BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. HB/AO- 03/2012]

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

Shri Rajendra Agarwal (PAN ABKPA3830H)
Smt. Lata Agarwal (PAN AAOPA3155G)
Smt. Indra Agarwal (PAN ADYPA2642P)
Shri. Shambhu Agarwal (PAN ABQPA2058P)
Shri. Vasudev Agarwal (PAN AAVPA5418K)

In the matter of M/s Empower Industries (India) Limited.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in respect of trading of shares of Empower Industries India Ltd. (hereinafter referred to as **"EIL"**) for the period from February 16, 2005 to March 11, 2005 (hereinafter referred to as **"Investigation Period"**). The role of the broker and their clients who traded in the scrip EIL were scrutinized.

2. During investigation period following Announcements were made by EIL:
   Table-1:

Sr. No	Date & time of anncmnt.	Subject	Effect of price/volume
1	02.03.2005	The board meeting to be	Price increased from closing

	at 11:02 AM & 4:44 PM	held on 08.03.2005 to consider the pricing of the issue and also to consider the options and ways for expansion plans, acquisition and any other related matter for growth of the company and to consider the increase in authorized capital and issue of right/preferential shares.	price Rs.100.15 on March 1, 2005 to Rs.101.90 on next trading day. Volume increased from average daily trading volume of 3685 shares to average daily trading volume of 22606 shares for remaining investigation period.
2	11.03.2005 at 04:31PM	The Board meeting which was scheduled to be held on March 08, 2005 has been postponed as the directors of the company have gone out of station.	The price came down from closing price Rs.113.96 on March 11, 2005 to Rs.110.75 on next trading day. There was negligible effect on the volume.

3. During the investigation period the share price rose from Rs 81.00 to Rs 113.00. The trading volume during the period of investigation as 217700 with an average trading volume of 12095 shares. However, one month preceding the investigation period the scrip was traded with a daily average volume of 2365 shares per day. Further the price of the scrip increased from Rs 61.00 on January 13, 2005 to Rs 79.50 on February 09, 2005. For the subsequent month after the investigation period, the scrip traded at an average daily volume of 13773 shares per day. Further the price of the scrip came down to Rs 97.80 on April 11, 2005 as against Rs 110.75 on March 14, 2005 (decrease of 13. 29% during one month after investigation).

4. Mr. Devang Master, promoter and director of the company, who was holding 265050 shares (53.01% of paid up capital) on 31st December, 2004 rematerialized 240500 shares and transferred 213000 shares (42.60% of the paid up capital) by off market transfers to various entities including Shri. Rajendra Agarwal, Smt. Lata Agarwal, Shri. Vasudev Agarwal. Smt. Indira Agarwal and Shri. Shambhu Agarwal (hereinafter referred to as **"Agarwal Family/ Noticees"**).

5. All the Noticees had except Shri Rajendra Agarwal claimed that they acquired the shares from M/s Rushabh Investments, Mumbai. Shri Rajendra Agarwal stated that he acquired shares in physical form during May 2003 from a sub-broker M/s Goldstar Finvest Pvt. Ltd, Mumbai.

However, the investigation conducted by SEBI revealed that the Noticees, acting in concert with each other had bought shares in off-market from Mr. Devang Master, promoter director of EIL on October 25, 2004 as shown below -

Table-2

Date	Buyer Name	Quantity
October 25,2004	Rajendra Agarwal	25000
October 25,2004	Lata Agarwal	25000
October 25,2004	Vasudev Agarwal	25000
October 25.2004	Indira Agarwal	25000
October 25.2004	Shambhu Agarwal	25000

6. As per the data available, it is observed that the broker Ruchiraj Shares and Stock Broker Pvt. Ltd. (hereinafter referred to as **'RSSB'**) had highest concentration on sale side contributing to 49.15% of the total volume during the period. The major selling clients of RSSB were the Agarwal Family**.** The trading details of the Agarwal family are given below.

