BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKB/AO–19/2011]

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:
Elexi Consultancy Services Private Limited
(PAN – AABCE3525A)
And
Shri Gopichand Banshal, Director of Elexi Consultancy Services Private Limited
(PAN – AIEPB0302N)
And
Shri Rajendra Bubna, Director of Elexi Consultancy Services Private Limited
(PAN – ADRPB5683J)
In the Matter of: M/s. G. R. Industries and Finance Limited

BACKGROUND

1. A sharp rise in the price of the scrip of M/s. G. R. Industries and Finance Limited (hereinafter referred to as "**Company**") was witnessed in as much as the price of the scrip went up from ₹ 2.00 to ₹ 170.20 (8500% increase) during the period of five months i.e. from 07.09.2004 to 28.02.2005 at Calcutta Stock Exchange (hereinafter referred to as "**CSE**").
2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigation in respect of buying, selling and dealing in the shares of the Company. The period of investigation was from January 01, 2004 to February 28, 2005 (hereinafter referred to as "**investigation period**").

3. The transactions done by the brokers during the investigation period constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The details of the said transactions are as follows:

Sl. No.	Name of the Broker	Volume (Buy/Sell)	Traded From (Rs.)	Traded Upto (Rs.)
1.	Bubna Stock Broking Services Ltd.	27,46,100	2.00	170.20
2.	Shyamlal Sultania	38,00,099	3.05	170.10
3.	M. Bhiwaniwala & Co.	18,59,901	2.25	170.10
4.	Ashok Kumar Kayan	11,76,500	6.00	170.10

4. It was observed that M/s. Bubna Stock Broking Services Ltd. (hereinafter referred to as "**BSB**") had formulated a scheme to manipulate price of the scrip and was aided and executed by other brokers of CSE namely M/s. Shyamlal Sultania (hereinafter referred to as "**SLS**"), M/s. M. Bhiwaniwala & Co. (hereinafter referred to as "**MBC**"), and Ashok Kumar Kayan (hereinafter referred to as "**AKK**"). BSB acquired all or major portion of the shares of the Company in its name and also in the name of several other client companies. The acquisitions were made prior to the price rise period through off market deals at very low prices. Majority of the client companies shared the same office address and directors as that of the broker and scrip Company. This indicated that the client companies including Elexi Consultancy Services Private Limited (hereinafter referred to as "**Noticee**") were the "front" companies of the broker. The broker and its client companies sold their holdings in the market in huge quantities at low prices initially and subsequently the price of the scrip was jacked up in collusion with other brokers. When the prices got pushed to peak rates, the clients who had bought at low prices sold their holdings in the market to book profits. The shares so sold, were purchased by the other set of clients to book loss and avail tax benefits.

5. On the conclusion of investigation by SEBI, Adjudication Proceedings under section 15I of the SEBI Act, 1992 (hereinafter referred to as "**the Act**") were initiated in respect of the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna.

6. Shri D. Sura Reddy was appointed as the Adjudicating Officer vide Order dated January 30, 2008 to inquire into and adjudicate under Section 15HA of the Act, the alleged violation of provisions of Regulations 4 (2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

7. Pursuant to transfer of Shri D. Sura Reddy, the undersigned was appointed as the Adjudicating Officer vide Order dated December 10, 2008.

SHOW CAUSE NOTICE, HEARING & REPLY

8. A Show Cause Notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna on July 01, 2008, calling upon them to show cause why inquiry should not be held against them under Rule 4(3) of the Adjudication Rules for the alleged violations.

9. The SCN issued to the Noticee returned undelivered and was arranged to be delivered through SEBI, Eastern Regional Office (hereinafter referred to as "**ERO**") vide letter dated August 13, 2008. The Noticee duly received the SCN and acknowledgment of receipt of the same is available on record. The Noticee replied to the SCN vide letter dated July 14, 2008 received on August 26, 2008. Thereafter, Notice of Inquiry dated December 22, 2009 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which an opportunity of personal hearing was given to the Noticee which was scheduled for January 21, 2010. The Notice of Inquiry was also duly delivered by ERO to the Noticee and acknowledgment of receipt of same is available on record. However, subsequently, the Noticee applied for consent in the instant matter.

10. The SCN issued to the Director of the Noticee, Shri Rajendra Bubna was duly received by him and acknowledgment of receipt of the same is available on record, however, no reply to the SCN was received. Further, no reply to the SCN issued to the other Director of the Noticee, Shri Gopichand Banshal was received. Hence Notices of Inquiry, each dated January 15, 2010 were issued under Rule 4(3) of the Adjudication Rules to both the Directors of the Noticee, Shri Rajendra Bubna and Shri Gopichand Banshal vide which the hearing was scheduled for February 02, 2010. The Notice of Inquiry was duly delivered by ERO. Mr. Pravin Panwar, Authorized Representative of both the Directors of the Noticee attended the hearing and submitted that they were availing the consent process.

11. Thereafter, on rejection of the consent application, Notices of Inquiry, each dated November 02, 2010 were issued to the Noticee and both its Directors Shri Rajendra Bubna and Shri Gopichand Banshal, vide which one more opportunity of hearing was

scheduled for November 22, 2010 and the same were delivered by ERO. All of them did not attend the hearing and sent further submissions vide letter dated November 22, 2010 *inter alia*, indicating some discrepancies in trade data. As some typographical errors were noticed in the relevant trading data/details provided as Annexure II of the SCN, the revised trading data/details were forwarded to the Noticee and its Directors Shri Rajendra Bubna and Shri Gopichand Banshal as "Annexure A" vide Notices of Inquiry, each dated January 20, 2011. The Notices of Inquiry also provided one more opportunity of hearing on February 09, 2011 and specified that the data enclosed with the Notices would only be considered for the present Adjudication Proceedings and not the data as contained in Annexure II of the SCN. Mr. Balbeer Choudhary and Mr. Pravin Panwar, Authorized Representatives of the Noticee and both its Directors Shri Rajendra Bubna and Shri Gopichand Banshal attended the hearing on February 09, 2011. The Authorized Representatives submitted additional submissions vide letters, each dated February 09, 2011 for the Noticee and its Director Shri Gopichand Banshal and on behalf of Shri Rajendra Bubna submitted the extracts of the minutes of the Board Meeting held on March 25, 2004 wherein it has been mentioned that Shri Gopichand Banshal, Director of the company would be authorized to place orders on behalf of the company individually, hence Shri Rajendra Bubna was not responsible for the trades carried out.

ISSUES FOR CONSIDERATION

12. After perusal of the SCN and submissions of the Noticee and its Directors, I have the following issues for consideration, viz.,
    A. Whether the Noticee and its Directors, Shri Rajendra Bubna and Shri Gopichand Banshal have violated provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations?
    B. Whether the Noticee and its Directors Shri Rajendra Bubna and Shri Gopichand Banshal are liable for monetary penalty under section 15HA of the Act?
    C. What quantum of monetary penalty should be imposed on the Noticee and its Directors Shri Rajendra Bubna and Shri Gopichand Banshal taking into consideration the factors mentioned in Section 15J of the Act?

