BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BD/NR/2020-21/7986

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Dhiren Agarwal HUF
(PAN: AAGHD9696H)
13, Shardanagar, Paldi
Ahmedabad – 380007.

In the matter of Jolly Plastic Industries Ltd.,

BACKGROUND

1. Securities and Exchange Board of India *(hereinafter referred to as "SEBI")* conducted an investigation in the scrip of Jolly Plastic Industries Ltd., *(hereinafter referred to as "JPIL" / "Company")* based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. The focus of the investigation was to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as "SEBI Act, 1992")* and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (*hereinafter referred to as "SEBI (PFUTP) Regulations"*) by certain entities in scrip of JPIL during the period February 14, 2012 to November 27, 2014 (*hereinafter referred to as "Investigation Period").*

2. During the investigation period, the Company made certain corporate announcements which were related to declaration of financial results and meeting of the Board of Directors of the Company. The Company made an announcement pertaining to stock split and declared November 14, 2014 as the record date. However, the Company later withdrew the record date and announced that the new record date would be intimated after shifting the

company's scrip code to demat mode. Further, it is observed from the Investigation Report (*hereinafter referred to as “IR”)* that the net profit of the Company for the year ending March 2012 and, March 2013 was zero and that of year ending March 2014 and March 2015 was ₹0.01 crore and ₹0.07 crore respectively.

3. During the investigation period 91,24,200 shares were traded through 5,549 trades. Trading in JPIL was suspended w.e.f February 17, 2003 on account of non-submission of quarterly results and later revoked w.e.f. February 13, 2012. The scrip was suspended from trading as a surveillance measure since January 7, 2015. There were no trades in the scrip from November 28, 2014 i.e. after the investigation period until January 7, 2015.

4. The scrip of JPIL was in physical rolling settlement with the market lot size being 100 shares throughout the investigation period. Further, the scrip was traded in ‘T’ group from February 14, 2012 to August 21, 2014, and started trading in ‘P’ group on September 02, 2014 (there was no trading in the scrip at BSE during August 22, 2014 to September 01, 2014).

5. The price & volume of the scrip JPIL during the period of investigation period is as under:

Period	Particulars	Open (₹)	High (₹)	Low(₹)	Close (₹)	Average Volume
February 14, 2012 to November 27, 2014 Investigation period	Price	10 (14/02/12)	317 (18/11/13)	10.00 (14/02/12)	122 (27/11/14)	22254
	Volume	100 (14/02/12)	459100 (25/03/14)	100 (on 132 trading days)	42200 (27/11/14)	

The scrip price of JPIL opened at low price of ₹10 on February 14, 2012 and touched a high of ₹317 on November 18, 2013 and closed at ₹122 on November 27, 2014.

6. Based on price trend (rise/ fall), the investigation period has been split into 5 patches and the price volume details of which are given below:

Period	Dates		Opening Price (volume) on first day of the period(₹)	Closing price (volume) on last day of the period (₹)	Low price(volume) during the period (₹)	High Price(volume) during the period (₹)	Avg. no. of (shares) traded daily during the period
Scrip suspended during pre-investigation period							
Patch-1	14/02/2012 – 18/12/2012	Price	10	90.8	10 (14/02/2012)	90.8 (18/12/2012)	341
		Vol	100	100	100 (on 56 different trading days)	5100 (29/11/2012)	
Patch-2	19/12/2012 – 05/02/2013	Price	92.6	35.55	34.5 (05/02/2013)	92.6 (19/12/2012)	1,430
		Vol	4,900	4,600	100 (on 14 different trading days)	13900 (09/01/2013)	
Patch-3	06/02/2013 – 23/09/2013	Price	34.55	305	34.55 (06/02/2013)	305 (23/09/2013)	14,977
		Vol	500	3,000	100 (on 12 different trading days)	140100 (04/09/2013)	
Patch-4	16/12/2013 – 25/06/2014	Price	288	49.5	49.5 (25/06/2014)	301.8 (16/12/2013)	41,852
		Vol	38,600	100	100 (on 39 different trading days)	459100 (25/03/2014)	
Patch-5	09/07/2014 – 27/11/2014	Price	51.95	122	49.65 (03/09/2014)	122 (27/11/2014)	17,750
		Vol	10,600	42,200	100 (on 11 different trading days)	105500 (20/11/2014)	
No trading and subsequently scrip suspended on 07/01/2015							

