BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/GG/VP/2021-22/15798-15805

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) RULES, 1995

In respect of:

Noticee No.	Name of the Entities	Pan No. of the Noticees
1	Shree Gopal Gupta	ACSPG2988B
2	Ashok Kumar Nigam	ADMPN4957A
3	Hari Om Mishra	AAJPO3043L
4	Ajay Srivastava	AQRPS5403J
5	Paramjeet Arora	AGTPA4589R
6	Parul Kansal	ANYPK5729M
7	K P Abraham	AGEPA0396B
8	JLG Securities Pvt. Ltd.	AABCJ3812F

In the matter of Regency Hospital Limited

A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Regency Hospital Limited during the period of 01.04.2011 to 30.09.2011 (hereinafter referred to as the 'investigation period') to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practice) Regulation, 2003 (hereinafter referred to as "**PFUTP Regulations**") by Regency Hospital Limited (Company), Atul Kapoor (Managing Director/

Whole Time Director), Rashmi Kapoor (Managing Director/ Whole Time Director), Shree Gopal Gupta (Noticee No. 1), Ashok Kumar Nigam (Noticee No. 2), Hari Om Mishra (Noticee No. 3), Ajay Srivastava (Noticee No. 4), Paramjeet Arora (Noticee No. 5), Parul Kansal (Noticee No. 6), K P Abraham (Noticee No. 7) and JLG Securities Private Limited (Noticee No. 8).

2. Show Cause Notice (SCN) dated 30.06.2015 was issued in respect of the Noticees under section 15HA of SEBI Act alleging that the Company (RHL) had funded Noticee Nos. 1 to 7, who were its employees, to induce them to deal in its own company scrip with the object of manipulating the price of the scrip and thereby had violated Regulation 3 (a), (b), (c), (d), 4(1), 4(2)(a), (d) and (e) of SEBI PFUTP Regulations. Directors of the Company viz., Atul Kapoor and Rashmi Kapoor being the Managing Director/ Whole Time Director of the company were responsible for the day-to-day management of the company and they were alleged to have also violated the aforesaid provisions.

3. It was separately alleged in the aforesaid SCN that, Noticee Nos. 1 to 8 had indulged in creating artificial volume by executing synchronized trades, reversal trades and traded among themselves resulting in no change of beneficial ownership and contributed to the price rise of the scrip through LTP and first trades. Further, it was alleged that the Noticees viz., Gopal Gupta, Ashok Kumar Nigam, Hari Om Mishra, and Ajay Srivastava have created artificial volume by indulging in self-trades and thereby violated Regulation 3 (a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI PFUTP Regulations, 2003. Based on the trading pattern of Noticee No. 8 it was alleged that Noticee No. 8 was connected with the Noticee Nos. 1 to 7 and violated Regulation 3 (a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI PFUTP Regulations, 2003. Noticee No. 8 is a Broker who executed proprietary trades during this period. Based on the trading pattern, it was alleged that Noticee No. 8 had also violated the aforesaid provisions.

4. The Adjudication proceeding in respect of the company was disposed of vide order dated 28.09.2018 wherein penalty of Rs 15,00,000/- was imposed on the Company and Rs 25,00,000/- each was imposed on Atul Kapoor and Rashmi Kapoor, the Directors of the Company.

5. Subsequently, the Adjudication proceedings in respect of Noticee Nos. 1 to 8 were disposed of vide order dated 31.07.2019 wherein penalty of Rs 15,00,000/- was imposed on the Noticee Nos. 1 to 7, and a penalty of Rs. 25,00,000/- (Twenty-five Lakh only) was imposed on Noticee No. 8.

6. The company and its directors preferred Appeal No. 388 of 2019 before the Hon'ble SAT against the AO order dated 28.09.2018. The Hon'ble SAT vide order dated 03.09.2020 remitted back the matter to the file of Adjudicating Officer and directed the company and its directors to file additional documents, if they are so advised, within three weeks from the date of the order (i.e. 03.09.2020) before the AO for his consideration. The Hon'ble SAT further directed that the Adjudication Officer will consider the matter afresh and pass appropriate orders after giving an opportunity of hearing within three months thereafter.

