BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO- 27 /2010]

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

In respect of

Swaminathan Subramani

(PAN.: Not Furnished)

In the matter of

Self trades in shares of

Cerebra Integrated Technologies Ltd, Glory Poly Films Ltd,

Visesh Infotecnics Ltd and Tricom India Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the trading done by Mr. Sunil Giridharilal Raheja, Mrs. Simran Raheja and Mr. Swaminathan Subramani (hereinafter collectively referred to as "Group") from January 1, 2008 to May 5, 2008 (hereinafter referred to as "Investigation Period") in the following scrips:

a) Visesh Infotecnics Ltd.
b) Sanra Software Ltd.
c) Jumbo Bag Ltd.
d) Cerebra Integrated Technologies Ltd.
e) Brushman India Ltd.
f) Tricom India Ltd.
g) Glory poly Films Ltd.
h) Rainbow Foundations Ltd.
i) GV Films Ltd.
j) Yogi Sung-Won India Ltd.
k) Kaashyap Radiant Systems Ltd.
l) International Hometex Ltd.

2. It was alleged that Mr. Swaminathan Subramani (hereinafter referred to as "**Noticee / SS** ") had indulged in self/wash trading in the scrips of Cerebra Integrated Technologies Limited, Glory poly Films Limited, Visesh Infotecnics Limited And Tricom India Limited, which led to creation of artificial volumes in the aforesaid scrips and was designed to create a false market leading to significant price movement in the aforesaid scrips and, hence, violated the provisions of regulations 4 (2) (a), (b) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**). The Noticee's current address is No. 29/15u, East Ellaiamman Koil Street, Thiruvottiyur, Chennai - 600019.

3. The aforesaid alleged violations, if established, make the Noticee 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. Mr. V.S. Sundaresan was appointed as Adjudicating Officer vide order dated November 24, 2008 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 provisions of PFUTP Regulations.

5. Consequent upon the transfer of Mr. V.S. Sundaresan, the undersigned was appointed as the Adjudicating Officer vide order dated November 12, 2009.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice dated January 30, 2009 (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. However, the same was returned undelivered. Therefore, another SCN dated March 6, 2009 was sent to the Noticee through SEBI, Southern Regional office, Chennai.

7. However, the Noticee did not reply to the said SCN.

8. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on June 10, 2009 vide notice dated May 18, 2009. The Noticee vide his letter dated June 16, 2009 sought 15 days time to submit his reply. Thereafter, the Noticee vide his letter dated June 26, 2009 replied to the said SCN and submitted the following:

"The other two names mentioned in your letter are not relevant to me and I am no way connected to them.

I am having Demat and trading accounts as mentioned in your letter. Sir I also promise you I did not have any small intention to manipulate the price by creating an artificial market with regard to Trading done by me. I was doing such type of transactions with the only sole purpose of maintaining the Credit/Debit balances with the respective brokers with whom I am having accounts.

To ensure that I receive the shares at the same rates I used to put the sale, and buy orders simultaneously at the same rate and same time to respective brokers with whom I had to maintain the credit balance.

The person who introduced me to open the accounts had wrongly written the same contact numbers to all the clients introduced by him in the KYC Forms.

I also humbly plead your goodselves that none of the transactions done by me falls neither in synchronized trading nor circular trading as it failed to fulfill the entire criteria as defined by applicable acts in force from time to time.

However Sir, I agree that the transactions have been done only due to the fact that I was not in a position to honour my payment in time and availed the extra time limit granted by the broker as I was facing severe Financial difficulties.

Sir; I also wish to humbly plead with You that my health conditions does not allow me to leave my residence and I have no person to attend on my behalf as authorized person to attend or represent on my behalf. So I beg your goodselves to forgive me and I assure you such things will not happen in future at all."

9. Another opportunity of hearing was granted to the Noticee on May 25, 2010 vide Notice dated May 7, 2010. The Noticee vide fax dated May 17, 2010 requested for rescheduling the hearing after 15 days. Therefore, another opportunity of hearing was granted to the Noticee on June 22, 2010 vide Notice dated June 07, 2010. However, the Noticee neither appeared nor made any submissions.