FINDINGS

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee and its Directors, Shri Rajendra Bubna and Shri Gopichand Banshal have violated provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations?

14. The provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations read 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;

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

15. A sharp rise in the price of the scrip of the Company was witnessed in as much as the price of the scrip went up from ₹ 2.00 to ₹ 170.20 (8500% increase) during the period of five months i.e. from 07.09.2004 to 28.02.2005 at CSE.

16. The transactions done by the brokers during the investigation period constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The details of the said transactions are as follows:

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4.	Ashok Kumar Kayan	11,76,500	6.00	170.10

17. It is observed that BSB had formulated a scheme to manipulate price of the scrip and was aided and executed by other brokers of CSE namely SLS, MBC and AKK. BSB acquired all or major portion of the shares of the Company in its name and also in the name of several other client companies. The acquisitions were made prior to the price rise period through off market deals at very low prices. Majority of the client companies shared the same office address and directors as that of the broker and scrip Company. These indicate that the client companies including the Noticee were the "front" companies of the broker. The broker and its client companies sold their holdings in the market in huge quantities at low prices initially and subsequently the price of the scrip was jacked up in collusion with other brokers. When the prices got pushed to peak

rates, the clients who had bought at low prices sold their holdings in the market to book profits. The shares so sold, were purchased by the other set of clients to book loss and avail tax benefits.

18. Further, it is observed that the Noticee had traded 1,89,000 shares through its broker BSB, which constituted 6.88% of the total traded volume of the broker. The following table illustrates the transactions done by the Noticee:

Client Code	Volume	Trade period & No. of trade days	Price Range (₹)
E051	1,89,000	21.09.2004 to 22.12.2004 -8- trade days	6.10 to 85.00

19. Further, it is observed that barring 300 quantity of buy transactions, all its other transactions were sale transactions. There was no trading in the scrip of the Company during the period 01.01.04 to 06.09.04. The Noticee had also not done any buy transactions in the scrip during the initial period of price rise. i.e., 07.09.04 to 30.09.04. However, it was one of the top 50 share holders of the Company as on 30.09.2004. Therefore, it is observed that the Noticee had acquired the shares of the Company through off market deals prior to the price rise period and its sale transactions during the period 21.09.2004 to 22.12.2004 implies that it had off loaded its previous holdings. The shares were sold by the Noticee at low prices i.e. in the range of ₹ 6.10 to ₹ 85.00. Therefore, it is observed that the Noticee was an integral part of the scheme of price manipulation in which it acted as the "front" company of BSB who colluded with other Brokers. The brokers and their respective client companies (including the Noticee) sold the holdings in the market in huge quantities at low prices initially and subsequently, the price of the scrip was jacked up as all the Brokers and clients were in collusion. When the prices got pushed to peak rates, the clients who had bought at low prices sold their holdings in the market to book profits. The shares so sold, were purchased by the other set of clients to book loss and avail tax benefits.

20. On perusal of the KYC forms, it is observed that the Noticee's address matches exactly with the address of the scrip Company. Also, one of the Directors of the Noticee, namely, Shri Rajendra Bubna was Director of BSB, the main broker who formulated the entire scheme of price manipulation. Further, another Director of the Noticee, namely, Shri Gopichand Banshal was also the director of the scrip Company. It is also observed that Shri Gopichand Banshal and Shri Rajendra Bubna were also directors of several other client companies namely, Ashi Forge Pvt. Ltd., Excel Vyapaar India Pvt. Ltd.,

Truly Consultancy Services Pvt. Ltd., Millstone Vyapaar Pvt. Ltd. and Vayudoot Commercial Pvt. Ltd. These companies acted as "Front" faces and colluded with brokers. The following tables' illustrates the Noticee's link with the scrip Company, its directors and other clients.

Table – 1

Director of G. R. Industries & Finance Ltd.	**Director of Bubna Stock Broking Services Ltd.**
Shri. Gopichand Banshal 26/14/b/1, Shailendra Road, Liluah, Howrah – 711 204	Shri. Gopichand Banshal 26/14/b/1, Shailendra Road, Liluah, Howrah – 711 204

Table – 2

NAME OF THE CLIENT COMPANY	**ADDRESS OF THE CLIENT COMPANY**	**ADDRESS OF THE SCRIP COMPANY**
Elexi Consultancy Services Private Limited	No.33, C. R. Avenue, 9th Floor Room No.916, Kolkata – 700 012	No.33, C. R. Avenue, 9th Floor Room No.916, Kolkata – 700 012

Table – 3

Name of the Director	**Directorship Details**	
Shri Gopichand Banshal	Director	Bubna Stock Broking Services Ltd. **(Broking company)** G. R. Industries & Finance Ltd. **(Scrip company)** **Client companies**: Ashi Forge Pvt. Ltd. Excel Vyapaar Pvt. Ltd. Truly Consultancy Pvt. Ltd. Millstone Vyapaar Pvt. Ltd. Elexi Consultancy Services Pvt. Ltd.
Shri Rajendra Bubna	Director	Bubna Stock Broking Services Ltd. **(Broking company)** **Client companies:** Ashi Forge Pvt. Ltd. Excel Vyapaar Pvt. Ltd. Truly Consultancy Pvt. Ltd. Millstone Vyapaar Pvt. Ltd. Vayudoot Commercial Pvt. Ltd. Elexi Consultancy Services Pvt. Ltd.

21. Therefore, in light of the aforementioned relationship and description of the entire scheme described above, it is observed that there was no distinction between the Noticee and the broker BSB in respect to the formulation of the entire scheme of price manipulation. Therefore, it is observed that the Noticee was virtually being used as a "front company" by BSB who colluded with AKK, SLS and MBC to off load the holdings of the Company held by all the clients (including the Noticee) for the aforementioned brokers.

22. Further, it is also observed that the Noticee's directors were also directors of BSB and other client companies as mentioned aforesaid. Therefore, it is observed that the Noticee and its directors facilitated BSB (who colluded with other brokers and other clients) to off load their holding, which ultimately generated huge volumes in the scrip at CSE and also hampered normal price discovery. Therefore, it is observed that the Noticee and its directors indulged in an act which created false and misleading appearance of trading in the scrip at CSE.

23. Further, it is observed that the Noticee's directors were also responsible for the conduct of its business and Section 27 of the Act explicitly mentions that the directors are liable for the conduct of the company. Therefore, it is observed that the Noticee and its directors acted through the Broker, and managed to manipulate the price as well as create artificial volume in the scrip by being a "front company" of BSB and other Brokers.

24. Now I deal with Noticee's submissions. Vide letter dated July 14, 2008 the Noticee submitted that it had purchased and sold securities in normal course. Vide letter dated November 22, 2010 the Noticee has claimed that the trades were carried out by the Noticee in the ordinary course of the business. However, in view of the findings noted in the preceding paragraphs, I find it difficult to accept Noticee's explanations.