Trading by Agarwal Family

The trading details of Agarwal Family dealing through broker RSSB is as under:

Table-3

Sr. No.	Seller Name	No. of shares sold	No. of trades entered	Counterparty major client name	Name of the counter party major broker
1	Vasudev Agrawal-(38004)	25000	45	Nilesh Upadhyay Govind Goel	Indiainfoline Ltd. Pilot Credit Capital Ltd.
2	Shambhu Agrawal-(38005)	25000	97	Vithalbhai Gajera Prasad Tandel Shila Suryavanshi Prakash D'souza Girdhaybhai Vagadia	Indus Portfolio Ltd Action Fin Ser.Ltd Motial Oswal Sec. Ltd. Galaxy Broking Ltd. Mehta Equities ltd.
3	Indra Agrawal-(38006)	25000	100	Subhash Goel Mahendra Brahmabhatt Dipak C. Shah	Pilot Credit Capital Ltd.
4	Lata	20100	126	Subhash Goel	Pilot Credit

	Agrawal-(38007)			Govind Goel	Capital Ltd.
5	Rajendra Agrawal-(38001)	11900	11	Nileshkuma Upadhyay	Indiainfoline ltd.
Total		**107000**	**379**		

7. **Off Market Trades**

From the table-3 above, it is observed that Agarwal Family sold 107000 shares through the broker RSSB which represented 49% of the total market volume during the investigation period. As per the records available with CDSL it is observed that the Agarwal Family did not have any shares for delivery for the sell trades initiated by them. Further investigation has revealed that delivery for shares sold by the Agarwal Family was given by the following entities:

Table 4

Sr.No.	Name	DP ID/ Client Id	No. of shares	Date
1	Devang Master	1601010000029818	2500	27th January, 2005
2	Sanjay Mahadik	1601010000102332	7500	27th January, 2005
3	Nilesh Kothari	1202700100023021	11300	3rd March, 2005
4	Nilesh Kothari	IN300183-12509826	1700	4th March, 2005
5	Ashok Bhagat	IN300271-10112300	20000	5th March, 2005
6	Nilesh Upadhyay	IN302269-10228324	20000	10th March, 2005
7	Vipul Vora	1601010000098671	3000	10th March, 2005
8	Ravi Farata	1601010000193478	2000	10th March, 2005
9	Vijay Bhagawandas Shah	IN300271-10120983	15000	11th March, 2005
10	Nilesh Kothari	IN300183-12509826	5000	14th March, 2005
11	Nilesh Upadhyay	IN302269-10228324	6950	14th March, 2005
12	Vijay Bhagawandas Shah	IN300271-10120983	14800	15th March, 2005
	Total		**109750**	

8. From table 4 above, it is observed that, delivery for the sell trades of the Agarwal Family was given by third parties including promoter-director. From the

data available it is also observed that Nilesh Kothari had received shares from Dipak C. Shah and Mahendra Brahmabhatt through off-market transfers, which was used towards giving delivery for the sell trades of the Agarwal Family. The above flow of securities clearly shows circular movement of shares.

9. In light of such trades it was alleged that the Agarwal Family violated the provisions of the Regulations 3(a), 4(1), 4(2)(a) and 4(2)(e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**), and therefore, liable for monetary penalty under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act"**).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. Show Cause Notices for Rajendra Aagrwal - ADJ/EIL/HB/PM/179489/2009 dated October 09, 2009, Shambhu Aagrwal - ADJ/EIL/HB/PM/179490/2009 dated October 09, 2009, Vasudev Agarwal - ADJ/EIL/HB/PM/179491/2009 dated October 09, 2009, Indra Agarwal - ADJ/EIL/HB/PM/179492/2009 dated October 09, 2009 and Lata Agarwal - ADJ/EIL/HB/PM/179493/2009 dated October 09, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty be not imposed under section 15HA of SEBI Act for the alleged violations specified in the SCN.

11. The Noticees, submitted a similar reply to the SCN vide their letter received on November 06, 2009. The submissions , inter-alia, are as under:

    i. *I am shocked and surprised to receive your above notice despite the fact that I have provided you all the required details and documents desired by you from time to time.*
    ii. *I am not a person who is a daily trader but always gad faith and reliance on my sub-broker, on whose direction/ advise and confidence, I did my share transaction. I did whatever my sub-broker said. Now, sub-broker to save*

himself. Making false statement and SEBI is relying on him and punishing me.

iii. *From your letter, it is clear that SEBI totally relied on sub-broker and not on me otherwise; SEBI would have taken action against sub-broker and not against me. I am innocent and it is the sub-broker who did all the thing and now SEBI is putting me in trouble.*

iv. *Nobody give receipt of cash no investor keep any copy/ receipt of instruction slip as everything done on faith of the sub-broker/ broker, which I did. I was also not aware of the process as to how the shares are transferred in my account on purchase. Relying on sub-broker is not a crime. To my knowledge, I sold the shares after purchase the same. Thus, I was having share when I sold. I am not a expert of share market so I don't know the rules, regulations of the market and wanted to clarify that shares have been delivered by sub-broker and not aware that why he has not put his stamp on back side of transfer deed, that is known to me as I stated earlier such rules in not aware to me.*