7. Pursuant to the aforesaid SAT order dated 03.09.2020, the SEBI order was remanded to another AO (Shri Amit Pradhan, Chief General Manager). The Adjudicating Officer, after considering the facts and circumstances of the case disposed of the proceedings vide order dated 21.01.2021 with the findings, as extracted below:

"12.I note that the Noticees have produced before me two certificates dated December 03, 2020 and January 04, 2021,duly authorized by the Independent Auditor namely, M/s. Pramod K Singh & Associates, Charted Accountants, wherein they have certified and made the following opinion with respect to the alleged credits made to the bank accounts of the employees by the Noticee No. 1:

a) Certificate dated December 03, 2020

i. Based on its examination, and upon consideration of the information, explanations and representations provided to it by the management of the Noticee No.1, the *auditors are of the opinion that the amounts in the statement of loans and advances to employees have been accurately extracted from the audited financial statements for the year ended March 31, 2011 and March 31, 2012 (para 10 of the certificate).*

b) Certificate dated January 04, 2021

i. The statement of loans and advances to employees as referred to in the statement, as extracted from the books of accounts and other relevant records and documents of the Noticee No. 1 are true and correct on the basis of the audited financial statements of the Noticee No. 1 for the financial year ended March 31, 2011 to March 31, 2020 which have been filed by the Noticee No.1 with the ROC and IT authorities, who have assessed the income of the Noticee No.1 for the relevant assessment years, corresponding financial year ended March 31, 2011 and March 31, 2012 (para 10(i) of the certificate)

ii. The amounts advanced to the 4 employees as referred to in the statement, in so far as they appear from the underlying documentation examined by the auditors, are given in the course of their employment with the Noticee No. 1and the same are being repaid as per the terms of sanction of loan and in accordance with the policy approved by the Board of Directors of the Noticee No. 1 in their meeting held on July 08, 1991(para 10(ii) of the certificate).

iii. The amounts so advanced by the Noticee No.1 are appropriately reflected in the audited financial statements of the Noticee No.1 for the relevant years ended March 31, 2011 to March 31, 2020(para 10(iii) of the certificate).

13.From the above it is observed that the Auditor has held that the amount credited in the bank accounts of the employees were in nature of the loan advances given by the Noticee No.1.Further, these were duly reflected in the Annual Return filed with ROC, IT Returns including its assessment done by Deputy Commissioner of Income Tax ('Assessing Officer') and in the books of accounts of the Noticee No.1as certified bythe Auditor.

14.Considering the extensive procedures followed by the auditors before giving certificate to the Notice confirming that the alleged advances were in the nature of loans, I am of the view that not much is left for the undersigned to inquire further in the matter as to whether these credits were loans or not. Further, on the issue of relying on the credibility of the third party assurance/certificate while deciding the instant proceedings, it is pertinent to mention here the ruling dated March 29, 2019 of Hon'ble SAT in the matter of Corporate Strategic Allianz Ltd. Vs. SEBI (Appeal No. 130 of 2017),wherein, Hon'ble SAT in para 10 of the order held as under:

"10. In our opinion, the AO has travelled beyond his brief and jurisdiction. The balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities. It is not open to the AO to question the entries in the balance sheet. The AO is not an expert to juggle the accounting figures and hold as to which entry should come under "Fixed Assets" or under the "Revenue Expenditure".

15.The aforesaid ruling has application to the proceedings before me. I am, therefore, of the view that the auditors are specialists who review the accounts of companies to ensure the validity and legality of their financial records. In the instant matter the auditor has also verified Annual Returns, Income Tax Returns and Provident Fund records, which clearly authenticate the auditor's claim. Therefore, in view of the above, I am inclined to form a view that the alleged advance given to the 4 employees by the Noticee No. 1 are in the nature of loans and are in the usual course of their employment. Further, if the main issue of the advancing the loan to 4 employees by the Noticee No. 1 is not in question then the instant proceeding qua the Noticees is not sustainable, since the allegation and charge, that the Noticees made funds available to its employees for the purpose of fraudulent activities, fails."