25. The Noticee further submitted that

   a. *At the outset, it is submitted that, the charges in the Notice are exceedingly vague, completely contrary to factual position on records and based merely on surmises and conjectures and on erroneous assumptions. The charges in the Notice are erroneously based on the assumption that there is no distinction between us and brokers i.e. BSB and with SLS, AKK and MBC who had colluded with BSB as alleged. The charge is also erroneously based on the assumption that we have been used as a "front company" by BSB and other brokers to off load the holdings of the Company held by us. It is denied* *that we were an integral part of any scheme that may have been devised by BSB. It is submitted that we at the time of carrying out any transactions were not aware of any such scheme that is alleged to have been devised by BSB in collusion with the Other Brokers.*

b. *It is submitted that, we have transacted in the scrip of the Company based on our independent commercial wisdom with no fraudulent intent. It is denied that our transactions could have influenced the price and volume of the scrip of the Company and also it is denied that, we have violated the provisions of the FUTP Regulations.*

c. *It is submitted that, the Notice fails to demonstrate the manner in which we have manipulated the price/ volume of the scrip of the Company. The charge of manipulation of price / volume is based on mere assumption of we being used as a "front company" by BSB and on factors such as relationship that ,our directors Mr. Gopichand Banshal and Rajendra Bubna who were appointed as our directors on March 26, 2004 may have shared with other companies which were the clients of the Other Brokers or relationship shared by them with the Other Brokers or the Company and also on factor such as, common addressed shared by us with the scrip Company. Thus, there is nothing concrete in Notice that establishes we have manipulated the price/volume in the scrip of the Company. Simply based on some alleged connection it cannot be assumed that we were used as "front company" and that we were an integral part of some scheme devised by BSB and also, that we had transacted fraudulently.*

d. *In this regard, your attention is invited to the order passed on September 15, 2009 by the Hon'ble Securities Appellate Tribunal in the matter of M/s Swaranganga Trading Pvt Ltd Vs SEBI*

*"……… **we are satisfied that the show cause notice that was issued to the appellant was as vague as it could be and did not spell out the charge which the appellant was required to meet**. Para 2 of the show cause notice which has already been reproduced hereinabove only states that the appellant had colluded with certain brokers for transacting in the shares of the company and that it created false and misleading appearance of trading in the scrip. No further details have been provided to the appellant. Who are the brokers with whom the appellant colluded and in what manner did the appellant create a misleading appearance in the trading of the scrip of the company is not spelt out in the show cause notice. On a plain reading in para 2 of the show cause notice it is not possible for the delinquent to offer his explanation as the allegations made therein are vague. No doubt the entire investigation report was sent to the appellant alongwith the show cause notice but that does not improve vagueness of the allegation in the show cause notice. The investigation report runs into 78 pages and deals*

with not only the appellant but with several other entities allegedly involved in the so called manipulation and the role which the appellant is said to have played cannot be spelt out from that report either. More than 30 pages of the report are in the form of charts dealing with the trades executed by different entities and the learned counsel appearing for the Board made a valiant effort in trying to track the trades of the appellant and link them with the trades of some other brokers with a view to establish the charge that the appellant had executed synchronised trades in a premeditated manner to rig the price of the scrip of the company. Despite the efforts made by the learned counsel, it was not clear to us as to how the trades were synchronised and in what manner did the appellant create a false and misleading appearance of trading on the screen of the exchange. ***A show cause notice is meant to contain the precise charge that is levelled against the delinquent in a concise manner so that he could reply to the same****. This is the basic requirement of the principles of natural justice. As pointed our earlier, paragraph 2 of the* ***show cause notice levelling the charge of violating Regulation 4 of the regulation is vague and we are satisfied that it violated the principles of natural justice****"*

e. *In the matter of Canara Bank and Others vs Debasis Das and others (2003) 4 SCC 557 had observed that as follows; "The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard.* ***Notice is the first limb of this principle. It must be precise and unambiguous****. It should apprise the party determinatively of the case he has to meet."*

26. I don't accept the aforesaid contentions of the Noticee and I find that the transactions of the Noticee alongwith the link it has with the scrip Company and BSB establishes that the Noticee was also involved in the price manipulation of the scrip of the Company. The Noticee has also not produced any evidence in support of denial of charges against it.

27. The Noticee further submitted that

a. *Further the trade and order log relied upon suffers from material deficiency and discrepancies:*

b. *<u>The deficiencies in the trade and order log are as follows</u>:*

(i) *The trade and order log does not provide the order time, price and quantity.*

(ii) *There are several such trades where the counterparty details are not given, to give a few instances, in trade nos 3-7 (10/sept/2004), 34-35 (15/sept/2004), 40-43*

(16/sept/2004), 348-375 (24/sept/2004), 413-419 (5/Oct/2004), 487–492 (12/Oct/2004), 500-548 (14/Oct/2004), 694-703 (1/nov/2004), 785-786 (10/Nov/2004), 855-857 (18/nov/2004).

c. *The discrepancies on the trade and order log are as follows:*

(i) *The trade time in a particular trade appears erroneous. To give a few instances:*

Trade no	***Trade date***	***Trade time***
1.	*7/09/2004*	*03:27:12*
		03:27:20
8	*10/09/2004*	*12:43:58*
		12:44:18
13	*13/09/2004*	*11:53:50*
		11:54:20
30	*14/09/2004*	*02:58:11*
		02:58:30

From the aforementioned data it is clear that the trade time in a particular given transaction is different. There can be a variation in the order time which depends upon the time the order is placed at but the trade time for a trade has to be the same as it is the time when the orders get executed.

(ii) *Further, there is discrepancy in the sequencing of the order numbers. For instance:*

Trade No.	***Trade date***	***Order No.***
1	*07/09/2004*	*8425*****
3-12	*10/09/2004*	*81134*****
13-29	*13/09/2004*	*87222*****
30-33	*14/09/2004*	*90203*****
34-35	*15/09/2004*	*84250*****
40-43	*16/09/2004*	*87222*****

There is discrepancy in the sequencing of the order numbers. In a proper trade and order log the order numbers should appear in an ascending manner in accordance to the order date and time. However, in the present case there order numbers appear erratic and are not in a proper sequence.

