BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/SRP/AE/2018-19/1927]

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

In respect of:

Anuj Kumar Agarwal (PAN AGSPA3807B)

In the matter of Pressman Advertising Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularity in the trading and dealings in the shares of Pressman Advertising Limited (hereinafter referred to as **"Company** or **PAL"**) during the period from April 01, 2012 to August 30, 2013 (hereinafter referred to as **"Investigation Period"**).

2. The Investigations, *prima facie,* revealed that Anuj Kumar Agarwal (hereinafter referred to as **"Noticee"**) along with a group of 28 other entities (hereinafter collectively referred to as **"Group Entities"** and individually by their respective names), who were connected/related to each other, had allegedly entered into reversal of trades i.e. shares purchased/sold on market were transferred back through off market within next 2-working days (i.e. T+2 days). The Group Entities are as follows –

Sl. No.	**Name of the entities who allegedly entered into reversal of trades in the scrip of PAL (Group Entities)**
1	Mridul Securities Pvt Ltd
2	Shree Aeran Marketing Pvt Ltd
3	Varun Aggarwal HUF
4	Amit Kumar Agarwal HUF
5	Praveen Kumar Agarwal HUF
6	Amit Kumar
7	Rekha Mishra

8	Praveen Kumar Agarwal
9	Anuj Kumar Agrawal
10	Ranjana Agarwal
11	Nupur Agarwal
12	Radha Rani
13	Smita Agarwal
14	Vivek Sharma
15	Rakesh Kumar Jain
16	Ajay Kumar Gupta And Sons HUF
17	Ankit Jain
18	Jawahar Lal Havelia
19	Adarsh Kumar Sehgal
20	Neelam Gupta
21	Siddhartha Havelia
22	Om Prakash Dawer
23	Atin Dawer
24	Manav Dawer
25	Ajay Kumar Gupta
26	Anil Kumar Gupta
27	Nisha Jain
28	Priyanka Havelia More
29	Mamta Sehgal

3. SEBI has, therefore, initiated adjudication proceedings under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") against the Noticee along with the aforesaid Group Entities for the alleged violation of the provisions of Regulations 3(a) to (d), 4(1) and 4(2)(a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**").

4. Entities at Sl. Nos. 15 to 29 viz. Rakesh Kumar Jain, Ajay Kumar Gupta and Sons HUF, Ankit Jain, Jawahar Lal Havelia, Adarsh Kumar Sehgal, Neelam Gupta, Siddhartha Havelia, Om Prakash Dawer, Atin Dawer, Manav Dawer, Ajay Kumar Gupta, Anil Kumar Gupta, Nisha Jain, Priyanka Havelia More, and Mamta Sehgal, applied for settlement of the respective adjudication proceedings initiated against them, under the provisions of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as "**SEBI Settlement Regulations**"). I note that vide respective Settlement Orders dated February 21, 2018, the adjudication proceedings have been disposed of in respect of the aforesaid 15 entities.

APPOINTMENT OF THE ADJUDICATING OFFICER

5. Earlier, Shri S. V. Krishnamohan, Chief General Manager, was appointed as Adjudicating Officer **(AO)** vide Order dated September 09, 2016 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, Shri Biju S, Chief General Manager, was appointed as AO in the matter in place of Shri S. V. Krishnamohan. Consequent upon transfer of Shri Biju S, the undersigned has been appointed as AO in the present matter vide Order dated July 06, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated October 26, 2016 (*hereinafter referred to as '**SCN**'*) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "***Adjudication Rules***") for the alleged violation of Regulations 3(a) to (d), 4(1) and 4(2)(a) and (g) of PFUTP Regulations.

7. It was alleged in the aforesaid SCN that the Noticee along with the Group Entities had entered into reversal of trades i.e. shares purchased/sold on market were transferred back through off market within next 2-working days i.e., T+2 days, thereby creating artificial trading volume in the scrip without change in beneficial ownership.

8. Noticee vide letter dated November 08, 2016 requested for extension of time to file reply to the SCN. Subsequently, the Noticee made submissions to the SCN, *inter-alia,* vide his reply dated December 09, 2016, and the relevant portions of the same is reproduced hereunder:

    PRELIMINARY SUBMISSION:

    i. At the outset the above Noticee holistically submits on SA that the set of alleged events narrated by the SEBI is nothing but a burning example where an innocent investor is being snared and trapped by group of unscrupulous persons who represented themselves allegedly as Share and Stock Dealers/ intermediaries registered under SEBI and took undue advantage of the inexperience and security market illiteracy of above Noticee.

ii. *Now after receiving the above Notice from the most respected and trustworthy regulator, SEBI, the Noticee consulted his counsel and shared the complete facts and events in chronological manner and whereas the counsel is of the opinion that the alleged notice of inquiry by SEBI is w.r.t. alleged reversal of trades i.e. sell orders of above Noticee were being allegedly matched with buy orders of group of unscrupulous persons/ associations which was actually not known to Above Noticee and that the Noticee is being cheated and misled by group of unscrupulous persons who took undue advantage of inexperience & illiteracy of Noticee in securities market by inculcating the alleged acts in securities market under the disguise of securities law. Therein lies the hard fact that the Above Noticee is an innocent investor who was not aware of the fact that sell order punched by these unscrupulous persons in his account has been allegedly reversed by group of unscrupulous persons in their account without the knowledge of Above Noticee. In fact Above Noticee is also not having any knowledge of provisions of Securities laws.*

iii. *I am advised to submit that there are thousands of laws made by the parliament and different states and thousands of rules framed by the executive arm i.e. the government. There are number of special enactments, i.e. special laws for securities market, special laws for insurance sector, special laws for banking sector, special laws for NBFC and so on which are applicable for particular sector and further their Regulators also kept on framing several rules, regulations and issuing numerous circulars for better regulation from time to time. There are customary laws and personal laws like Hindu Law and Mohammaden law etc. There are hundreds and thousands of notifications and circulars which are binding on various parties. Above all we have number of judge made law derived from various court decisions which as everybody knows keeps on changing. Even the Government itself is not aware of the number of laws that are in operation and force in this country. Some of the laws like:*

   a. *Companies Act, 2013 contains 470 sections and in addition to those vast army of sections there are number of rules regulations, notifications, circulars etc are also there.*
   b. *Securities Laws contains*
      i. *ACTS: Securities Contract Regulations Act, 1956; Securities and Exchange Board of India Act, 1992; Depositories Act, 1996*
      ii. *RULES: Securities Contract Regulation Rules, 1957; SEBI (Bankers to an Issue) Rules; SEBI (Debenture Trustee) Rules; SEBI (Portfolio Manager) Rules; SEBI (Merchant Banker) Rules; etc*
      iii. *REGULATIONS: SEBI (Settlement of Administrative and Civil Proceedings) Regulations; SEBI (Foreign Portfolio Investors) Regulations; SEBI (listing Obligation and Disclosure Requirement) Regulations; SEBI (Depository and Participant)Regulations; SEBI (Stock Brokers and Sub Broker) Regulations; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations; SEBI (Stock Exchange and Clearing Corporation) Regulations; SEBI (Issue of Capital and*

Disclosure Requirements) Regulations; SEBI (Mutual Fund) Regulations; SEBI (Delisting of Equity Shares) Regulations ; SEBI (Prohibition of Insider Trading) Regulations; SEBI (Share based Employee Benefit) Regulations; SEBI (Research Analyst) Regulations; SEBI (KYC Registration Agency) Regulations; SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations; SEBI (Investment Advisor)Regulations; etc.

iv. *Circulars and guidelines issued by SEBI/ Recognized Exchanges from time to time;*

It is humanly impossible to remember the army of laws of land stacked in front of the citizens. Better not to say anything about illiterates or those who cannot understand legal language like Above Noticee.

