structured trades among themselves with a total traded volume of 29,72,551 shares accounting for 3.49% of gross market traded quantity wherein buy and sell order rates and quantities were same and time difference between buy and sell orders was less than 1 minute, the details of which are annexed as Annexure 7 to the show cause notice sent by the undersigned to the Noticee. Further, it is found that these connected entities were also observed to be involved in 243 trades which were executed at a price difference of 0.5% or more than the last traded price or last closing price as can be reflected from Annexure 8 annexed to the show cause notice issued to the Noticee.

DATA OF SYNCHRONIZED TRADES

Date	Time	Trd	Qty	Rate	Diff	%	buyer	Buy Client	Seller	Sell Client	Buy order Time	Sell order Time	Time Difference	Buy order Qty	Sell order Qty	Qty Diff	Buy order rate	Sell order rate	Rate Diff
03/08/2005	10:29:00	197	200	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:29:00	10:28:00	0:01:00	200	15000	-14800	34.65	34.65	0
03/08/2005	10:28:57	196	250	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:57	10:28:00	0:00:57	250	15000	-14750	34.65	34.65	0
03/08/2005	10:28:55	195	200	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:55	10:28:00	0:00:55	200	15000	-14800	34.65	34.65	0
03/08/2005	10:28:54	194	150	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:54	10:28:00	0:00:54	150	15000	-14850	34.65	34.65	0
03/08/2005	10:28:52	193	200	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:52	10:28:00	0:00:53	200	15000	-14800	34.65	34.65	0
03/08/2005	10:28:51	192	300	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:51	10:28:00	0:00:51	300	15000	-14700	34.65	34.65	0
03/08/2005	10:28:49	191	150	34.65	0.00	0.00	D0946	RAMDAS KRISHSAGAR (Dir:SHARPLINE TRADING CO PVT LTD.)	D0323	VIJAY SURYAVANSHI	10:28:50	10:28:00	0:00:50	250	15000	-14750	34.65	34.65	0
16/09/2005	14:25:29	1676	840	42.90	0.00	0.00	D0907	TOPFLAG EXPORTS PVT. LTD. (Dir:RAMDAS KSHIRSAGAR / Santosh Jagtap)	D0323	VIJAY SURYAVANSHI	14:24:38	14:25:29	0:00:51	5000	900	4100	42.8	42.85	-0.05
16/09/2005	14:24:01	1606	690	42.70	0.00	0.00	D0907	TOPFLAG EXPORTS PVT. LTD. (Dir:RAMDAS KSHIRSAGAR / Santosh Jagtap)	D0323	VIJAY SURYAVANSHI	14:23:53	14:24:01	0:00:08	5000	700	4300	42.7	42.65	0.05

22. Thus, the connected entities entered into large off market trades amongst themselves during the relevant period and dealt through multiple brokers generating large trading volumes. Around the same period large quantities of shares were also transferred to these allegedly interconnected entities by the entities connected to MCL. By way of entering into trading amongst themselves, these entities allegedly brought out a sudden spurt in the volume and price of the scrip and were therefore able to sustain an average of 67% of the trading volume for a period of nearly six months. These volumes were adequate enough to induce the other investors to deal in the shares of MCL. Thus, the Noticee has effectively contributed in a substantial way to the distortion in the equilibrium in the scrip of MCL by entering into a number of synchronized and structured deals as can be noted from the data.

23. Thus, the Noticee along with the said other connected entities have manipulated the scrip of MCL by entering into transactions that are not genuine resulting in the creation of a misleading appearance of trading in the scrip of MCL and by creating artificial volumes, thereby contravened provisions of the PFUTP Regulations, 2003.

24. It is very evident from the manner of trading that the Noticee used to indulge in synchronized trades thereby contributed to the sudden spurt in the volume and price of the scrip and maintained as average of 67% of the trading volume for a period of nearly six months from March – September 2005.

25. As stated earlier, the Noticee has a common telephone number with 22 other entities viz., Ajit Suryavanshi, Umesh Choukekar, Ritedeal Trading Company Pvt. Ltd, Amar Adhav, Dattu Shitole, Deepak Narvekar, Deepak Todkar, Fine Line Mercantile Co.Pvt Ltd, Ganesh Raut, Jagdish Parab, Mahesh Kokate, Premkumar Singh, Stockholm Mercantile Co. Pvt. Ltd, Sharpline Trading Co. Pvt Ltd, Ramdas Kshirsagar, Topflag Exports Pvt. Ltd, Ranjan Mandal, Santosh Narvekar, Santosh Pawar and Jayesh Waghela. The common telephone number of all these entities is **022-56546666**. This is more than adequate proof to show the linkage between the entities, who indulged in off-market deals and synchronized and structured trades.