(iii) *Further there appears to be discrepancy in the order numbers where the order numbers in a particular trades are not in sync with the each other for instance:*

Trade no.	***Order no.***	***Counterparty Order No.***
131 - 156	*7820*******	*8722*********
379 - 383	*8722******	*9020********
736-744	*7820******	*8113*******
745-783	*7522******	*8722******

d. *It is not possible that the order numbers in a particular trade could be at such variance where one order in a trade could begin with 7820***** and in the same trade the counterparty order could begin with 8722****.*

e. *In this context we invite your attention to the Order dated January 20, 2010 passed in the matter of M/s Subh Stock Broking Private Ltd, by SAT interalia holding that, "….. that order no.330 is shown to have been placed at 12:33:42 hours whereas order no. 300 is shown to have been placed at 12:38:04 hours. There are a large number of discrepancies of this nature. While the order numbers are in sequence, the time at which they are shown to have been placed on the system does not appear to be correct. A later order is shown to have been placed earlier in point of time than as order placed earlier. This, in our view, should not happen. ……….We are satisfied that the principles of natural justice were violated".*

f. *Thus, there appears to be discrepancy in the trade and order log making the same unreliable. The instances given in the paras above are only illustrative, the entire trade and order log is itself unreliable. Such half baked data the veracity of which is patently suspect cannot be the basis for imposing penalty on us. Any reliance on the same would be opposed to law.*

28. In regards the Noticee's aforesaid submissions, I note that the revised trading data/details were forwarded to the Noticee as "Annexure A" vide Notice of Inquiry dated January 20, 2011 after which the Noticee was given one more opportunity of hearing which was scheduled for February 09, 2011 for the Noticee to make further submissions and the Noticee also made further submissions vide letter dated February 09, 2011 which has been dealt with in the subsequent paragraphs.

29. The Noticee further submitted that

a. *With regard to the observations in para 1 of the Notice, it is submitted that it is a matter of fact and we have no comments to offer.*

b. *With regard to the observations in para 2 of the Notice, it is denied that the transactions carried out by us could have influenced the price/ volume of the scrip of the Company. We had independently transacted through our broker BSB. We at the time of carrying out transactions were not aware of the identity of the Other Brokers who had also transacted during the Investigation Period. We were also not aware of the identity of the counter party clients or the nature of their transactions in the scrip of the Company.*

c. *It is denied that we were aware of any scheme of price manipulation that may have been formulated by the BSB as alleged. It is denied that we were aware of whether BSB was,* *aided by or had acted in collusion with, the Other Brokers as alleged. It is submitted that we have no role whatsoever, in the scheme as may have been formulated by BSB. We are not aware of any transactions carried out by BSB in the scrip of the Company, in its own name. As far as we are concerned we have transacted independently in the scrip of the Company and the purchase as well as the sale of the shares of the Company have been carried out in our name. It is submitted that purchases that may have been made off market and subsequent sale on market does not indicate any fraudulent intent. In the present case the Notice fails to demonstrate that transactions carried out by us were in a manner that had led to price / volume manipulation. It may be noted that it is not the case that we have transacted amongst the other clients who had also transacted in the scrip of the Company. Further, simply because of common address and directors as that of the Company and the brokers, is no indication that we were used as "front company" as alleged. We are not aware of whether BSB had acquired any shares of the Company neither are we aware of its sale transactions in the same. The transactions carried out by us have no connection with those that may have been carried out by BSB or Other Brokers and their clients. It is submitted that we have not sold shares of the Company with the intention of influencing the price of the same in collusion with any brokers, as alleged. Further we are not aware of the identity of the entities who purchased the shares from us and then they may have subsequently sold their holdings in the market as alleged. As far as we are concerned we have not executed any transactions of such nature. We have transacted in the ordinary course with no intention of fraudulently influencing the price of the scrip of the Company.*

d. *With regard to the observations in para 3 of the Notice it is denied that we had any role in manipulation of price or volume. It is submitted that, we have transacted independently based on our commercial wisdom through our broker BSB in the ordinary course of trade. We are not aware of transactions that may have been carried out by the BSB for its other clients, thus we are not aware of its volumes. It may be noted that, from the data as provided by you, therein it is stated that we have transacted on 8 trade days. Then, it logically follows that transactions carried out only on 8 trade days from the entire period of 5 months when the price rise was witnessed, could not have influenced the price/ volume of the scrip of the Company. The allegation that we have done buy transaction on 22.12.2004 of 300 shares @ Rs. 72.60 and Rs 85.00 as a token transaction is factually incorrect. We have not carried out a single transaction on 22.12.2004 as alleged. It is submitted that the allegations in the notice are based on without taking into consideration proper facts.*

e. *We have transacted at the prevalent market price of the exchange and not with the any fraudulent intention of selling our shares at low prices to influence the price/ volume, as alleged. It is submitted, the transactions were not continuous in nature, over a period of 5 months. Further our transactions were genuine, delivery based and were not square off trades. Thus, the transactions carried out by us could not have influenced the price/ volume of the scrip of the Company.*

f. *It is submitted simply because we had sold out holdings in the company during the investigation period as alleged. It cannot be concluded that we are a part of the scheme. It is denied that we were an integral part of any scheme that may have been devised by BSB. It is denied that we were a "front" company of our broker BSB and other brokers, as alleged. It is denied that we have colluded either with our broker BSB, Other Brokers or the clients who have also transacted in the scrip of the Company. It is submitted that we had transacted on the order matching mechanism of the exchange, we are not aware of the identity of the counter party to our sale or buy transactions. We are not aware of whether the entities who have bought from us had subsequently sold the shares in the market, and neither are we aware of whether the purchasers of those shares had subsequently sold the shares in the market. We have transacted independently, on the order matching mechanism of the exchange and at the prevalent market price. All our transactions were delivery based transactions. We have transacted in the ordinary course with no fraudulent intent of manipulating the price / volume of the scrip as alleged.*

30. In regards the Noticee's aforesaid submissions, I also note that the Noticee's transactions should not be viewed in isolation but as part of the entire scheme of the price manipulation wherein the Noticee was also involved. The Noticee has also claimed that purchases that might have been made off market and subsequent sale on market does not indicate any fraudulent intent. I don't agree with the Noticee's explanations herein, considering the background of the case. The Noticee has not been able to explain its trades in the given circumstances. I also don't agree with the Noticee that the Notice fails to demonstrate that transactions carried out by the Noticee led to price/volume manipulation as the trades of the Noticee are definitely manipulative in nature.

31. The Noticee further submitted that

a. *It is submitted that simply because our director Mr. Rajendra Bubna and Mr. Gopichand Bansal were the directors of BSB does not indicate that we had colluded with our broker BSB or that we were used as "front company" by brokers. Further even if our director*

Mr. Gopichand Bansal and Mr. Rajendra Bubna were the directors of the other client entities namely, Ashi Forge Pvt Ltd, Excel Vyapaar Pvt Ltd., Truly Consultancy Pvt Ltd., Millstone Vyapaar Pvt Ltd., and Vayudoot Commercial Pvt Ltd., it cannot form basis for drawing any adverse inference against us. It is not the case that we had transacted amongst these entities. Further even if our director Mr. Gopichand Banshal was the director of the Company it cannot form the basis of drawing an adverse conclusion of manipulation of price/ volume in the scrip of the Company.