That the Securities laws of this country, a special law, is very complex and complicated in nature and are not always easy to understand / interpreted as the interpretation of these laws are linked and having inter-connection between Act, rules & regulations. That it is a well-known fact that for compliance therewith would often require the assistance of securities market expert. It is equally well known fact that the legislation in securities market undergoes so frequent changes and amendments, vide regular Notices, Circulars and guidelines issued from time to time by SEBI and also by NSE / BSE, that it is not possible for even a person specializing in this field, including the SEBI administrator, to claim that he knows of each and every provision of these special laws and further cannot claim that he knows what exactly the law is on a particular given day or period without making references to the history of the enactments. Meaning thereby the above Noticee belongs to a rural area where people hardly understand the English language and how it can be expected that such a complicated law, which is not commonly used, can be understood by the common layman like Above Noticee.

iv. *In fact it would not be out of place to mention that there are many actions which are though permissible under SEBI Laws (i.e. selling of shares at stock exchange in present matter) but the same act if combined with other simultaneous act (i.e. alleged reverse trade in present matter) would become contravening as per securities laws. Whereas even a common conscientious citizen (like Above Noticee) with his/ her prudence (without having knowledge of Securities Laws and without having any knowledge of any alleged reversal of trade) would not be able to identify such other alleged contravening act & hence can easily be trapped by unscrupulous persons/ associations to achieve their alleged malafide and wrongful goals, if any, because the group of unscrupulous persons always try their focus on the high net-worth clients/ individuals who are securities market illiterate. Hence there was no misconduct on the part of Above Noticee but he has been wrongly dragged in the present alleged notice/ inquiry. Viewed thus, it is therefore hereby requested to kindly withdraw the alleged Notice qua Above*

Noticee and do not initiate any penal proceedings against him so as to render justice, equity and good conscience.

v. ***RELIANCE MADE ON:***

Hon Supreme Court of India in ***Motilal Padampat Mills Ltd V State of Uttar Pradesh reported in (1979) 118 ITR 326(SC)*** *HAS RIGHTLY OBSERVED THAT:*

> *"It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law."*

In a case decided by the Hon Supreme court the judges openly admitted that they have never heard of the law which was stated to have been violated by an illiterate person in a remote village. Therefore, the Hon court acquitted the person charged for violating that law.

vi. *Now primarily question arises whether the above Notice be held responsible for any alleged contravention, if any, of Securities Laws. In order to understand the situation and give answer to said query, let us consider the scenario:*

"Two customers exit a restaurant on a winter day and on their way out grab a coat hanging in the lobby. The first customer accidently takes a coat belonging to someone else thinking it was his and carries it out of the store. The second customer likewise grabs the wrong coat but takes it because he decides it looks better than the one he owned.

Both actions were identical, but only one customer should be, and likely would be, charged with committing a willful misconduct. This is because courts recognize there is a difference between carelessly picking up the wrong coat from a restaurant and intentionally choosing the wrong coat off the rack.

The first action is not misconduct, but merely a mistake, while the latter is considered willful misconduct.*"*

*In current example, the person who picked up the coat first was not aware that the said coat do not pertains to him and hence he has not committed any misconduct but simply a mistake and similarly the above Noticee has been trapped and was not aware of the fact, that at one end group of unscrupulous persons are executing the sell order of M/ s Pressman Advertising Limited (herein after referred as "****PAL****") in the above Noticee account and whereas at other end they are also allegedly punching reverse orders in their associate accounts. Amid that the Above Noticee even not aware of any term known "Reversal of Trade". Having said that mere selling of shares of PAL in the account of Noticee no. 22 is not fraudulent on the part of above Noticee and there was no contravention of PFUTP regulations on the part of above Noticee as the trading in the account of above Noticee was done by group of unscrupulous persons and Above Noticee was not having any knowledge that the trades executed in his account were allegedly matched by group of unscrupulous persons (without knowledge of above Noticee).*

vii. *It is submitted that the above Noticee is innocent and shares of PAL were sold in Above Noticee account by group of unscrupulous persons and Above Noticee was under impression that as the trades were being carried out as per the directions of Share and Stock dealers (alleged unscrupulous persons), all the transactions are in accordance with law. Whereas Above Noticee was not aware* *that alleged sell order of PAL shares punched in Above Noticee account was allegedly matched by these unscrupulous persons at the disguise of Securities Laws. Amid that, presumption of innocence is a legal right of Above Noticee and it is also recognized as international legal right as per UN's Universal Declaration of Human Rights. With due respect it is submitted that mere fact that shares sold in the account of Above Noticee was bought by M/ s Mridul Securities Private Limited (without knowledge of Above Noticee) cannot prove indulgence of above Noticee in any alleged fraudulent act in the light of fact that the sell order in above Noticee account was punched at recognized exchange terminal where it is not possible to know identity of counter party and the sell order so punched in above noticee account were punched by unscrupulous persons and above Noticee was not aware of the identity of counter party of trade.*

viii. *With great reverence it is solemnly submitted that Above Noticee is an innocent investor who has been wrongly dragged and duped by group of unscrupulous persons/ associations and infact he was not aware of fact that the shares of PAL sold in his account were actually allegedly purchased by M/ s Mridul Securities Private Limited. That the above noticee have neither acted in fraudulent manner nor contravened any of the provisions of PFUTP Regulations as he was neither punched sell order for selling of PAL shares nor aware of the identity of counter party to sell orders executed from his account. Hence he should be acquitted / exonerated from the alleged inquiry proceedings and no penalty should be imposed under 15HA of SEBI Act, 1992 and the alleged notice issued qua Noticee no. 22 is liable to be withdrawn to render justice, equity and good conscience.*

BACKGROUND

ix. *Respectfully submitted that Noticee no. 22 (Son of Sh. Rakesh Kumar Agarwal), respectable citizen of India, is a reputed businessman. That the above Noticee belongs to a rural area where people including above Noticee are not aware of Securities law & mechanism, intricacies involved in securities market and are basically Securities market illiterate.*

x. *That the above Noticee hereby wish to symbolize & share his sorrow, agony and pain for being duped and trapped by Group of unscrupulous persons* ***[i.e. Mr. Atul Kumar Jallan, M/ s Mridul Securities Private Limited {Stock & Share Dealer/ Share & Commodity Dealer}*** *,.who not only cheated him but also connived to destroy his reputation and image in the society.*

xi. *That Mr. Sudhir Mehrotra, a Chartered Accountant by profession, used to maintain the accounts of above Noticee and was also having harmonious friendly relationship with father of Above Noticee. That due to such friendly relationship with Mr. Sudhir Mehrotra all the family members of above Noticee including the above Noticee had to have full trust on suggestions and recommendations of Mr. Sudhir Mehrotra. Whereas Mr. Amit Kumar, brother of Above Noticee, generally used to deal with Mr. Sudhir Mehrotra w.r.t. account of all the family members. That in around 2010 our family CA Mr. Sudhir Mehrotra introduced Mr. Atul Kumar Jallan to family members of above Noticee as an expert in Securities Market who in turn explained and introduced that he is having associated companies named M/ s Mridul Securities Private Limited; M/ s Shree Aeran Marketing Pvt Ltd and M/ s Raj Rani Securities Pvt Ltd (herein after jointly* *referred to as Group of unscrupulous persons) who are* ***"DALAL of share Bazar'*** *i.e. Stock & Commodity Dealer intermediaries registered with SEBI and also having business relationship with other intermediaries registered with SEBI i.e. Adroit, Maheshwaritech, Alankit and Farsight. He quoted that:*

"hum SEBI ki Taraf se Registered hai, hamare paas research ke log hai aur agar aap hamare through paisa lagaenge to aap good return paa sakte hai aur hum apna share (professional fee) aap se le levenge ....."