8. Aggrieved by the order dated 31.07.2019, the Noticee Nos. 1 to 8 had preferred separate appeals before SAT which were pending disposal at the point of time of issuance of the above order by the AO. Based on the findings contained in the AO order dated 21.01.2021, the Hon'ble Tribunal disposed of the pending appeals of Noticee Nos. 1 to 8 vide a common order dated 22.12.2021 with the following findings:

" *6. In the impugned order, the AO while holding the appellants guilty of violating Regulation 3 and 4 of the PFUTP Regulations held as under:- "64. Therefore, it is clear from above that company has facilitated and funded its employees namely; Gopal, Ashok, Hari, Ajay, Paramjeet, Parul and K.P. (Noticees), from which Noticees have undertaken synchronized, reversal and self-trades in the securities market, resulting in creation of artificial volume in the scrip, giving false and misleading appearance of trading in the scrip.*

> *70. Moreover, it is a matter of record that none of the aforementioned seven Noticees have submitted any material or document to establish their stand that the credit from the company in the respective accounts of the Noticees were in the nature of salaries / loans.*
>
> *71. It is also observed that no recovery schedule has been submitted by the Noticees towards recovery of loan availed by any of the above mentioned seven Noticees from the company.*
> *72. Further, no evidence like documents pertaining to hypothecation / mortgage of assets / property to create collateral security towards personal / housing loan of the employees has been placed on record by the seven Noticees.*
>
> *89. It is further established that all the payments, made by the Noticees namely; Gopal, Ashok, Hari, Ajay, Paramjeet, Parul and K.P., to their respective brokers for the purpose of settlement of reversal trades and self-trades, were funded by the company. Therefore, from the foregoing it is clear that the Noticees have violated Regulation 3(a),3(b),3(c),3(d), 4(1) and 4(2)(a) (b) (e) and (g) of the PFUTP Regulations.*

7. The aforesaid findings are in direct conflict with the subsequent findings given by the AO in its order dated January 21, 2021 and consequently cannot be sustained.

8. ……… We are of the opinion that in view of the findings given by the AO that there was no inducement by the Company and its Directors upon its employees to trade in the scrip of the Company nor had the Company facilitated and funded its employees, the question to be answered by the AO would be whether the employees on their own entered into synchronized, reversal and self-trades in the securities market and created artificial volume in the scrip and gave false and misleading appearance of trading in the scrip of the Company. Further, if the finding is in the affirmative, the AO will have to consider the impact of this non-inducement by the Company with regard to the imposition of the penalty. Consequently, without adverting and commenting any further, it would be appropriate that the AO reconsiders its decision in the light of the subsequent decision given by the AO dated January 21, 2021 in the case of the Company and its two directors."

9. Pursuant to the SAT Order dated 22.12.2021, SEBI appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "SEBI Adjudication Rules") vide order dated 28.12.2021 to inquire into and adjudge under section 15HA of the SEBI Act, against the Noticees for the alleged violations of the provisions of PFUTP Regulations.

10. An opportunity of hearing was granted to the Noticees on 15.02.2022 vide Hearing Notice dated 24.01.2022. The Noticee Nos. 1 to 7 had authorized Mr. Prakash Shah, Advocate (AR) to appear on their behalf. The AR appeared for the hearing on 15.02.2022 and reiterated the submissions made vide reply dated 07.02.2022. The Noticee Nos. 1 to 7 made additional submissions vide letter dated 25.02.2022. Mr. Gagan Kumar Gupta, Director of JLG Securities Private Limited appeared in person for the hearing and reiterated the submissions made vide reply dated 10.02.2022. Noticee No. 8 made additional submission vide letter dated 28.02.2022

CONSIDERATION OF ISSUES AND FINDINGS

11. As per the SAT order dated 22.12.2021, the following issue has been framed by the Hon'ble Tribunal for the AO's consideration.

Issue:

Whether the employees on their own entered into synchronized, reversal and self-trades in the securities market and created artificial volume in the scrip and gave false and misleading appearance of trading in the scrip of the Company?

If the findings are affirmative, whether the non-inducement by the company is to be considered while deciding the case?