b. *It is submitted that based on some relationship and common addresses it cannot be concluded that we had transacted with a fraudulent intent. The Notice fails to demonstrate in what manner were we a part of alleged scheme. It does not show that we had in any manner transacted with a particular set of clients of particular brokers or that we had transacted in any fictitious manner. Simply based on alleged connection and common address, it cannot be alleged that we had a manipulative intent.*

c. *We have transacted through the broker BSB and it is denied that we had any nexus with BSB or the Other Brokers SLS, AKK and MBC. The allegation of us being a "front company" is baseless and without any concrete evidence. It is denied that we had held shares for or on behalf of BSB. It is denied that we and our directors had aided BSB in any manner whatsoever. There is nothing in the Notice that shows that we were holding shares of the Company on behalf of BSB or the Other Brokers i.e. SLS, AKK and MBC, as alleged. It is denied that we were an integral part of any scheme that was devised. The charge in the Notice is baseless without any evidentiary proof.*

32. Herein, the Noticee has not disputed the links as mentioned in the SCN but only submits that it does not indicate that the Noticee was the front face and colluded with BSB. However, I find that it was because of the collective efforts of the Noticee and others along with BSB that the scrip witnessed price manipulation and huge trading volume without any justification for the same. I also note that the SCN describes the price manipulation scheme and hence don't accept the Noticee's contentions regarding the Notice failing to demonstrate in what manner the Noticee was part of the scheme. The pattern of Noticee's trades along with the links with the other entities specifies the involvement of the Noticee in the price manipulation of the scrip of the Company.

33. Further, the Noticee submitted that

a. *With regard to para 4 of the Notice, it is denied that we and our directors had facilitated BSB and Other Brokers to off load their holding. It is denied that we and our directors had indulged in an act which created false or misleading appearance of trading in the* *scrip of the Company. It is denied that we and our directors acted through our broker BSB.*

b. *With regard to the violation of the provisions of regulation 4 (2)(a) of the FUTP Regulations, it is denied that we have indulged in any act which creates a false or misleading appearance of trading in the securities market.*

c. *With regard to the violation of the provisions of regulations 4 (2)(e) of the FUTP Regulations, it is denied that we have indulged in any act or omission amounting to manipulation of the price of the security.*

d. *It is submitted that on a careful perusal of the Regulation 4 it is clear that element of deceit is an underlying factor in the transactions. A genuine transaction by itself cannot attract the regulation though such a transaction had resulted in influencing the price of the scrip. It is submitted that in Regulation 4, the intention of the party is relevant. If one is to be charged for the fraudulent and unfair trade practices stated in Regulation 4, it is absolutely necessary to prove that the person had acted intentionally.*

e. *It is submitted that charge of fraudulent and unfair trade practices under Regulation 4 is a serious charge. In the instant case, as demonstrated hereinbefore there is no evidence at all that when we were trading we were acting in collusion, with a view to carry out fraudulent and unfair trade practices in the scrip.*

In this context with regard to the nature of evidence required to sustain the charge of fraudulent and unfair trade practices, your attention is invited to the Order dated 22-10-2001 of Hon'ble Securities Appellate Tribunal in the case of Sterlite Industries Limited vs SEBI (2001)34 SCL 485(SAT-Mumbai) "In this context it is to be noted that Chairman holding the Appellant guilty of indulging in price manipulation has stated that "creation of false market and <u>price manipulation is a very serious offence</u>". Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having large number of investors. The stigma sticks and it also hurts, not the company alone, but its shareholders as well. "Not all the King's horses and all the King's men" can ever salvage the situation. Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence." The extent of proof required to hold the delinquent guilty has been explained by the Hon'ble Supreme Court in Bank of India v. Degala Surya Narayana (AIR 1999 SC 2407). The Court held:

"strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and objectively may arrive at a finding upholding the gravamen of the charges against the delinquent officer. Mere conjuncture or surmise cannot sustain the finding of guilt even in departmental enquiry proceeding." (emphasis supplied)

In the Notice it has not been specified as to how and in what manner have we influenced the price. The notice being vague, being based on incorrect facts and the trade and order log itself being defective and unreliable the charges can also not sustain. It is submitted that as a result of execution of transactions in the scrip we have not made any disproportionate gain or gained unfair advantage. Further we have also not caused any loss to investors or group of investors. Since we have not violated the provisions of FUTP Regulations and the Act and we have not indulged in any fraudulent and unfair trade practices relating to securities market, imposition of penalty under section 15HA of SEBI Act 1992 is not warranted.

It is submitted that an inquiry under section 15 I is justified only if there is a prima facie contravention of the provisions of law specified in section 15A to 15 HB, since there is no prima facie finding, of any violations of the law backed up with material in support, no inquiry is justified. The notice therefore is unwarranted.

34. I don't find the aforesaid explanations of the Noticee satisfactory and I find that the SCN has clearly specified the allegations against the Noticee and also specified the links it has with the scrip Company and BSB and other client companies, therefore, the aforesaid submissions of the Noticee do not absolve it from the said violations.

35. Now I deal with the Noticee's submissions made vide letter dated February 09, 2011

  a) *Please refer to your letter EAD-04/ADJ/PKB/EIF167/2493/2011 dated January 20, 2011 enclosing therewith a copy of a revised trade details for the investigation period being January 1, 2004 to February 28, 2005 in the matter of G.R. Industries and Finance Limited.*
  b) *We state that we had vide our letter dated November 22, 2010 clarified that the trade and order log provided with the Notice was unreliable as the same suffered from material discrepancies and deficiencies as explained in our reply. During the course of the hearing granted to us on 22nd November 2010 we had explained the nature of discrepancies and deficiencies as set out in our reply. We had also requested for a correct and complete trade and order log to enable us to provide our reply. Pursuant to the request made by us we are now given a copy of revised trade and order log.*

c) *We notice that, in the revised trade and order on careful comparison with the previous trade and order log provided with the Notice, there appears to be changes made in the timings of the placing of the orders in certain trades, when the order date, the order number and quantity and price is the same in both revised and the previous trade and order log.*

d) *The changes carried out to the order timings in the previous trade and order log and the revised trade and order log are setout hereinbelow:*

Dated	*Order No.*	*Order Time in previous trade no.*	*Order time in the revised trade no.*
7/09/2004	*842500733*	*03:27:**12***	*15:27:**13***
10/09/2004	*811347755*	*12:37:**03***	*12:37:**04***
10/09/2004	*811347761*	*12:45:**00***	*12:45:**01***
10/09/2004	*811347763*	*12:46:**05***	*12:46:**06***
13/09/2004	*872228434*	*11:53:**50***	*11:53:**51***
13/09/2004	*872228435*	*11:54:**20***	*11:54:**21***
13/09/2004	*872228444*	*01:23:**16***	*13:23:**17***
13/09/2004	*872228455*	*03:18:**20***	*15:18:**21***
14/09/2004	*902039754*	*02:58:**11***	*14:58:**21***
14/09/2004	*902039755*	*02:58:**30***	*14:58:**31***
14/09/2004	*902039757*	*02:58:**49***	*14:58:**50***
14/09/2004	*902039761*	*02:59:**34***	*14:59:**35***
15/09/2004	*842500904*	*03:24:**54***	*15:24:**55***
16/09/2004	*872228492*	*12:35:**35***	*12:35:**36***
16/09/2004	*872228493*	*12:35:**41***	*12:35:**42***
20/09/2004	*782016918*	*01:07:**16***	*13:07:**17***
20/09/2004	*872228522*	*01:07:**16***	*13:07:**17***
27/09/2004	*872228616*	*03:07:**29***	*15:07:**30***