v. *I was not involved in any type of illegal activities in the shares of the company under investigation. I was not party to any circular moment. I was not a party in creating inflationary volumes. I have not aided and abetted the company, promoter-driver in manipulation. I have not defrauded the innocent investor.*

vi. *I am innocent, I did all legal things, I relied on my sub-broker, who is now, making false case to SEBI and putting illegalities on me. Please do not rely on the sub-broker.*

vii. *I was not instrumental in creating artificial volumes. I have not entered into circular trading. I have not involved into increasing price of the shares of the company. I have not violated Regulations 3(a) and 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations. I am not attracted to penalty under 15 HS of SEBI Act.*

viii. *Thus I request you to goodself withdraw the above your notice and please do not held any enquiry against me. I also promise that I will continue to co-operate the SEBI at all time and also wanted to put on record that such type of transaction done by me first time in my life.*

12. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing on January 19, 2010 vide notice dated January 8, 2010. Shri. A. P. Shukla, appeared on behalf of the Noticees on January 19, 2010. Shri A. P. Shukla denied all the allegations made in the SCN. He reiterated that the shares have been purchased through Rushab Investments and Gold Star Finvest Ltd, who were sub-brokers, known to RSSB. The shares were bought off-market in 2003 in physical and dematerialized subsequently. It was contended that the whole transaction for purchase and sale was managed by the broker RSSB. Any off-market deal executed by the broker is supposed to be informed to the exchange within 24 hours in separate Form BB. The sub-broker & broker failed to perform and so they denied issuance of bill.

13. It has been admitted that the shares have been transferred before selling in the market. It was stated that this was done on the advice of the broker. Subsequently the consideration for the sale was received from the broker. It was also stated that unless the shares are received by the broker the consideration for the same would not be given.

14. It was stated that the Noticees were not fully aware of whole procedure and compliance of the market and had depended on the advice of broker/ sub broker.

15. Further it has been stated that all documents in support of the contentions have been provided to the Investigating Officer and the investigation officer has not taken care of my contentions and documents submitted to him. All the taxes due on the transactions have also been paid by him. So there was no intention to defraud investors. It was contended that a buy and sale transaction on a single day cannot influence the market and defraud the investors and the same is not proven from the records. Further it was contended that the allegations on the same are baseless. The Noticees are innocent investors who are not aware of the market procedures and trusted his broker who has not guided properly. It is requested that the proceedings against the Noticees should be dropped.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the charges set out in the show cause notice, the written and oral submissions of the Noticees and the documents available on record.

17. In light of the facts and circumstances of the case, the issues that arise for consideration in the present case are -

    (i) Whether the Noticees have violated regulations 3(a), 4(1), 4(2) (a) and 4(2) (e) of SEBI (PFUTP) Regulations, 2003?

    (ii) Does the above violations, if any, on the part of the Noticees attract monetary penalty under section 15HA of SEBI Act?

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

18. In order to address the above questions, the exact construct of the case needs to be established in perspective. In order to do that it would be appropriate to refer to the relevant provisions of the following regulations of SEBI (SAST) Regulations 1997:

    <u>Reg. 3 - Prohibition of certain dealings in securities</u>

    No person shall directly or indirectly—

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

    <u>Reg. 4 - Prohibition of manipulative, fraudulent and unfair trade practices</u>

    1. *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
    2. *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:*

    (a) indulging in an act which creates false or misleading appearance of trading in the securities market;