10. I observe that three opportunities of hearing have been given to the Noticee. However, the Noticee had failed to avail the said opportunities. I am convinced that ample opportunities have been given to the Noticee to explain his case personally as stated above, but the Noticee has failed to avail the opportunity of personal hearing. I am, therefore, compelled to proceed with the matter based on the material available on record and his submission.

CONSIDERATION OF ISSUES AND FINDINGS

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

    a) Whether the Noticee had violated regulations 4 (2) (a), (b) and (g) of PFUTP Regulations?
    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?

12. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations, which reads as under:

> ***4. Prohibition of manipulative, fraudulent and unfair trade practices***
> *(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;*
> *(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;*
> *(c) ….*
> *(d) ….*

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

13. Upon careful perusal of the documents available on record including the basis of allegations made, I find the following:

a) The Noticee shared a common contact mobile number, viz. 9884482935, with Mr. Sunil Raheja. The Noticee, vide his letter dated June 26, 2009, submitted that he does not know Mr. Sunil Raheja and Mrs. Simran Raheja. He also submitted that he, Mr. Sunil Raheja and Mrs. Simran Raheja were introduced by one Mr. Amit who, by mistake, had written the same contact number for all of them in the KYC forms and hence, they should not be considered as a group. However, the material available on record reveals that the Noticee, Mr. Sunil Raheja and Simran Raheja (wife of Mr. Sunil Raheja) were introduced to the broker, viz. M/s Dawnay Day AV Securities Private Limited, by one Mr. Amit. All of them dealt in the same scrips during the same period and, above all, in the same pattern. All these cannot be said to be mere coincidence. The claim of the Noticee that he does not know Mr. Sunil Raheja and Mrs. Simran Raheja does not appear to be true. Hence, the contention of the Noticee is devoid of any merit. Therefore, I am of the view that the Noticee, Mr. Sunil Raheja and Mrs. Simran Raheja are connected to one another and belong to the same group.

b) The examination of the trade-order log, details of which were provided to the Noticee as Annexure to the SCN, reveals that the group had indulged in self / wash trades, i.e. the same entity was both the buyer as well as the seller, in all 12 scrips through different / same brokers creating artificial volumes to the extent of 43,57,157 shares. The summary of the trades executed by the group is given below:

Scrip Name	Self Trade (Volume)	Volume Traded by the Group	Total Volume in the Scrip	Self Trade as a % of total volume	Self Trade as a % of Trading done by the Group
Visesh Infotecnics Ltd	1,285,919	4,465,928	14,820,246	8.68%	28.79%
Sanra Software Ltd	189,032	793,366	1,748,837	10.81%	23.83%
Jumbo Bag Ltd	33676	152822	9,385,783	0.36%	22.04%
Cerebra Integrated Technologies Ltd	328,122	2,097,574	3,043,853	10.78%	15.64%
Brushman India Ltd.	4000	30792	3,885,780	0.10%	12.99%
Tricom India Ltd	314,654	3,405,987	7,047,927	4.46%	9.24%
Glory poly Films Ltd.	214,580	2,503,938	8,846,033	2.43%	8.57%
Rainbow Foundations Ltd	25,026	365,913	797,612	3.14%	6.84%
GV Films Ltd	1,887,620	33,991,639	306,776,071	0.62%	5.55%
Yogi Sung-Won India Ltd	4500	234573	919,272	0.49%	1.92%
Kaashyap Radiant Systems Ltd	69822	26668441	333,350,848	0.02%	0.26%

International Hometex Ltd	206	603628	4,510,517	0.00%	0.03%
Total	**4,357,157**	**75,314,601**	**695,132,779**	**0.63%**	**5.79%**

c) The Group had created substantial artificial volumes in these scrips by indulging into self/wash trades.

d) In 5 scrips, viz. Visesh Infotecnics Ltd., Sanra Software Ltd., Jumbo Bag Ltd., Cerebra Integrated Technologies Ltd. and Brushman India Ltd., the percentage of self/wash trades was more than 10% of the volume traded by the group as seen from the aforesaid table. Similarly, in respect of 4 scrips, viz., Tricom India Ltd., Glory Poly Films Ltd., Rainbow Foundations Ltd. and GV Films Ltd., the percentage of self/wash trades was between 5 and 10%. In respect of 1 scrip, viz., Yogi Sunwon India Ltd., the percentage was more than 1% and in respect of 2 scrips, viz., Kaashyap Radiant Systems Ltd. and International Hometex Ltd. the percentage was less than 1 %.