The aforementioned table clearly shows that there are changes made to the order timings in the revised trade and order log. The aforementioned data is only illustrative, there are several such instances, where the order timings have been changed as explained above, that exists in the revised trade and order log. The fact that there are such changes in the order timings makes the entire data unreliable and raises the question of credibility pertaining to the trade and order log relied on to prepare the Notice. In the present case as explained above, there are changes carried out to the order timings, whereas, the date, trade nos, order numbers, price and quantity are the same. In such circumstances, it raises a doubt on the change in the *timings of the placement of the orders. Thus, it is clear that the trade and order logs are tampered and doctored to create a charge against us.*

e) *The trade and order log as provided is unreliable, and only after bringing to your notice the nature of deficiencies and discrepancies, we were provided with a revised trade and order log which is also defective.*

36. I don't agree with the Noticee's submissions that the trade and order log is unreliable. The revised trading details were provided to Noticee and the Noticee was also given one more opportunity of hearing after receipt of data to make submissions. Therefore, no principles of natural justice stand violated. Moreover, the Noticee has not disputed its trades and also not provided any evidence to substantiate its submissions.

37. The Noticee further submitted

a) It is submitted that the revised trade and order log suffers from material deficiency as it does not provide order quantity and order price. The same are crucial to deal with a charge of price manipulation, as alleged.

b) Further the trade and order log does suffer from discrepancies as the order numbers appear erratic and not in proper ascending sequence in accordance to order date and time. Further, there is discrepancy in the counter party order numbers for the same trade.

c) The nature of discrepancies are explained hereinbelow:

(i) There is vast difference in the counter party order numbers. There appears to be discrepancy in the order numbers where the order numbers in a particular trades are not in sync with the each other for instance:

Trade no.	***Order no.***	***Counterparty Order No.***
131 - 156	*7820******	*8722**********
379 - 383	*8722*******	*9020*********
736-744	*7820*******	*8113********
745-786	*84250*******	*7522*******

*It is not possible that the order numbers in a particular trade could be at such variance where one order in a trade could begin with 7820***** and in the same trade the counterparty order could begin with 8722****or at variance as setout above.*

(ii) The order numbers appear erratic and not in proper sequence in accordance to the order date and time. For instance:

Tradeno.	***Trade date***	***Order No.***
1	*07/09/2004*	*8425*****
3-12	*10/09/2004*	*81134*****
13-29	*13/09/2004*	*87222*****

30-33	*14/09/2004*	*90203*****
34-35	*15/09/2004*	*84250*****
40-43	*16/09/2004*	*87222*****

The order sequencing should be ascending in accordance to order date and order time. In the present situation the orders appear erratic. The above table is only illustrative in nature, there are several such trades where the order numbers appear erratic.

d) *Thus, there appears to be discrepancy in the trade and order log making the same unreliable. The instances given in the paras above are only illustrative, the entire trade and order log is itself unreliable. Such half baked data the veracity of which is patently suspect cannot be the basis for imposing penalty on us. Any reliance on the same would be opposed to law.*

38. I don't accept Noticee's above submissions. I note that the Noticee has neither denied nor disputed any of the trades but has only raised certain issues relating to order number sequencing. In this regard it is pertinent to note that such occurrence of order numbers is not a discrepancy or an error of any sort. In CSE, the order numbers are generated in the following manner:

(i) The order numbers are automatically generated by the system and are unique for a scrip;

(ii) To fasten processing and trade matching activity by the trading system, scrips are allocated different basket numbers and orders of the scrips are routed from such baskets to different processors. Upon placement of any order, the immediately available processor allocates last available order number with the applicable series;

(iii) Hence it is possible to have different series of order numbers for the same scrip on the same day.

39. The Noticee further submitted that

a) It is denied that we had transacted in the scrip of the Company with the intent of influencing the price/ volume of the scrip. It is submitted that we had sold shares in the ordinary course through our broker on the order matching mechanism of the exchange at the prevalent market price, without any fraudulent intent. The transactions carried out by us were delivery based and not square off transactions.

b) It is submitted that the price rise in the scrip of M/s G.R. Industries and Finance Ltd (Company) was observed from 7 September 2004 to 28 February 2005, from the entire investigation period beginning from January 1, 2004 to February 28, 2005. It was observed that the price of the Company during September 7 2004 to February 28 2005 rose from Rs. 2 to Rs 170.20.

c) *From the period of September 7, 2004 to February 28, 2005 we have transacted only on 5 days, i.e., on September 21, 2004, September 22, 2004, September 24, 2004, October 14, 2004, October 18, 2004. The price of the Company had already increased from Rs 2 on September 7, 2004 to Rs. 6.50 on September 20, 2004 (i.e., a trade day prior to our transaction on September 21, 2004). This indicates that the price was moving in an upward mode. It is submitted that it is not due to our transactions that the price had begun to rise. We have only transacted in the shares of the Company in the ordinary course. The transactions carried out by us have not adversely influenced the price of the scrip of the Company as alleged.*

d) *The table below indicates that there was no adverse impact due to our trades on the price of the scrip of the Company:*

Date	***Price range between which our transactions took place***	***Previous day close price***	***Gap in days between our transactions***
Sept 21, 2004	*6.50*	*6.50*	---------
Sept 22. 2004	*6.50*	*6.45*	---------
Sept 24, 2004	*6.50 – 6.70*	*6.50*	*1 day*
Oct 14, 2004	*6.10- 6.20*	*6.50*	*20 days*
Oct 18, 2004	*6.50 -6.55*	*6.50*	*3 days*

e) *From the aforesaid table it is clear that there has been no adverse impact on the price of the scrip of the Company. As a matter of fact, there was no price rise on days when we had transacted. It is submitted that the price of the scrip of the Company had continued to increase after October 18, 2004. Further the transactions carried out by us were not continuous; they were carried out with a gap in days between them. The transactions were carried out by us only on 5 days from the period of September 7, 2004 to February 28, 2005. The transactions were all delivery based transactions and were not square off transactions. Our transactions were genuine, with no fraudulent intent. The transactions were all carried out by us at the prevalent market price. Our intention was only to transact in the ordinary course, like any ordinary investor would.*

f) *It is reiterated that we have no relationship with our broker Bubna Stock Broking Services Ltd (BSB) save and except a client broker relationship. We are not concerned with the transactions carried out by BSB for its other clients. We have transacted on the order matching mechanism of the exchange and our transactions have matched accordingly. We are not aware of the identity of the counter party to our transactions. We have no* *connection, relationship with the counter party being client codes, 1470, V224, 2426, 2429, 2430, 2327, 2328, 2327, 2663, 1475, 1474, RS63, RE64, U215, V553, SU32, SU31, V552, B799, N.M Lohia, B800, PA25, A777, I142, A778, N210, A092. It be noted that we have not transacted with a particular set of entities. It is denied that we had created artificial volumes in the scrip of the Company. The transactions carried out by us were delivery based transactions and were not square off transactions.*