Further he quoted that:

*"**Bazaar me pata karwa leve hamari business tie up bahut sare broker se bhi hai... not only in Delhi but in Mumbai, Kolkata and Ahmadabad too.***

Bahut saare bazaar main aise hai jo public ko ********** banate Hai par aap humse deal kare to apka paisa bhi surakshit rahega aur aap aur hum sabhi achche paise kama levenge**'*

Further he quoted that:

*"**Hamara saara kaam kanoon ke dayare me reh kar hota hai"***

This alleged group of unscrupulous persons/ associations allegedly in connivance & collusion with each other convinced the above Noticee & his family members by their psychedelic & convincing statements for making an investment in the securities market through them and assured for good amount of return and the same was endorsed by Above Noticee to his family members as he trusted Mr. Sudhir Mehrotra. That on directions of Mr. Atul Kumar Jallan, above Noticee and his family members signed on bunch of documents which, as per Mr. Jallan, were required to conduct trading in securities market. But now the above Noticee is being traumatized and shocked on the receipt of the stated Notice under reply issued by your good office which has exposed the layers of tricky misconduct and misleading statements of unscrupulous persons/ associations which ultimately duped the above Noticee.

xii. *It is worthy to mention here that the shares purchased, from time to time, in the account of Above Noticee through Mr. Atul Kumar Jallan & his associate companies, were used to be sold in above noticee account by these unscrupulous persons/ associations only. Unfortunately the shares of PAL were also bought in the account of above Noticee from M/ s Mridul Securities Private Limited were later on sold in the account of above Noticee by these unscrupulous persons/ associations. Whereas Above Noticee was not having any knowledge of the fact that M/ s Mridul Securities Private Limited is having any alleged malafide intention to reverse the sell order(s) of PAL shares punched in Above Noticee Account. Above Noticee was not even aware of the fact that M / s Mridul Securities Private Limited has punched any buy order and it is allegedly on counter side of trade.*

xiii. *Though we all are aware that the unscrupulous persons are in existence who are waiting for gullible inexperience investors to trap just like*

***Mr. Charles Ponzi, an Italian, who conned investors in the US and Canada by promising 50% profit in 45 days by buying discounted postal reply coupons in other countries and redeeming them at f act value in the US as a form of Arbitrage. But in reality the cost of transactions was higher than the profit to be made**.*

And similarly, in present circumstances the above Noticee was being trapped in the alleged ponzi scheme of Mr. Atul Kumar Jallan and his co-associates/ companies resultant enormous loss of reputation to above Noticee.

xiv. *That being a bonafide & gullible inexperienced investor who is not aware of mechanism of trading in secondary market , Securities Laws, legalities of trades, its implications, and even fail to diffentiate between listed and unlisted entities/ companies, their intermediaries and are also not aware of the fact of financial market intermediaries through whom one can execute security market transactions and simply relied upon the advice of their CA who in turn allegedly relied upon the psychedelic suggestions of Mr. Atul Kumar Jallan w.r.t. investment in Securities Market, are the real sufferer as the reputation of above Noticee is at stake due to alleged wrongful acts of group of unscrupulous persons. It is further stated at the risk of repetition that the above Noticee is being targeted, trapped and misled by the group of unscrupulous persons in their alleged ponzi & false scheme resultant loss of reputation to above Noticee. Rightly said that, financial schemes introduced by some unscrupulous which a common man do not understand resultant to collapse and ends up giving big losses/ trouble to innocent investors.*

Before the Deponent begin with the submission on the facts and laws, he beseech before your good office to kindly take an affirmative view on the basis of circumstances so explained in this submission and declare the above Noticee impeccable.

BRIEF FACTS AND SUBMISSION OF NOTICEE NO. 22 (ANUJ KUMAR AGARWAL)

xv. *That the Noticee no. 22 is a reputed businessman and not aware of intricacies & laws relating to securities market and is basically securities market illiterate. That the trading account and even the financials of Noticee no. 21 was never handled by him and he is not aware of the transactions executed in his account, but the same were managed by group of unscrupulous persons only under intimation to him. That whatever submission is made by above Noticee is being made by him on oath after receiving information from Mr. Amit Kumar (brother of Above Noticee) on the basis of documents on record and after taking legal advice.*

xvi. *That Noticee No. 22 is advised to state that in the year 2010, on the advise of Mr. Atul Kumar Jallan, 1000 shares of TTK Prestige Limited (ISIN 'INE690AO101O') were bonafide purchased in Above Noticee account from M/ s Mridul Securities Private Limited. Similarly in June 2012, upon advise of Mr. Atul Kumar Jallan, 1,70,000 shares of Pressman Advertising Limited (PAL) (formerly known as Nucent Finance Limited) were bonafide purchased in the account of Above Noticee from M / s Mridul Securities Pvt Ltd. That Above Noticee and his family members are securities market illiterates and were not aware of methods of keeping the shares in 'Demat Form' and group of unscrupulous persons had taken undue advantage out of this hard core fact. That Above Noticee and his family were being distorted / orchestrated by group of Unscrupulous persons by issuing alleged Sale Bills therein mentioning the word "Demat Delivery" so as to make Above Noticee come to believe that Demat Delivery of shares being made by them to above Noticee.*

…

xvii. *That I am advised to state that 1000 shares of TTK Prestige Limited (ISIN 'INE690A01010') were sold by unscrupulous persons in above Noticee account through broker named M / s Adroit Financial Services Pvt Ltd. Similarly in the month of July i.e. on 18.07.2013 and 19.07.2013 respectively shares of PAL also sold in the account of Above Noticee by group of unscrupulous persons themselves.That as per mutual terms, Mr. Atul Kumar Jallan used to take his respective professional fee in cash. That family of Above Noticee (including Above Noticee) was having an impression, as orchestrated by group of unscrupulous persons, that the acts to be performed are within the lines of Laws of Land, hence the same were allowed to be operated by group of unscrupulous persons. Whereas the Above Noticee and his family never question the actions of group of unscrupulous persons as it was prima facie revealed that the unscrupulous persons merely conducting sale and purchase of securities transactions in the Above Noticee account and above all, Above Noticee was getting bills for each and every transactions. Hence the transactions carried out by unscrupulous persons in Above Noticee account were believed to be bonafide. But after receiving Notice under reply it has created upheaval and tribulation atmosphere in the family of Above Noticee*