e) The Noticee had indulged in self/wash trading in 4 scrips, viz. Cerebra Integrated Technologies Ltd. Glory Poly Films Ltd., Visesh Infotecnics Ltd. and Tricom India Ltd., during the investigation period. The summary of self/wash trades indulged by the Noticee are as under:

S. No.	Scrip Code	Scrip Name	Wash Volume	Volume Traded by Entity	Total Volume in the Scrip	% of Wash Trades to Total Volume in the Scrip	% of Wash Trades to Volume Traded in the Scrip
1.	532413	Cerebra Integrated Technologies Ltd	8,850	167,193	3,043,853	0.29	5.29

2.	532857	Glory poly Films Ltd.	28,281	667,083	8,846,033	0.32	4.24
3.	532411	Visesh Infotecnics Ltd	18,979	541,148	14,820,246	0.13	3.51
4.	531675	Tricom India Ltd	5,354	390,824	7,071,591	0.08	1.37
Total			**61,464**	**1,766,248**	**33,781,723**	**0.18**	**3.48**

f) The Noticee had indulged in such self/wash trades and created an aggregate volume of 61,464 shares in the aforesaid scrips. The details of the same are given below :

Trade Date	Scrip Name	Buy Member Code	Buy client Name	Sell Member code	Sell client Name	Trade Rate	Trade Qty
14-Jan-08	Visesh Infot	275	SS	491	SS	35.50	9479
14-Jan-08	Tricom India(Bse Indonext)	391	SS	456	SS	213.80	49
16-Jan-08	Visesh Infot	491	SS	3063	SS	33.75	4500
16-Jan-08	Tricom India(Bse Indonext)	491	SS	456	SS	210.00	1000
17-Jan-08	Tricom India(Bse Indonext)	391	SS	491	SS	230.40	385

17-Jan-08	Tricom India(Bse Indonext)	3063	SS	391	SS	225.00	20
30-Jan-08	Visesh Infot	275	SS	3063	SS	24.00	5000
15-Feb-08	Cerebra Int	391	SS	3063	SS	30.85	5000
15-Feb-08	Cerebra Int	491	SS	3063	SS	30.85	2000
19-Feb-08	Glory Poly	275	SS	3063	SS	99.75	1740
19-Feb-08	Glory Poly	456	SS	3063	SS	96.85	2000
19-Feb-08	Glory Poly	3063	SS	456	SS	97.75	3069
20-Feb-08	Glory Poly	491	SS	3063	SS	96.50	2000
21-Feb-08	Glory Poly	248	SS	3063	SS	97.10	6875
26-Feb-08	Glory Poly	456	SS	3063	SS	94.45	6000
26-Feb-08	Glory Poly	3063	SS	248	SS	93.00	1900
3-Mar-08	Glory Poly	3063	SS	3063	SS	102.40	1000

4-Mar-08	Glory Poly	3063	SS	248	SS	100.65	2697
5-Mar-08	Cerebra Int	3063	SS	275	SS	40.40	1850
7-Mar-08	Glory Poly	456	SS	3063	SS	101.65	1000
18-Mar-08	Tricom India(Bse Indonext)	248	SS	456	SS	123.70	1900
24-Mar-08	Tricom India(BSE Indonext)	456	SS	248	SS	117.90	2000

g) Since the Noticee executed these self/wash trades in such a manner where the quantity, price and the time of placing the order were almost same, they can also be classified as structured and matching synchronized orders.

14. Farlex Financial dictionary defines "wash trades" as "*an illegal act in which an investor buys and sells the same security at the exact same time, especially through two different brokerages. This results in neither profit nor loss for the investor, but creates the impression that the security is undergoing heavy trading, which could drive up the price or generate unwarranted interest*." This is what has transpired in the present case. A large number of self/wash trades were conducted regularly. The regularity with which the Noticee had indulged in such self/wash trades, leads one to conclude, that these transactions were effectively meant to manipulate the market. It is my considered belief that these trades have resulted in projection of the volumes of the

scrips in a way that was not the market determined volumes but with a sinister motive to induce other persons to invest in the said scrips which lacked basic fundamentals.