40. I don't agree with the Noticee's aforesaid submissions and I find that the trades of the Noticee are manipulative in nature. Moreover, in view of link stated in the preceding paragraphs, the Noticee can't claim that it has no relationship with their broker BSB save and except a client broker relationship. The scrip witnessed a price rise which was not market determined but was because of the collective efforts of the brokers and the respective clients including the Noticee. Therefore, merely stating the Noticee traded on few days and its trades did not influence the price of the scrip of the Company does not dilute the role of the Noticee in the manipulation of the scrip of the Company.

41. I find that the price of the scrip of the Company witnessed a sharp rise from ₹ 2.00 to ₹ 170.20 and the transactions done by four brokers including BSB constituted 83.30% of the total traded volume in the scrip of the Company at CSE. The Noticee had traded 1,89,000 shares through BSB, which constituted 6.88% of the total traded volume of the broker and barring 300 quantity of buy transactions, all its other transactions were sale transactions. There was no trading in the scrip of the Company during the period 01.01.04 to 06.09.04. The Noticee had also not done any buy transactions in the scrip during the initial period of price rise, i.e., 07.09.04 to 30.09.04. However, it was one of the top 50 share holders of the Company as on 30.09.2004. Therefore, the Noticee had acquired the shares of the Company through off market deals prior to the price rise period and its sale transactions during the period 21.09.2004 to 22.12.2004 implies that it had off loaded its previous holdings. The shares were sold by the Noticee at low prices i.e. in the range of ₹ 6.10 to ₹ 85.00. Moreover, Shri Gopichand Banshal and Shri Rajendra Bubna were the Noticee's Directors and were also Directors of BSB, the main broker who formulated the entire scheme of price manipulation. Shri Gopichand Banshal and Shri Rajendra Bubna were also directors of several other client companies namely, Ashi Forge Pvt. Ltd., Excel Vyapaar India Pvt. Ltd., Truly Consultancy Services Pvt. Ltd., Millstone Vyapaar Pvt. Ltd. and Vayudoot Commercial Pvt. Ltd.. Shri Gopichand Banshal was also the director of the scrip Company. These companies

including the Noticee acted as "Front" faces and colluded with brokers. Further, the Noticee's address also matches exactly with the address of the scrip Company. Therefore considering the trades of the Noticee along with the nexus it shares with BSB and the Company and other clients in the background of the entire price manipulation scheme, I find that the Noticee was an integral part of the scheme of price manipulation. This scheme indeed facilitated price manipulation of the scrip of the Company and ultimately generated huge volumes in the scrip at CSE and also hampered normal price discovery.

42. It is of no doubt that there has been a manipulation of price of the scrip of the Company and the price rise as well as the huge trading volume mentioned above without any change in the fundamentals of the Company quite establishes the same. Further, there was also false and misleading appearance of trading in the scrip of the Company, as the trading was not genuine trading but only done to facilitate the concerned entities in achieving their own ends and avail tax benefit. Therefore the trading as well as the price rise has been artificial.

43. The question is whether the Noticee is guilty of manipulating the price of the scrip and of creating false or misleading appearance of trading in the securities market. The four brokers whose transactions are involved have contributed to 83.30% of the total traded volume in the scrip of the Company at CSE and the Noticee has traded through one of these four brokers, viz., BSB. I also note that Noticee has traded 1,89,000 shares through BSB, and barring 300 quantity of buy transactions, all its other transactions were sale transactions. But it is only through such clients, BSB and the other brokers have manipulated the price of the scrip of the Company and created false or misleading appearance of trading. The relationship between the clients, brokers and Company has been brought out clearly in the preceding paragraphs. Therefore, the Noticee's trades should not be viewed in isolation. It should be seen in coordination with the entire scheme formulated by BSB in collusion with the other brokers. Further, the intention behind executing such trades have been made clear by the link demonstrated above. The link between the Noticee and BSB and the Company and other client companies involved makes it quite clear that it acted as the front company of BSB as part of the scheme. All these trades of Noticee and other clients and brokers have helped in raising the price of the scrip which was not a genuine price rise or for that matter these trades were also not genuine trades as they were only done to achieve their own ends.

Therefore, I find that the Noticee alongwith the other clients and brokers have dealt in the market in a manner that has resulted in the manipulation of the price of the scrip of the Company and has created false or misleading appearance of trading in the securities market.

44. At this juncture, it is pertinent to mention that in case of Adjudication Proceedings initiated in respect of other client companies in the matter of G. R. Industries and Finance Ltd. wherein hearings were conducted on March 09, 2011, Mr. Pravin Panwar, Authorised Representative of the client companies and their Directors submitted that the address of G. R. Industries and Finance Ltd. was shifted to the present address on 04.05.2006, i.e., after the investigation period. During the investigation period the Company was located in Assam. Further, he also made the following submissions and requested for the same to be noted in other cases also.

"The trade data does not indicate that there was a manipulative intent as there was difference between the trade time and order time. I'm also submitting the copy of Form 32 of G.R Industries wherein it can be noted that Mr. Anil Kumar Khemka, Mr. Gopichand Banshal and Mr. Hare Krishna Behera became directors of the Company from 11.11.2005 i.e. subsequent to the period of Investigation. This submission may be noted with regards to other cases also."

45. I have examined the above submissions keeping in view the other evidences available on record. There is no dispute that Mr. Anil Kumar Khemka & Mr. Gopichand Banshal were the directors of the various client companies who have dealt in the scrip of G. R. Industries and Finance Ltd. during the investigation period and subsequently, as per the submissions of the Noticee became the directors of G. R. Industries and Finance Ltd. post investigation period. It is the own submission of the Noticee that G. R. Industries and Finance Ltd. changed its address subsequently to the address from where these client companies were operating during the investigation period. It is too much of coincidence that subsequent to the investigation period the directors & address of these client companies were adopted by G. R. Industries and Finance Ltd., in the scrip of which manipulative trades have been done by these client companies. The suspicion that the Company & clients were connected during the time of investigation period also gets deepened by the evidences otherwise available on record. In this regard, I note that in the case of Adjudication Proceedings initiated in respect of Graceful Advisors Pvt. Ltd., one of the client company (now merged with Vayudoot Commercial Pvt. Ltd.), Mr. Hare Krishna Behera strenuously argued and submitted documents that he was

appointed Director of Graceful Advisors Pvt. Ltd. only on 1.09.2005, *i.e.* after the investigation period. However, on perusal of the KYC form available with the broker, it is noted that Mr. Hare Krishna Behera has signed the KYC form of Graceful Advisors Pvt. Ltd. in the capacity of Director for the trades done during investigation period. This creates serious doubts about the actual people in control of all these companies (clients as well as Company) during period of investigation. From the above discussions it would be appropriate to conclude that though Mr. Anil Kumar Khemka, Mr. Gopichand Banshal and Mr. Hare Krishna Behera were formally appointed directors of the Company subsequent to the investigation period, they were connected with the Company during the investigation period. Hence the submissions of the Noticee lacks merit and does in no way weaken the link between the entities involved in the entire scheme of manipulation, as discussed in the preceding paragraphs.