…

xviii. *That I am advised to state that trading on any recognized Stock Exchange, like NSE / BSE, is conducted through several thousands of terminals interlinked with each other under the established systems of the Authorities. Moreover the system of trade is completely transparent without any possibility of being able to recognize and find out the identity of counter party.*

xix. *It is submitted that like other bonafide genuine selling transactions in the account of Noticee No. 22 w.r.t. sale of shares of TTK Prestige Limited made through recognized Stock Exchange trading terminal, the shares of PAL were also genuinely sold bonafide in the above Noticee account at the recognized exchange terminal through Adroit Financial Services Private Limited by group of unscrupulous persons without having any knowledge / identity of counter party to Above Noticee. Whereas what so ever dealing carried out in the account of Above Noticee with group of unscrupulous persons were done under bonafide belief of Above Noticee that the acts performed by group of unscrupulous persons, being agents registered with SEBI, are within the framework of Securities Laws. That Above Notice is advised to state that recognized Exchange Trading System is completely transparent and does not disclose the name of counter party on the other side of the transaction. Amid that no innocent investor like above Noticee may have any methodology to know that the shares purchased them are being sold by whom and vice versa. Having said that, I am advised to state that the allegations as to reversal of trade qua above Noticees does not hold water in the light of the fact that while unscrupulous persons punched sell order of scrip of PAL in Above Noticee code the identity of counter party was not known to above Noticee as the shares of PAL were sold at Exchange Terminal where the seller/buyer of securities cannot have any access to know the counter party of transaction. Amid that above Noticees was not aware that such unscrupulous persons had punched sell order in Above Noticee* *account and simultaneously punched buy order in the account of Mridul Securities Private Limited which ultimately allegedly resultant reversal of trade.*

xx. That the Above Noticee has relied upon the Annexure 2 which is annexed by SEBI in its Notice under reply. I am advised to state that after Analyzing the said Annexure 2, as enumerated herein below, it can be evinced that the contents of said Annexure is totally incoherent with the alleged opinion framed by the Hon'ble AO qua Above Noticee, hence can be termed as defective in nature as prima facie no violation of any SEBI laws is revealed per se:

a. That the order number wise sell order quantity punched in the account of Above Noticee on dated 18.07.20 13 & 19.07.2013 is different from the alleged order number wise buy order quantity punched by party at counter part of trades. Having said that if we look at trade executed on 18.07.2013, single sell order number i.e. 2013071867844749 was punched in above Noticee account for 1,00,000 shares . Whereas there were two different buy orders punched by party at counterpart through different order numbers i.e. 2013071869879765 for 45000 shares (out of which only 44375 shares executed with Above Noticee); and order no. 2013071869880416 for 45000 shares (out of which only 43595 shares executed with Above Noticee). Similarly on 19.07.2013 sell order via single order number 2013071967881405 for 70000 shares was punched in the account of Above Noticee but buy orders were punched via several different order numbers such as 2013071969818709 for 35000 shares (out of which trade for only 34213 shares executed); order number 2013071969819596 for 35000 shares and order no. 2013071969821721 for 1000 shares out of which trade for 787 shares were executed) as also evident from Annexure 2 annexed by SEBI along with its Noticee under reply. And in above circumstantial evidence enumerated above, it is prima facie that there was no planning for alleged reversal of trade in the account of Above Noticee and the same was beyond his stretch of imagination and knowledge.

b. That, on 18.07.2013, only single sell order was punched in Above Noticee account i.e. at 10:02:06 for selling 1,00,000 shares. Whereas the Buy orders were punched at 13:37:49 and 13:37:53. It is submitted that if at all it is presumed, without admitting the same, the sell order were to be matched with buy order; there would neither be any gap between sell order & buy order nor there would be any difference in order size (order number wise) for buy and sell orders, not even for single order. Whereas it is evidential that the order number wise sell quantity punched In Above Noticee account did not match with order number wise buy quantity punched by party at counterpart and moreover the gap between sell order and buy order is approx. more than 3 Hour which clearly reflects that the alleged inquiry of SEBI is faulty qua above Noticee as prime facie it is revealed that there was no planned reversal of trades in the account of Above Noticee. Above all it is stated on oath that the Above Noticee was not aware of identity of party at counter part of trade at any point of *time, i.e. he was not aware that the group of unscrupulous person had allegedly punched any buy order against the sell order in the account of Above Noticee.*

c. *Similarily on 19.07.2013 the gap between sell order and buy order was more than 3 hour which clearly reflects that the identity of party at counter part of trade was not known while executed sell orders in Above Noticee account.*

Hence the allegation of SEBI qua Above Noticee does not hold water and hence should be withdrawn qua above notice and no penalty should be imposed on Above Noticee to render justice, equity and good conscience

QUESTION OF LAW

xxi. *That the Above Noticee is not, in any way, responsible for any alleged breach or violation of any of the provisions of Regulation 3(a) to (d), 4(1) and 4 (2)(a) & (g) of SEBI (PFUTP) Regulation as explained herein below:*

a. *That above Noticee did not dealt in the scrip of PAL in any fraudulent or unfair manner as each and every trade transaction in scrip of PAL in the account of Above Noticee was directly performed by group of unscrupulous persons for their alleged wrongful personal gains.*

b. *That Above Noticee never used or employed, in connection with the IPO/ purchase or sale of PAL scrip, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder. Whereas it is pertinent to mention here if it all it is presumed, without admitting the same, that there were any manipulative device adopted, then it would have been performed by unscrupulous persons for their alleged wrongful gain and not by Above Noticee.*

c. *That Above Noticee did not employ any device, scheme or artifice to defraud in connection with dealing in PAL scrip as it was group of unscrupulous persons who had punched sell order in the account of above noticee under the disguise that such trading are executed as per the statutory securities laws. Whereas Above Noticee, being securities market illiterate, though authorized group of unscrupulous persons to execute trades in his account, but has not and never authorized anybody to breach any of the provisions of laws of land. Therefore, if at all it is presumed, without accepting the same, that there is any contravention to provisions of securities laws, Above Noticee, being securities market illiterate, cannot be held responsible for the same.*

d. *That Above Noticee did not engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with trading in PAL scrip as the sell order punched in the account of above noticee was assured to be done in accordance of law and Above Noticee was not having any knowledge of identity of counter party as well as the manner in which transactions has been performed.*

e. *That Above Noticee have not, in any manner what so ever, indulge in a fraudulent or unfair trade practice w .r .t. trading in PAL scrip.*

f. *That in order to make any person responsible for any alleged manipulative/ fraudulent / unfair trade practice, ill intention/ mens era to conduct such fraud is necessary. Whereas in the trading observed by you there was no bad intention on the part of Noticee no. 22 is establishing rather your good office is also failed to establish existence of mens era/ ill intention on the part of Above Noticee of having indulgence in any kind of fraudulent / manipulative/ unfair trade practice in PAL trades.*

xxii. *It is submitted at the risk of repetition that the Securities laws of this country are special legislations which is very complex & complicated in nature and are not always easy to understand / interpret. That it is a well-known fact that the legislation in securities market undergoes so frequent changes and amendments, vide regular Notices, Circulars and guidelines issued from time to time by SEBI and also by NSE / BSE, that it is not possible for even a person specializing in this field , including the SEBI administrator, to claim that they are aware of each and every provision of these special laws/ enactments and further cannot claim that they are aware what exactly the law is on a particular given day or period without making references to the history of the enactments.*

xxiii. *In fact it would not be out of place to mention that there are many actions which are though permissible under SEBI Laws (i.e. selling of shares at stock exchange in present matter) but the same act if combined with other simultaneous act (i.e. alleged reverse trade in present matter) would become contravening as per securities laws. Whereas even a common conscientious citizen (like Above Noticee) with prudence (without having knowledge of Securities Laws and without having any knowledge of any alleged reversal of trade) would not be able to identify such alleged contravening act & hence can easily be trapped by unscrupulous persons/ associations to achieve their alleged malafide and wrongful goals, if any, because the group of unscrupulous persons always try their focus on high net-worth clients/ individuals who are securities market illiterate. Hence there was no breach of any law performed by the Above Noticee but he has been wrongly dragged in the present alleged notice/ inquiry. Viewed thus, if is therefore hereby requested to kindly withdraw the alleged Notice qua Above Noticee and do not initiate any penal proceedings against Above Noticee so as to render justice, equity and good conscience.*

xxiv. ***RELIANCE MADE ON**:*

*Hon'ble Supreme Court in **Motilal Padampat Mills Ltd V State of Uttar Pradesh reported in (1979) 118 ITR 326(SC)** HAS RIGHTLY OBSERVED THAT:*