12. **Factual Matrix:**

a. Investigation was initiated in the instant case based on the IMSS alerts for synchronized trades. As per the examination report, the scrip of Regency Hospital Limited ("RHL") opened at Rs. 48/-, touched a high of Rs. 58.85 and closed at Rs. 48.7 during the period of April 1, 2011 to September 30, 2011.

b. It was observed that there were no significant change in price except in the month of November 2011 probably reflecting the market sentiment. Volumes have started increasing in the scrip in April 2011 onwards and after touching a peak in July, have stabilized.

c. The shareholdings of the promoters have remained constant at 71.12%. However, **it was observed that a pledge was created by the promoters for 33.62% of shareholding** as observed from the shareholding pattern for the quarter ended June 2010 and thereafter it was increased to 62.76% as observed from the shareholding pattern for the quarter ended December 2010.

d. The top ten trading members entered into transactions with each other for 38,44,266 shares which accounted for around 99% of the total traded volumes in the scrip during the period of examination.

e. The trades among some identified clients (9 connected clients) dealing through trading members Zuari Investments Ltd. , Aditya Birla Money Ltd., and UPSE Securities Ltd., was for 3747171 shares i.e. 96.66% of the total traded volumes in the scrip.

f. Out of the trades executed between the said group of identified clients, the orders for 36,71,327 shares i.e. 97.98% of the trades executed among the group, were placed within 1 min of the each other and therefore appears to be synchronized.

g. It was observed that the said clients entered into the scrip after the creation of pledge on the promoters' shares. The said clients with the exception of JLG Securities Limited have traded almost only in this scrip with nil or negligible trading in other scrips since July 2010 onwards.

h. From the minutes of the twenty second Annual General Meeting of the members of Regency Hospital Ltd., it was observed that majority of the Agenda items were proposed or seconded by aforesaid entities who were responsible for the volumes in the scrip.

13. I note from the records that, a common SCN dated 30.06.2015 was issued to 11 entities (the Company and two directors along with Noticee Nos. 1-8 herein), in the matter. The relevant facts are reproduced hereunder:

a. There were 9 identified suspected entities, who have traded 37,47,171 (96.66% of the total market volume) shares among themselves out of which 33,05,396 shares (88.21%) were synchronized in nature.

b. The trades among identified clients (9 connected entities) dealing through trading members Zuari Investments Ltd., Aditya Birla Money Ltd., and UPSE Securities Ltd. was for 37,47,171 shares i.e. 96.66% of the total traded volume in the scrip.

c. Out of the trading of 37,47,171 shares within the connected entities, for 36,58,886 shares accounting for 94.38% of the total market volume, trades were placed within a one-minute time difference and hence, were in the nature of synchronized trades.

d. 4 connected entities i.e. Hari Om, Gopal Gupta, Ashok Kumar Nigam and Ajay Kumar Srivastava, were involved in 119 repetitive self-trades for 1,95,432 shares which were 31.53% and 31.67% of their total buy and total sell, respectively. Thus, the 4 connected entities have created artificial volume.

e. 33.62% (2216023 shares) of promoter's shares were pledged during the quarter ended June 2010 which was increased to 62.76% (4176664 shares) at the quarter end Dec 2010.

f. From the bank account statements of these 7 suspected entities, it was observed that there were numerous transactions between the company and these entities. The entities have mainly traded in the scrip of the company during the investigation period and payments to their respective brokers were funded by the company.

g. Directors of Regency Hospital Limited viz., Dr. Atul Kapoorand Dr. Rashmi Kapoorbeing the Managing Director/ Whole Time Director, respectively, of the company were responsible for the day-to-day management of the company.

   The trade details were furnished to the Noticees vide Annexures 1 to 17 of the Show Cause Notice.

14. Based on the above facts, it was alleged in the SCN dated 30.06.2015 as under:

    a. The company funded Shree Gopal Gupta, Ashok Kumar Nigam, Hari Om Mishra, Ajay Srivastava, Paramjeet Arora, Parul Kansal, K P Abraham (Noticee Nos. 1 to 7 herein) for inducing them to deal in the company's own scrip with the object of manipulating the price of the scrip and thereby has violated Regulation 3 (a), (b), (c), (d), 4(1), 4(2)(a), (d), (e) of SEBI PFUTP Regulations, 2003. Directors of Regency Hospital Limited viz., Dr. Atul Kapoor and Dr. Rashmi Kapoor being the Managing Director/ Whole Time Director of the company at the relevant time were responsible for the day-to-day management of the company and violated the aforesaid provisions.

    b. The company had failed to disclose the information received from their promoters in respect of their pledged securities to BSE. Therefore the Company and both the directors were alleged to have violated Regulation