46. Now I deal with the submissions made by Shri Gopichand Banshal, the Director of the Noticee. I note that vide letter dated November 22, 2010 Shri Gopichand Banshal stated that he adopts the reply dated November 22, 2010 filed by the Noticee and, inter-alia, submitted that "*It is submitted that the charges in the Notice are not based on proper appreciation of facts. Since Elexi Consultants Pvt Ltd has not violated the provisions of 4(2)(a) and 4(2)(e) of FUTP Regulations, it cannot be concluded that I in my capacity as a director be held liable under the provisions of section 27 of the SEBI Act, 1992.*" Subsequently, vide letter dated February 09, 2011, Shri Gopichand Banshal stated that he adopts the reply dated February 09, 2011 filed by the Noticee in this regard.

47. Now I deal with the submissions of the other Director of the Noticee, Shri Rajendra Bubna. I note that vide letter dated November 22, 2010 Shri Rajendra Bubna stated that he adopts the reply dated November 22, 2010 filed by the Noticee and, inter-alia, submitted that "*It is submitted that the charges in the Notice are not based on proper appreciation of facts. Since Elexi Consultants Pvt Ltd has not violated the provisions of 4(2)(a) and 4(2)(e) of FUTP Regulations, it cannot be concluded that I in my capacity as a director be held liable under the provisions of section 27 of the SEBI Act, 1992*". Thereafter, during the course of personal hearing, Shri Rajendra Bubna submitted the extracts of the minutes of the Board Meeting held on March 25, 2004, signed by both the Directors Shri Rajendra Bubna and Shri Gopichand Banshal, wherein it has been mentioned that Shri Gopichand Banshal, Director of the company would be authorized to place orders on behalf of the company individually. Placing reliance on the extracts of the said Board Meeting of the Noticee held on March 25, 2004, Shri Rajendra Bubna submitted that he

was not responsible for the trades carried out. I find that the aforesaid submissions of Shri Rajendra Bubna cannot absolve him from his responsibility regarding the trades carried out by the Noticee in the scrip of the Company.

48. I note that apart from being a Director of the Noticee, Shri Rajendra Bubna was also a director of several other client companies namely, Ashi Forge Pvt. Ltd., Excel Vyapaar India Pvt. Ltd., Truly Consultancy Services Pvt. Ltd., Millstone Vyapaar Pvt. Ltd. and Vayudoot Commercial Pvt. Ltd. As already observed in the preceding paragraphs of this Order, all these companies including the Noticee acted as “Front” faces and colluded with the brokers. Further, Shri Rajendra Bubna was also a director of BSB, the main broker who had formulated the entire scheme of manipulation and through which the Noticee carried out its trades in the scrip of the Company. The aforesaid factors reflect that Shri Rajendra Bubna, being the director of BSB, Noticee and the other client companies was aware of the scheme of manipulation and cannot plead ignorance and shun his responsibility by only relying on the extracts of the minutes of the Board Meeting of the Noticee held on March 25, 2004. Therefore, in view of the links between the entities involved as well as keeping in view the background of the case, I don’t find the explanations of Shri Rajendra Bubna satisfactory to absolve him from the said violations.

49. Since, the charges of violation of PFUTP Regulations against the Noticee stand established, I hold Shri Gopichand Banshal and Shri Rajendra Bubna, Directors of the Noticee, guilty of violation of the Regulation 4(2) (a) and (e) of PFUTP Regulations keeping in view Section 27 of the SEBI Act, 1992, which explicitly mentions that the directors are liable for the conduct of the company and reads as under:

27. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

***Provided** that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

50. Therefore, I find the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna guilty of violating provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations.

ISSUE 2: Whether the Noticee and its Directors Shri Rajendra Bubna and Shri Gopichand Banshal are liable for monetary penalty under section 15HA of the Act?

51. Section 15 HA of the Act prescribes the penalty for fraudulent and unfair trade practices. The provisions of the section read

"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".

52. In view of the violation of provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations, I find that the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna are liable for monetary penalty under section 15HA of the Act.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee and its Directors Shri Rajendra Bubna and Shri Gopichand Banshal, taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

53. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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."*

54. In such cases, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I note that the material available on record also does not dwell on the extent of specific gains made by the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna. Suffice to state that keeping in mind the practices indulged in by them, a pre-determined agenda was achieved in that the trading in the scrip of the Company was in a manner meant to create artificial price and volume, which is an important criterion capable of misleading the investors while making investment decisions. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market and also erodes the confidence of the investors in the orderly behaviour 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 omissions and commissions. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end of market manipulators. Considering the continuous effort of the Noticee wherein trades were carried out over a period of time, it can safely be concluded that the nature of default was also repetitive.

55. It has already been established that the Noticee and its Directors, Shri Gopichand Banshal and Shri Rajendra Bubna have violated Regulations 4(2) (a) and (e) of PFUTP Regulations.

56. Considering the facts and circumstances of the case and the material available on record and the violation committed by the Noticee and its Directors, I find that penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on Elexi Consultancy Services Private Limited and ₹ 2,00,000/- (Rupees Two Lakhs only) on Noticee's Director, Shri Gopichand Banshal and ₹ 2,00,000/- (Rupees Two Lakhs only) on Noticee's Director, Shri Rajendra Bubna under section 15HA of the Act would be commensurate with the violation committed by them.

ORDER

57. Considering the facts and circumstances of the case, in terms of the provisions of section 15HA of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on Elexi Consultancy Services Private Limited and ₹ 2,00,000/- (Rupees Two Lakhs only) on Noticee's Director, Shri Gopichand Banshal and ₹ 2,00,000/- (Rupees Two Lakhs only) on Noticee's Director, Shri Rajendra Bubna for violation of provisions of Regulations 4(2) (a) and (e) of PFUTP Regulations.

58. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to Shri Jayanta Jash, Regional Manager, Eastern Regional Office, Securities and Exchange Board of India, L&T Chambers, 3rd Floor, 16 Camac Street, Kolkata – 700017.

59. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and its Directors, Shri Gopichand Banshal & Shri Rajendra Bubna and also to Securities and Exchange Board of India.

Date: March 15, 2011 **P. K. Bindlish**
Place: Mumbai **Adjudicating Officer**