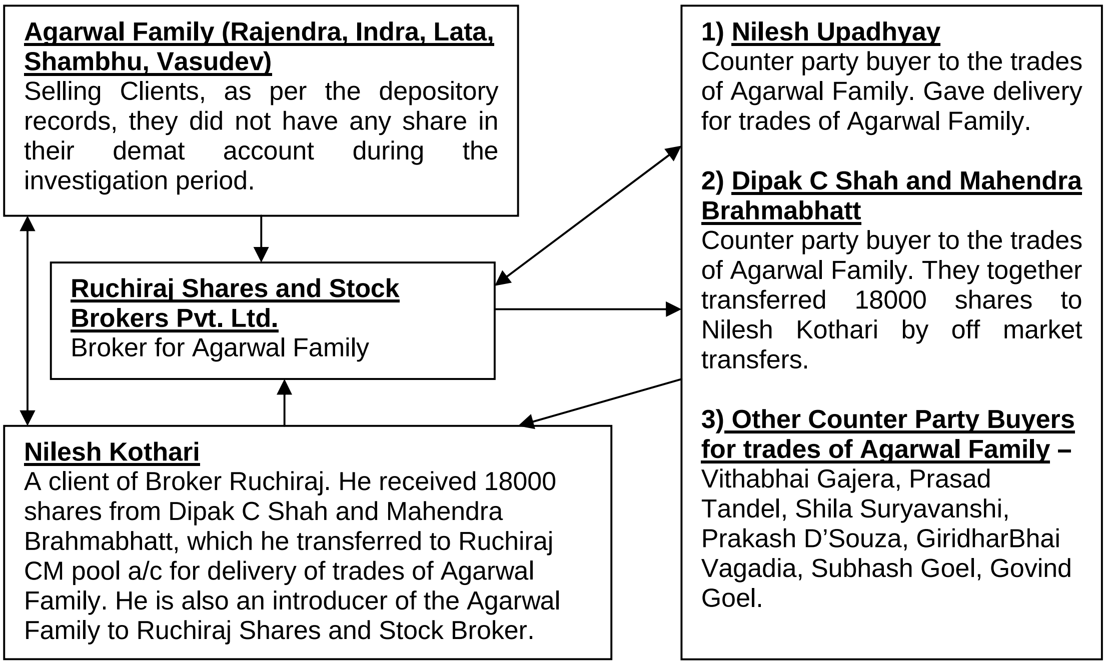
    (e) any act or omission amounting to manipulation of the price of a security;

19. Contrary to the findings in the investigation report, the Noticees have submitted that the shares had been purchased through Rushab Investments and Gold

Star Finvest Ltd, who were sub-brokers, known to RSSB. The Noticees states that the shares were bought off-market in 2003 in physical and dematerialized subsequently. It was contended that the whole transaction for purchase and sale was managed by the broker RSSB.

20. In the absence of any concrete explanation / clarification by the Noticees, for the contrary evidences of the RTA on record, I am constrained to rely on the records as available with the RTA as being more authentic and have proceeded with the adjudication on this basis.

21. The modus operandi of the circular movement of shares between the sellers (Agarwal Family) and buyers (as showing in para six above) would be best explained through the following diagrammatic representation



22. The above diagrammatic representation highlights the movement of shares between the buyers and sellers. Drawing reference from table 4 above, it may be concluded that some counterparty buyers to the sell trades of the agarwal family, transferred shares directly or indirectly to broker RSSB's pool account to meet the delivery requirements of the sell trades of the agarwal family.

23. I have examined the records available and the submissions made by the Agarwal Family. From the evidence available and the facts and circumstances of the case, the following points emerge:

a. Agarwal Family was the selling party who sold the shares through the broker RSSB.
b. The Agarwal Family received the shares directly from the Promoter of EIL Mr. Devang Master through off market transfers.
c. It has been admitted that the shares were transferred before selling in the market.
d. Further, it can be construed that the agarwal family was aware of the movement of shares to and from its account demat account.
e. The above evidences may aid towards the conclusion that the agarwal family on their part, intentionally aided or abetted Mr. Devang Master, promoter director of EIL, in the circular movement of shares and creation of artificial trading volumes between the Promoter, and the entities mentioned at para six and seven above

24. In view of the above, it appears that the agarwal family was aware of the circular movement of shares, as alleged in the SCN, and has been party to the whole scheme.

25. Having established the violations in the foregoing paragraphs, the next issue for consideration is as to whether the violations on the part of the Noticees to regulations 3(a), 4(1), 4(2) (a) and 4(2) (e) of SEBI (PFUTP) Regulations, 2003, attracts monetary penalty under section 15HA of SEBI Act, and if so, what would be the monetary penalty that can be imposed on the Noticee.

26. The provisions of section 15HA of SEBI Act is reproduced here under :

Penalty for fraudulent and unfair trade practices.

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

27. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow"*.

28. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15HA of the SEBI Act.

29. While determining the quantum of monetary penalty under section 15HA of SEBI Act, I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
b. the amount of loss caused to an investor or group of investors as a result of the default;
c. the repetitive nature of the default.

30. From the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticees.

ORDER

31. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.10,00,000/- (Rupees Ten Lakh only) under Regulation 15HA on the Noticees jointly and severally which will be commensurate with the default committed by them.

32. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI- Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be

forwarded to Shri B Rajendran, General Manager, Investigation Department - Division – ID6, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

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

Date: **December 10, 2012**	**HARINI BALAJI**
Place: **Mumbai**	**ADJUDICATING OFFICER**