15. I have considered the submissions of the Noticee that he indulged in self/wash trading merely for maintaining credit balance with his respective brokers. In my view, the Noticee through the said artificial trades manipulated the price and volume of the said scrips and adversely affected the market equilibrium. Even assuming, without agreeing to the claim of the Noticee, that these trades were executed for maintaining credit balances, in my view, nobody can be allowed to create artificial volume and thereby manipulate the prices and trading volumes in the securities market which have potential to induce the general investors to buy and sell the particular scrips. The trades executed herein by the Noticee were admittedly not the real trades as there was no intention to change the beneficial ownership. When the trades were inherently not genuine, I do not feel that it is necessary to prove that investors had, in fact got induced and bought and/ or sold on the basis of these trades. Similar views were expressed by the Hon'ble SAT in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI wherein it had observed that *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the*

market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations."

16. In the matter of Ask Holdings Pvt. Ltd. vs. SEBI, Hon'ble SAT has held *"… ..The buyer and the seller were the appellants themselves and these trades were executed primarily with a view to artificially increase the trading volumes in the scrip of the Company. Artificial increase in the volumes of scrip has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about the scrip and follow the herd mentality while trading. The adjudicating officer was, therefore, right in holding that the appellants had violated the provisions of Regulation 4 of the Securities & Exchange Board of India (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995. The allegations are rather serious and the appellants by indulging in artificial trades had polluted the stock market. The penalty of Rs. 10 lakh imposed appears to be reasonable in the circumstances of the present case and it does not call for any interference in appeal."*

17. In case an entity is alleged to have manipulated the market or distorted the market equilibrium in terms of the PFUTP Regulations and their acts are corroborated up to a certain extent by the investigation findings, then the underlying intention of the said entity is brought out. Furthermore, price manipulation does not only involve manipulation in the prices of the scrip but also includes building up of volumes. This is evident from the finding that the Noticee had

indulged in self/wash trades and created an artificial volume of 61,464 shares in the said scrips.

18. Regulation 4(2)(a) of PFUTP Regulations, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(b) of PFUTP Regulations, inter alia, prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4(2)(g) of PFUTP Regulations prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. As detailed above, the acts of the Noticee clearly created false and misleading appearance of trading in all the 4 scrips and also that he did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by executing continuous self/wash trades in a substantial manner, in the manipulation of price/volume of all the scrips which led to creation of artificial volumes and misleading appearance of trading in the said shares. As the Noticee acted as both the buyer and the seller, he does not appear to have any genuine investment interest in the scrips.

19. However, the said artificial volume created by the Noticee was not enough to impact the price of the said scrips. Hence, the allegation of violation of Regulation 4(2)(b) of PFUTP Regulations does not stand established.

20. In view of foregoing, I find that the submissions of the Noticee are not tenable and consequently, hold that the charges leveled against the Noticee are proved and that the allegation of violation of provisions of

regulations 4 (2) (a) and (g) of PFUTP Regulations by the Noticee stands established.

21. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

22. Thus, the aforesaid violation by the Noticee make him liable for penalty under Section 15HA of SEBI Act which read as follows:

> ***"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."*

23. While determining the quantum of penalty under section 15HA, 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;*

> *(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."*

24. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee in that he traded in various scrips in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. The greater the liquidity, the higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volumes and been induced into investing in the said scrips. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omission and commission. Considering the continuous effort of the Noticee in this aspect where the self/wash trades were carried out over a period of time and that too in as many as 4 scrips, it can safely be surmised that the nature of default was also repetitive.

ORDER

25. In terms of provisions of rule 5(1) of the Rules, I impose a penalty of Rs.3,00,000/- (Rupees three lakhs only) under section 15 HA of SEBI Act on the Noticee, Mr. Swaminathan Subramani resident of No. 29/15u, East Ellaiamman Koil Street, Thiruvottiyur, Chennai 600019, for violation of provisions of regulations 4(2) (a) and (g) of PFUTP Regulations as mentioned above. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by the Noticee.

26. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr.S. Ramann, Officer on Special Duty, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

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

Date: **June 30, 2010**
Place: **Mumbai**

PIYOOSH GUPTA
ADJUDICATING OFFICER