"It must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law."

xxv. *…*

xxvi. *It is earnestly submitted that the above Noticee neither took any unfair advantage nor the trade of above notice resultant loss caused to an investor or group of investors nor the above noticee was indulge in any alleged default in PAL nor have any track record of indulgence in any such alleged malpractice in past. It is pertinent to mention here that the Above Noticee has not in any manner repeatedly indulge in any alleged reversal trade in the securities of Pal, have not acted in fraudulent manner and not violated any of the provisiosn of SEBI Act,* *rules or Regulations. The truth is above Noticee was victimized and trapped by group of unscrupulous persons who had allegedly used above noticee to serve their malafide purpose at the disguise of securities laws at the stake of reputation of Above Noticee. Hence the Above Noticee is not liable for any monetary penalty under section 15HA of SEBI Act, 1992.*

xxvii. *That I am advised to state that it is essential for the stock brokers to abide by the SEBI (Stock Brokers and Sub Brokers) Regulations, code of conduct for stock brokers. Precisely it is prima facie revealed that the connected stock brokers on whose terminals such alleged trading in the scrip of Pal has been performed have allegedly contravened Clause A of the Code of Conduct for Stock Brokers under Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 ("the Stock Broker Regulations") read with regulation 7 thereof r / w Regulation 15 of the Broker Regulations read with Clause A of the Code of Conduct as specified under schedule II of the said Regulations . I am further advised to state that the concerned stock brokers, through whom alleged trading in scrip of Pal has been conducted, were required to analyze the alleged activities so as to prevent the alleged acts, if seems contravening, at the initial stage only. Meaning thereby if proper due diligence would have been taken care of by Adroit Financial Services Private Limited (SEBI regn no. INB230853830) and other stock brokers who were involved in such alleged trades then it would have been prevented from such breach of laws, if any, and humiliation of innocent investors like Above Noticee.*

Relevant provisions of Broker Regulations:

Stock brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

Schedule II

Clause A of the Code of Conduct for Stock Brokers

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock -broker shall act with due skill, care and diligence in the conduct of all his business

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock -broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the f air and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial sound ness.

(5) Compliance with statutory requirements: A stock -broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 15]

A. General.

(1) Integrity: A sub-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A sub-broker shall act with due skill, care and diligence in the conduct of all his business.

xxviii. It is worthy to mention here that Hon'ble SEBI had introduced LES schemes in both Equity Derivative segment and Capital Market Segment vide its circulars no. CIR/ DNPD/ 5/ 2011 dated 02 .06.2011 and circular no. CIR/ MRD / DP/ 05/ 2013 dated 08.02.2013 respectively. Through these LES schemes, Hon'ble SEBI has allegedly allowed Exchanges viz a viz Stock Brokers to do Wash out / Self / Structured / Synchronized trades which leads to generation of artificial market of illiquid securities, creation of false or misleading appearance of trading and also tantamount to circular transactions in respect of securities which leads to alleged misrepresentation and giving wrong picture to genuine investors at large in securities market. That it would be totally unconscionable on the part of SEBI that at one end it has allowed LES scheme (during the same period in which alleged trade in above noticee account has been questioned) which are allegedly in contravention of PFUTP Regulations and at other end has initiated inquiry on innocent investor like above noticee alleging indulgence of above noticee in reversal of trade, if any, without proper and impartial analyses of documents beforehand. That the alleged Inquiry Notice under reply qua Above Noticee is unconstitutional as the same is against the 'Law of equality' and 'equal protection of law to all' and hence the 'alleged Notice under reply' is liable to be withdrawn qua above noticee on this ground only and no penal action should be taken against Above Noticee.

9. Vide his aforesaid reply dated December 09, 2016, Noticee also submitted copy of the sale bills for his purchase transactions, contract notes for his sell transactions, judgment of Hon’ble Supreme Court of India in Motilal Padampat Mills Ltd. vs State of Uttar Pradesh, and SEBI circulars dated 02.06.2011 and 08.02.2013.

10. From the available records, I note that a personal hearing in respect of the Noticee before the erstwhile AO, Shri S. V. Krishnamohan was conducted on December 23, 2016. Shri Amit Gupta, advocate, from the firm M/s. Amit Ashok Gupta & Associates, Delhi, appeared on behalf of the aforesaid Noticee, and made the following submissions –

   i. His clients have traded through Mridul Securities Pvt. Ltd., Raj Rani Securities Pvt. Ltd., Shree Aeran Marketing Pvt. Ltd., and Adroit Financial Services Pvt. Ltd. (Member, NSE). Except Adroit Financial Services Pvt. Ltd., all others were not registered with SEBI as a broker. These intermediaries were introduced to the clients through their Chartered Accountant.

ii. The trades as mentioned in the SCN was not disputed by the Noticee, however, it was submitted that irregular trades in the scrip were done by the brokers and that the Noticee was not party to any irregular trading or manipulation. The Noticee has been trading in other scrips also.

iii. Reliance was placed upon the reply dated December 09, 2016 of the Noticee and it was requested that a liberal view may be taken in the matter.

11. Subsequently, another opportunity of personal hearing was granted to the Noticee by the erstwhile AO, Shri Biju S, on February 28, 2018. However, vide email dated February 26, 2018, the counsel for the Noticee viz. Shri Amit Gupta, informed that they cannot mark their appearance on the said date of hearing.

12. Pursuant to appointment of the undersigned as AO, opportunity of personal hearing was granted to the Noticee on July 24, 2018. In the said hearing, Shri Amit Gupta, advocate and Ms. Kapila Mahendroo, advocate, Authorized Representatives (**ARs**) appeared on behalf of the Noticee, and reiterated the submissions made earlier vide reply dated December 09, 2016. Further, ARs submitted that the Noticee and certain other entities viz. Nupur Agarwal, Amit Kumar, Smita Agarwal, Radha Rani, and Amit Kumar Agarwal HUF, who have been issued SCN in the matter are family members and related to each other. ARs also filed a summary of the transactions carried out by the Noticee in various scrips during the period from May 31, 2010 to July 19, 2013.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully examined the allegations against the Noticee and his replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are :

I. Whether the Noticee violated the provisions of Regulations 3(a) to (d), 4(1), and 4(2) (a) and (g) of PFUTP Regulations?

II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

III. If yes, then what should be the quantum of penalty?

FINDINGS

14. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PFUTP Regulations, alleged to have been violated by the Noticee. The same are reproduced below:

PFUTP Regulations, 2003:

"Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange.

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder

……"

"Regulation 4: 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.

(2) 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.

…

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

……”

Issue I : **Whether the Noticee violated the provisions of Regulations 3(a) to (d), 4(1), and 4(2) (a) and (g) of PFUTP Regulations?**

15. I note that the allegations levelled in the SCN are to the effect that during the Investigation Period, the Noticee along with the Group Entities, indulged in reversal of trades in the scrip of PAL, thereby created artificial volumes and misleading appearance of trading, and entered into transactions without any intention of change of beneficial ownership of such security. Therefore, it was alleged that the Noticee has violated the provisions of Regulations 3(a), (b), (c), 4(1), and 4(2) (a) and (g) of the PFUTP Regulations.