26. It is observed from the material available on record that the Noticee along with the connected entities whose names are given in Annexure 1 to the show cause notice dated May 21, 2008 have manipulated the scrip of MCL by entering into transactions that were not genuine which resulted in the creation of misleading appearance of trading and created artificial volumes in the scrip of MCL and thus contravened PFUTP Regulations, 2003.

27. In this regard, I have placed reliance on the judgment of SAT in the matter of ***Ketan Parekh v. SEBI***[1], wherein SAT has stated that mere synchronization of trade is not per se illegal, a presence of additional factor is necessary to come to a conclusion that the synchronized trade is illegal. In the present case, I believe the additional factors and linkages are adequately proved and as discussed above, the trading pattern of the Noticee does depict manipulative trading. Also the proof of them being connected to each other by way of sharing the same telephone number is sufficient enough to prove the linkages between the entities combined with the manner of trading among all these entities.

28. Moreover, the Noticee had not taken any effort to respond to the show cause notice sent to him by SEBI and had not appeared before the undersigned to explain or defend himself for the acts done by him inspite of having two opportunities of hearings, which, in effect, go on to show that the Noticee has not shown any concern or seriousness in the instant quasi-judicial proceedings. In this regard I rely upon the judgment of the Hon'ble Securities Appellate Tribunal ***Classic Credit Limited vs. SEBI***[2], **wherein the Hon'ble SAT dwelled upon the subject of the significance of filing a reply to the show cause notice sent by SEBI and stated as follows, '*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them.'***

29. In view of the same it is construed that the Noticee has admitted the alleged charges.

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[1] SAT Appeal No. 2 of 2004

[2] [2007] 76 SCL 51 (SAT - MUM.)

30. Therefore, taking into consideration the above and all other facts and material available on record, I find that the Noticee has not executed genuine transactions and has violated Regulations 4(1), 4(2) (a), (b), (e), and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 making him liable for penalty under Section 15HA of the SEBI Act, 1992.

31. In view of the above, the next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticee for the violation of abovementioned provisions of the PFUTP Regulations.

32. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shriram Mutual Fund***[3], *interalia* held that "once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Thus, as the violation of statutory obligations by the Acquirers has been established, I hold that they are liable for monetary penalty."

33. The provisions of section 15HA of the SEBI Act as prevailing at the relevant time are reproduced hereunder :

> ***"Penalty for fraudulent and unfair trade practices.***
>
> *15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

34. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

[3] [2006] 68 SCL 216(SC)

(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

35. In a matter of this kind, it is difficult to compute the disproportionate gain or unfair advantage that the Noticee had, however, the manner of trading of the Noticee would have certainly had a wrong impact on the investors' minds considering the fact that the trading amongst the connected entities including the Noticee brought about the sudden spurt in the volume and price of the scrip and they together were able to sustain 67% of the trading volume for a period of six months. Such volumes prove to be adequate enough to induce investors and have an impact on their minds to deal in the shares of MCL on the basis of the artificial volumes and misleading appearance projected because of the trading done by the Noticee along with other connected entities.

36. Furthermore, there is repetitive nature in the dealings, synchronized trades in particular, done by the Noticee with other connected entities which lasted for six months from March-September, 2005 as can be noted from the trade and order logs and the data available on record. In all the six months, an average of 67% of the trading volume was sustained by the Noticee along with other entities by their manner of trading, which would have had a significant impact on the investors' minds to trade in the scrip of MCL. Thus the Noticee clearly deserves a strict punishment for the reasons stated above.

ORDER

37. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I(2) of the Act, I hereby impose a monetary penalty of Rs. 10 lakh (Rupees Ten lakh only) on the Noticee, Shri Vijay Suryavanshi. I find that this penalty is commensurate with the violations committed by the Noticee.

38. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Officer on Special Duty,

Dr.Pradnya Sarvade, Investigation Department (ID-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, “G” Block, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.

39. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee Mr. Vijay Suryavanshi and also to the Securities and Exchange Board of India.

Date: **July 16, 2009**
Place: **Mumbai**

SANDEEP DEORE
ADJUDICATING OFFICER