8A(4) of SEBI SAST Regulations, 1997. Further the director Dr. Atul Kapoor apart from violating Regulation 8A(4) has also violated Regulation 8A(2) of SEBI SAST Regulations, 1997.

c. Shri Gopal Gupta, Ashok Kumar Nigam, Hari Om Mishra, Ajay Srivastava, Paramjeet Arora, Parul Kansal, K P Abraham and JLG Securities Private Limited (i.e. Noticee Nos.1 to 8 herein) had indulged in creating artificial volume through synchronized trades, reversal trades and traded among themselves without intending to change beneficial ownership and contributed to the price rise of the scrip through LTP and first trades. Further the Noticees viz., Shri Gopal Gupta, Ashok Kumar Nigam, Hari Om Mishra, and Ajay Srivastava had indulged in creating artificial volume by executing self-trades. Thus the Noticee Nos. 1 to 8 had violated Regulation 3 (a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) and (g) of SEBI PFUTP Regulations, 2003.

FINDINGS:

15. I have perused the Investigation Report, the SCN and the order of the AO dated January 21, 2021. Essentially, Noticee Nos. 1 to 7 have not disputed the trades alleged in the SCN. Their common response with respect to the allegations on synchronization is that the quantum of synchronization was insignificant/ diminutive and had no price/ volume. Regarding the impact of LTP variations in the trades, the contention is that none of the trades are alleged to have registered a new high price. As regards self-trades, it was contended that it was an insignificant quantity which deserved to be ignored on the basis of a SEBI internal circular. The Noticees have further placed reliance on certain case laws to seek exoneration from the violations and or alternatively remission of the quantum of penalty.

16. I note that based on the Auditor's certificate, produced by RHL and its directors, the allegation of them funding the trades of Noticee Nos. 1 to 4 were dropped in the AO order dated 21.01.2021. The facts of the case

makes it clear that this is not a regular market manipulation case – i.e. a case of price or volume manipulation or both, where an independent group of traders is identified for commission of a fraudulent or unfair trade practice in the securities market. In contrast, this is a case where the whole edifice of the allegation cast on the group of employees of the company, has been the motive of the promoter-directors to sustain their massive pledge of shareholding of 33.62%, by providing funds to their employees through the company and inducing them to deal in the company's scrip to manipulate the market.

17. Thus, the trading of the employee group is inseparably linked to the motives attributed to the promoters/directors of the company. In the instant case, I do not find it appropriate to disconnect the main objective underlying the alleged manipulative scheme of the directors and the company, from the trades executed by the employees of RHL ,i.e. Noticee Nos. 1 to 7 herein.

18. In view of the fact that the underlying allegation of funding against the company and its directors have been dropped by the earlier Adjudicating Officer, it is only logical to extend the benefit of the same to the group of employees, who were alleged to have traded to create artificial volumes. As the alleged main perpetrators have gone scot-free, there is no rational for me to *de novo* examine the trades of the Noticees, to see whether they have committed a violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003. There is no independent evidence of manipulation attributable to the group of employees, besides the fact of funding by the Company. It would be a travesty of justice to independently proceed against the employees who were allegedly used by the company and its directors, as per the investigation. As the earlier AO has held that Noticee Nos. 1 to 4 herein were not funded by the company to trade, in my view the funding allegation totally fails even as against Noticee Nos. 5 to 7, because they are also

employees of RHL who allegedly indulged in self-trades during the relevant period.

19. Hence, I am convinced that I should take the case to its logical end by extending the benefit of the conclusive findings of the AO, given in favor of the company and its directors to the Noticees as well. I note that Noticee No. 8 is an independent broker who executed proprietary trades, which happened to synchronize with the trades of the group of employees. The broker's role also does not merit a separate consideration for the reason brought out above. Thus, I do not find Noticee Nos. 1-8 to be in violation of the provisions of the SEBI (PFUTP) Regulations, as alleged in the SCN.

20. In the interest of justice and in the peculiar facts and circumstances of the case, I hereby dispose of the SCN dated 30 June, 2015 issued to Noticee Nos. 1 to 8 hereinabove, without any findings against them.

21. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are being sent to the Noticees and also to SEBI.

Date: March 31, 2022
Place: Mumbai

GEETHA G
ADJUDICATING OFFICER