16. From the material available on record, I note that investigations have established inter-personal relationship of the Group Entities on the basis of MCA filing, KYC Documents, Bank Account statements and off-market transactions etc. The details are explained in the following table -

TABLE - 1		
Sr. No.	**Entity Name**	**Basis of Connection**
1	Raj Rani Securities (P) Ltd	1. Address: 121-A Pocket-D Deep Enclave Phase-III Ashok Vihar New Delhi - 110052 2. Directors: (a) Meena Jalan and (b) Pankaj Goel 3. Address of Directors: 912, Lekhu Nagar, Tri Nagar, Delhi, 110035, Delhi 4. Email: atul_jalan2007@rediffmail.com 5. Mobile: 09810410741 6. Transferred shares off-market to sr. no. 2
2	Mridul Securities Private Limited	1. Address: 912 Street No 59 Tri Nagar, Delhi - 110035 2. Directors: (a) Sudha Mittal and (b) Kumud Khemka 3. Address of Directors: Same as directors of Sr. No. 1 4. Email: Same as Sr. No. 1 5. Mobile: 09810410741 (same as Sr. No. 1) and 09810558711 6. Received shares off-market from sr. no. 1

		7. Transferred shares off-market to sr. no. 3,4,5,6,7,8, 9,10,11,12,13,14,16,17,18,19,21,22,23,26,27,28,29
3	Shree Aeran Marketing Private limited	1. Director Megha Jalan has the same address as directors in Sr. No. 1 & 2 and director Deepak Goyal has the same address as entity in Sr. No. 1 2. Email: Same as Sr. No. 1 & 2 3. Mobile: 09810558711 (same as Sr. No. 2) 4. Transferred shares off-market to sr. no. 2,20,24,25, 30,31,32
4	Rakesh Kumar Jain	1. Add: Flat No H - 1/ 201, Sec 11, Rohini, Delhi - 110085 2. Email: ankit201@yahoo.com 3. Phone: 09810661322, 01127570350 4. Received shares off market from sr. no. 2
5	Nisha Jain	1. Same address, Email ID and Phone with Sr. No. 4 2. Received shares off market from sr. no. 2
6	Ankit Jain	1. Same address, Email ID and Phone with sr. no. 4,5 2. Received shares off market from sr. no. 2
7	Jawahar Lal Havelia	1. Email: shavelia@hotmail.com 2. Phone: 09811325385, 01147096401 3. Received shares off market from sr. no. 2
8	Siddhartha Havelia	1. Same Email ID and phone as Sr. No. 6 2. Received shares off market from sr. no. 2
9	Priyanka Havelia More	1. Same Email ID and phone as Sr. No. 6, 7 2. Received shares off market from sr. no. 2
10	Atin Dawer	1. Add: C 13, Kirti Nagar, New Delhi 2. Email: info@narulagupta.com 3. Received shares off market from sr. no. 2
11	Om Prakash Dawer	1. Same address and Email ID with Sr. No. 9 2. Phone: 09873094440, 01125939266 3. Received shares off market from sr. no. 2
12	Dawer Manav	1. Same address and Email ID with Sr. No. 9 & 10 2. Same phone number with Sr. No. 10 3. Received shares off market from sr. no. 2
13	Mamta Sehgal	1. Add: F 204, Ambika Appartment, Rohini Sector 14, New Delhi 2. Email: ajay@advancetechonline.in 3. Phone: 09810058255 4. Transferred funds to Sr. No. 2 5. Received shares off market from sr. no. 2
14	Adarsh Kumar Sehgal	1. Same address, Email ID and phone with sr.no. 13 2. Transferred funds to Sr. No. 2

		3. Received shares off market from sr. no. 2
15	Adarsh Kumar Sehgal HUF	1. Same address, Email ID and phone with sr.no.13,14 2. Transferred funds to Sr. No. 2
16	Ajay Kumar Gupta	1. Add: F-22/30 Sector-3 Rohini Delhi 2. Same Email ID with Sr. No. 13, 14 & 15 3. Director of Advance Tech Services Private Limited (ATSPL). Email of ATSPL is account@advancetechonline.in 4. Received shares off market from sr. no. 2
17	Ajay Kumar Gupta & Sons HUF	1. Same address with Sr. No. 16 and same Email ID with sr.no.13,4,5,16 2. Received shares off market from sr. no. 2
18	Anil Kumar Gupta	1. Add: Flat No-23, Plot No-28/2, Jamna Appartment, Sector-9, Rohini, Delhi-110085 2. Email: anil@advancetechonline.in 3. Phone: 09810131452 4. Director of ATSPL 5. Received shares off market from sr. no. 2
19	Neelam Gupta	1. Same address, Email ID and phone with sr.no.18 2. Received shares off market from sr. no. 2
20	Amit Kumar Agarwal HUF	1. Add: Madhuban Compound Station Road 317, Nai Bast- 2 H. No. 274, Se Anta Tak, Pilibhit, Uttar Pradesh - 262001 2. Email:amit@dsriceexports.com 3. Phone: 09837899919 4. Received shares off-market from sr. no. 3
21	Amit Kumar	1. Same address, Email ID and phone with sr. no. 20 2. Received shares off market from sr. no. 2
22	Anuj Kumar Agrawal	1. Same address, Email ID and phone with sr. no. 20, 21 2. Received shares off market from sr. no. 2
23	Nupur Bansal/ Nupur Agarwal	1. Same address, Email ID and phone with sr. no. 20, 21 & 22 2. Received shares off market from sr. no. 2
24	Radha Rani	1. Same address, Email ID and phone with Sr. No. 20, 21, 22 & 23 2. Received shares off-market from sr. no. 3
25	Smita Agarwal	1. Same address, Email ID and phone with Sr. No. 20, 21, 22, 23 & 24 2. Received shares off-market from sr. no. 3
26	Rekha Mishra	1. Received shares off-market from sr. no. 2
27	Praveen Kumar Agarwal - HUF	1. Email: praveenkumar051@rediffmail.com 2. Received shares off-market from sr. no. 2

28	Praveen Kumar Agarwal	1. Same Email ID with Sr. No. 27 2. Received shares off-market from sr. no. 2
29	Ranjana Agarwal	1. Same Email ID with Sr. No. 27 & 28 2. Received shares off market from sr. no. 2
30	Parveen Kumar Singhal	Received shares off-market from sr. no. 3
31	Vivek Sharma	Received shares off-market from sr. no. 3
32	Varun Aggarwal HUF	Received shares off-market from sr. no. 3
	Notes – *i. As per SEBI, Sl. Nos. 1, 15, and 30 have not engaged in reversal of trades in the scrip of PAL.* *ii. Sl. Nos. 4 to 14, and 16 to 19 applied for settlement proceedings under Settlement Regulations to SEBI. Settlement Orders dated February 21, 2018 have been passed in respect of these entities.*	

17. As per the details in the SCN, I note that during the Investigation Period, the Group Entities purchased 39,79,550 shares (84.41% of total market volume) and sold 35,19,127 shares (74.65% of total market volume) of the Company in NSE. Their trading summary in the scrip of PAL in NSE during the Investigation Period is as under –

TABLE - 2				
	NSE			
Client Name	**Gross Buy Vol**	**% to total mkt Vol**	**Gross Sale Vol**	**% to total mkt Vol**
Mridul Securities Pvt Ltd	3086550	65.47	43527	0.92
Shree Aeran Marketing Pvt Ltd	893000	18.94	0	0.00
Rakesh Kumar Jain	0	0	75200	1.60
Ajay Kumar Gupta And Sons HUF	0	0	160000	3.39
Varun Aggarwal HUF	0	0	250000	5.30
Amit Kumar Agarwal HUF	0	0	100000	2.12
Praveen Kumar Agarwal HUF	0	0	215000	4.56
Ankit Jain	0	0	74000	1.57
Jawahar Lal Havelia	0	0	75200	1.60
Adarsh Kumar Sehgal	0	0	162000	3.44
Neelam Gupta	0	0	75200	1.60
Siddhartha Havelia	0	0	74000	1.57
Om Prakash Dawer	0	0	70000	1.49
Atin Dawer	0	0	70000	1.49
Amit Kumar	0	0	170000	3.61
Rekha Mishra	0	0	125000	2.65
Manav Dawer	0	0	70000	1.49
Ajay Kumar Gupta	0	0	162000	3.44
Anil Kumar Gupta	0	0	162000	3.44
Praveen Kumar Agarwal	0	0	215000	4.56
Nisha Jain	0	0	74000	1.57
Anuj Kumar Agrawal	0	0	170000	3.61
Ranjana Agarwal	0	0	40000	0.85

Priyanka Havelia More	0	0	74000	1.57
Nupur Agarwal	0	0	170000	3.61
Radha Rani	0	0	180000	3.82
Mamta Sehgal	0	0	162500	3.45
Smita Agarwal	0	0	180000	3.82
Vivek Sharma	0	0	120500	2.56
Grand Total	**39,79,550**	**84.41**	**35,19,127**	**74.65**
Market Volume	**47,14,760 shares**			

18. From the above, I note that the contribution of the Group Entities to the total trading volume of PAL in NSE during the Investigation Period was significant viz. purchase contribution of 84.41% of the market volume, and selling contribution of 74.65% of the market volume.

19. From the trade log (in NSE) and off-market transfer data of the Group Entities, I also note that Mridul Securities Pvt Ltd. and Shree Aeran Marketing Pvt. Ltd. together purchased 33,45,795 shares of PAL (70.96% of market volume) on market in NSE from Group Entities, and these trades were reversed by transferring 34,75,600 shares in off-market to the same set of entities from whom the shares were purchased, as summarized in Table – 3 below. It was observed that the Noticee entered into reversal of trades i.e. shares purchased/sold on market were transferred through off market within next 2-working days.

TABLE - 3					
Entity Name	**No. of shares purchase on market**	**No. of shares transferred off-market**	**No. of reversal trades**	**Total reversal Qty**	**% of reversal Qty to Mkt Vol**
Mridul Securities Pvt Ltd	2565737	2645100	29	2565737	54.42
Shree Aeran Marketing Pvt Ltd	780058	830500	10	780058	16.55
Total	**33,45,795**	**34,75,600**	**39**	**33,45,795**	**70.96**

20. The details of the reversal of trades by the Group Entities are as below –

Table 4 : Reversal of Trades by Group Entities						
Trading on NSE				**Off-Market Transfer by Buyer to Seller**		**Reversal Qty**
Date	**Buyer Name**	**Seller Name**	**Qty**	**Date**	**Qty**	
03-Jun-13	Mridul Securities Pvt Ltd	Rekha Mishra	74800	05-Jun-13	75000	74800
05-Jun-13			47641	06-Jun-13	50000	47641
06-Jun-13	Mridul Securities Pvt Ltd	Praveen Kumar Agarwal HUF	111100	07-Jun-13	115000	111100
07-Jun-13			89661	10-Jun-13	100000	89661
10-Jun-13		Praveen Kumar Agarwal	99990	11-Jun-13	100000	99990
11-Jun-13			100000	13-Jun-13	100000	100000
14-Jun-13			15000	17-Jun-13	15000	15000

10-Jun-13	Mridul Securities Pvt Ltd	Mamta Sehgal	161800	11-Jun-13	162500	161800
11-Jun-13	Mridul Securities Pvt Ltd	Adarsh Kumar Sehgal	162000	13-Jun-13	162000	162000
14-Jun-13	Mridul Securities Pvt Ltd	Ranjana Agarwal	32610	17-Jun-13	40000	32610
17-Jun-13	Mridul Securities Pvt Ltd	Priyanka Havelia More	74000	18-Jun-13	74000	74000
17-Jun-13	Mridul Securities Pvt Ltd	Siddhartha Havelia	49290	18-Jun-13	74000	49290
17-Jun-13	Mridul Securities Pvt Ltd	Ankit Jain	74000	18-Jun-13	74000	74000
18-Jun-13	Mridul Securities Pvt Ltd	Ajay Kumar Gupta	154600	19-Jun-13	162000	154600
18-Jun-13	Mridul Securities Pvt Ltd	Nisha Jain	71245	19-Jun-13	74000	71245
21-Jun-13	Mridul Securities Pvt Ltd	Anil Kumar Gupta	154553	24-Jun-13	162000	154553
26-Jun-13	Mridul Securities Pvt Ltd	Atin Dawer	70000	27-Jun-13	70000	70000
26-Jun-13	Mridul Securities Pvt Ltd	Manav Dawer	70000	27-Jun-13	70000	70000
26-Jun-13	Mridul Securities Pvt Ltd	Om Prakash Dawer	70000	27-Jun-13	70000	70000
02-Jul-13	Mridul Securities Pvt Ltd	Ajay Kumar Gupta and Sons HUF	160000	03-Jul-13	160000	160000
09-Jul-13	Mridul Securities Pvt Ltd	Jawahar Lal Havelia	75100	10-Jul-13	75200	75100
09-Jul-13	Mridul Securities Pvt Ltd	Rakesh Kumar Jain	75200	10-Jul-13	75200	75200
15-Jul-13	Mridul Securities Pvt Ltd	Amit Kumar	89977	16-Jul-13	90000	89977
16-Jul-13			80000	17-Jul-13	80000	80000
15-Jul-13	Mridul Securities Pvt Ltd	Nupur Agarwal	90000	16-Jul-13	90000	90000
16-Jul-13			80000	17-Jul-13	80000	80000
18-Jul-13	Mridul Securities Pvt Ltd	Anuj Kumar Agrawal	87970	19-Jul-13	100000	87970
19-Jul-13			70000	22-Jul-13	70000	70000
24-Jul-13	Mridul Securities	Neelam Gupta	75200	23-Jul-13*	75200	75200
10-Jul-13	Shree Aeran Marketing Pvt Ltd	Varun Aggarwal HUF	64601	11-Jul-13	76000	64601
11-Jul-13			76000	12-Jul-13	76000	76000
18-Jul-13			87645	19-Jul-13	98000	87645
26-Jul-13	Shree Aeran Marketing Pvt Ltd	Smita Agarwal	92500	29-Jul-13	100000	92500
29-Jul-13			80000	30-Jul-13	80000	80000
29-Jul-13	Shree Aeran Marketing Pvt Ltd	Vivek Sharma	72450	30-Jul-13	75200	72450
31-Jul-13			45300	01-Aug-13	45300	45300
31-Jul-13	Shree Aeran Marketing Pvt Ltd	Radha Rani	94800	01-Aug-13	100000	94800
01-Aug-13			74700	02-Aug-13	80000	74700
05-Aug-13	Shree Aeran Marketing Pvt Ltd	Amit Kumar Agarwal HUF	92062	06-Aug-13	100000	92062
Total			**33,45,795**		**34,75,600**	**33,45,795**
** first transferred shares off-market and then purchased on market*						

21. From the above, I note that vide the aforesaid modus operandi, the Group Entities effectively reversed trades amounting to 33,45,795 shares which is 70.96% of the total market volume in PAL scrip in NSE during the Investigation Period.

22. I note that Noticee had sold a total of 1,70,000 shares of PAL in NSE on 2 dates viz. July 18th and 19th, 2013, and that out of the same, 1,57,970 shares were sold to one entity viz. Mridul Securities Pvt Ltd. It is also observed that the Noticee received a total of 1,70,000 shares in off market from the same entity i.e. Mridul Securities Pvt Ltd itself. With regards to the dates, I note that the off-market transfers have happened on July 19th and 22nd, 2013 i.e. within 2-working days of the on-market transactions. Accordingly, the quantity of shares which was reversed between the Noticee and Mridul Securities Pvt. Ltd., was 1,57,970 shares. From his reply dated December 09, 2016, I note that the Noticee has not disputed the aforesaid transactions as alleged in the SCN. I note that the Noticee has contended that he was not aware of the counterparty for the on-market transactions, and there was difference in the quantity and time between the buy and sell orders. In this regard, I note that the quantities, dates, and counterparty in off-market transfers were in line with the on-market transactions of Noticee, and the Noticee has reversed 1,57,970 shares of PAL i.e. almost 92.92% of his entire on-market sell quantity. Therefore, I do not find any merit in the aforesaid submissions of the Noticee.

23. The Noticee has submitted that he has done trading in 1 more scrip also apart from PAL during the period from May 31, 2010 to July 19, 2013. The Noticee has also *inter alia* contended that there are many laws in this country, and that laws related to the securities market are complex and complicated. The Noticee has further submitted that he was not having knowledge of the securities market laws, and knowledge of reversal of trades, and was thus duped by certain unscrupulous persons. In support of his aforesaid claim that he is innocent, the Noticee has quoted the judgment of Hon'ble Supreme Court in the matter of **Motilal Padampat Mills Ltd V State of Uttar Pradesh reported in (1979) 118 ITR 326(SC)**. In this regard, I note that the facts of the aforesaid case stated by the Noticee is different from the present case. In the instant matter, I note that the Noticee has sold 1,00,000 shares of PAL in NSE on July 18, 2013, and out of the same 87,970 shares were sold to Mridul Securities Pvt Ltd (buyer), and Noticee has received the same number of shares as his on-market sell transaction i.e. 1,00,000 shares in off market from Mridul Securities Pvt Ltd before T+2 day. Subsequently, on July 19, 2013 the Noticee sold 70,000 shares of PAL in NSE, out of which the entire 70,000

shares were sold to Mridul Securities Pvt Ltd, and again the Noticee has received the same quantity of shares i.e. 70,000 shares in off market deal from Mridul Securities Pvt Ltd before T+2 day. Accordingly, I note that the off market transfers have enabled the Noticee to meet securities pay-in obligation of his on-market transactions, and thus the Noticee has reversed trades cumulating to 1,57,970 shares (i.e. 92.92% of his total sell quantity) with Mridul Securities Pvt Ltd. Due to the aforementioned reversal of trades there is no change in the actual beneficial ownership of those shares. I note that no genuine investor will carry out such trades as it will only create a false and misleading appearance of trading in terms of artificial volumes in the scrip which is prohibited under the provisions of PFUTP Regulations. Accordingly, I do not find any merit in the above contentions of the Noticee. I further note that such reversal of trades is not an isolated occurrence in the present matter, but the same has been carried out altogether by the Group Entities repeatedly. I note that vide the aforesaid *modus operandi* i.e. combination of on-market and off-market transactions within 2-working days, the Noticee along with the other Group Entities effectively reversed trades cumulating to 33,45,795 shares which is 70.96% of the total market volume in PAL scrip in NSE (i.e. 47,14,760 shares) during the Investigation Period, and in this regard the contribution of the Noticee as a seller in the scrip is to the tune of 1,57,970 shares i.e. approximately 4.72% of the total artificial volumes altogether created by the Group entities. Further, I note that ignorance of law as claimed by the Noticee cannot be considered as an excuse especially in the facts and circumstances of the instant case.

24. I further note that the Noticee *inter alia* submitted "*It is worthy to mention here that the shares purchased, from time to time, in the account of above Noticee through Mr. Atul Kumar Jallan & his associate companies, were used to be sold in above noticee account by these unscrupulous persons/ associations only. Unfortunately the shares of PAL were also bought in the account of above Noticee from M/s Mridul Securities Private Limited were later on sold in the account of above Noticee by these unscrupulous persons/ associations. Whereas Above Noticee was not having any knowledge of the fact that M/s Mridul Securities Private Limited is having any alleged malafide intention to reverse the sell order(s) of PAL shares punched in Above Noticee Account. Above Noticee was not even aware of the fact that M/s Mridul Securities Private Limited has punched any buy order and it is allegedly on counter side of trade*". From the same, I note that the Noticee

has not disputed the reversal of his trades, however, he has put blame on other entities for the same. I note that the Noticee has not provided any supporting documents in this regard. From the trade log, I note that the traded value of 1,57,970 shares sold by the Noticee to Mridul Securities Pvt Ltd in NSE was approximately Rs. 26.56 lakh. I note that all the above mentioned trades and transfer of shares were happening in the trading account and demat account, whose beneficial owner was the Noticee. Accordingly, I find the claims of the Noticee that he was not aware of the transactions and reversals, to be unacceptable. The Noticee has also contended that proper due diligence was not carried out by Adroit Financial Services Pvt. Ltd. and other stock brokers which would have prevented such breach of laws. In this regard, I note that the said contention does not absolve the Noticee of its role in the alleged violations. Further, I am of the view that when entering into dealings of such magnitude, the Noticee was bound to exercise care and caution, and as such cannot shrug off responsibility at a later stage.

25. I note that in the matter of ***SEBI v. Kishore R. Ajmera,*** *(supra)* the Hon'ble Supreme Court observed that *"the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light".* In view of the above, I note that the Noticee has to ensure that whatever trading strategy he adopts, it should be in conformity with the regulatory framework.

26. Therefore, in view of the above, I hold that the Noticee has violated the provisions of Regulations 3(a) to (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations.

<u>Issue II</u> : Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

27. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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. Once the contravention is established, then the penalty is to follow.*"

28. The Hon'ble Supreme Court in its Order dated April 26, 2013 in the matter of ***N. Narayanan Vs Adjudicating Officer, SEBI,*** has laid down that "*Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality"".*

29. Thus, the violation of Regulations 3(a) to (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations by the Noticee makes him liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below –

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

Issue III **: If yes, then what should be the quantum of penalty?**

30. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, 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;
(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.

31. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. From the documents/details made available, it is noted that no prior default by the Noticee is on record. In the present matter, I find that the Noticee along with the Group Entities had entered into reversal of trades i.e. shares purchased / sold on market were transferred through off market within the next 2 working days (i.e. T+2 days). I note that during the period under investigation, the Noticee along with the Group Entities had created artificial volume (by way of such reversal of trades and without change in beneficial ownership) to the tune of 33,45,795 shares which is 70.96% of the total market volume at NSE in the scrip of PAL. The above actions of the Noticee are in violation of the provisions of Regulations 3(a) to (d), 4(1) and 4(2)(a) and (g) of PFUTP Regulations.

ORDER

32. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15 J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on the Noticee viz. Anuj Kumar Agarwal, in terms of Section 15HA of the SEBI Act, 1992 for

violation of the provisions of Regulations 3(a) to (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations.

33. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

34. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai
Date: January 22, 2019

Satya Ranjan Prasad
Adjudicating Officer