7. Pursuant to carrying out Last Traded Price (LTP) analysis for the investigation period, the investigation found that during Patch-5, Dhiren Agarwal HUF *(hereinafter referred to as “Noticee”)* manipulated the price of the scrip and created a misleading appearance of trading in the scrip through 7 trades for 700 shares, by placing buy orders in small quantity before the sale order, thereby contributed to ₹24.4 to positive LTP (20.24% of market positive LTP). Therefore, it is alleged that the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) and (e) of SEBI (PFUTP) Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer, vide order

dated September 28, 2017, under Section 19 of the SEBI Act read with Section15-I of the SEBI Act 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as *"SEBI Adjudication Rules"*) to inquire and adjudge under Section 15 HA of the SEBI Act 1992, for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/2279/2018 dated January 23, 2018 was issued to the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against him in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15 HA of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee. I note that the Noticee did not file reply to the charges alleged in the SCN.

10. Thereafter, in the interest of natural justice and in terms of Rule 4 (3) of the SEBI Adjudication Rules, vide email and letter dated March 5, 2020, an opportunity of personal hearing on March 24, 2020 was granted to the Noticee. However, in view of the Covid-19 pandemic, the hearing scheduled on March 24, 2020 could not be conducted. The Noticee vide email dated April 20, 2020 sought extension of 4 weeks to submit his reply and personal hearing thereafter. Vide email dated May 4, 2020, the Noticee was informed of granting extension of time up to May 18, 2020 to submit his reply, besides providing an opportunity of personal hearing on May 21, 2020. Vide email dated May 20, 2020, the Noticee sought soft copy of the SCN for filing his reply, which was provided vide email dated May 21, 2020. In view of the same, the hearing scheduled on May 21, 2020 could not be conducted. Thereafter, vide email dated June 1, 2020; the Noticee was given final opportunity to furnish his reply by June 8, 2020. Vide the aforesaid email; the Noticee was informed that in view of Covid-19 pandemic, while he was exempted from appearance before the undersigned in person, the Noticee was given an

opportunity of hearing through Webex video conference, on June 10, 2020. The Noticee vide email dated June 10, 2020 authorized Ms. Jyoti Pandey, Advocate, Lexkare *(hereinafter referred to as "Authorized Representative")* to appear before me for the hearing. I note that on the scheduled date of hearing i.e., June 10, 2020 at 2 PM the Authorized Representative appeared for the hearing through Webex video conference and sought time till June 15, 2020 to submit the reply, besides not insisting for further hearing in the matter.

11. The Noticee vide email dated June 15, 2020 submitted his reply, which is summarized hereunder:

    (a) Trading of shares in physical lot means, delivery of shares is not guaranteed. However, in the case of shares traded in demat form, the delivery of shares generally never fails. Therefore, while trading in the shares of JPIL, it carried inherent risk of failure of physical delivery of shares. Risk of losing delivery was primary reason not to take risk of placement of higher of 7 lots (700 shares) at one go. If the order would have placed for 700 shares, the margin requirement would have been considering the average trade rate of ₹ 80 translating into margin requirement of ₹700₹80 = ₹56,000.*

    (b) Therefore, the contention of the AO that Dhiren Agrawal could have directly placed an order for 700 shares at one go instead of placing single order of 100 shares over a period of 7 days is sans basis and contrary to preaching of SEBI for investor protection It is the prerogative of the Trader of shares on Stock Exchange in what fashion and manner orders has to be placed. It is not unheard that, many traders' places multiple orders of 1 share just to test whether the offer quantity by the Seller or Buyer is disclosed quantity.

    (c) It is alleged that, during the 7 trading days as provided in table above, I contributed to positive LTP of ₹24.40, thereby increasing the Share price to ₹85.30 from ₹63.80 per share. On the face of it, an attempt is made to depict that, I have acted in a manner to inflate the price of the scrip of Jolly Plastic in 7 trading days. However, on comparison of historical prices of Jolly Plastic, which forms part of the investigation period covered by this SCN, price of ₹85.30 is substantially lesser than, the price at which traded a year back

    (d) As at September 2014, when the undersigned traded in the shares of Jolly Plastic, the 52 week high and low of JPIL was as below:

52 week high	*₹317*
52 week low	*₹49.50*
Traded price by Noticee	*₹65 to ₹85*

(e) Further, the share price of Jolly Plastic was showing rising trend since May 2014, In the month of May 2014, the scrip commence its upward movement from ₹55 odd price after falling from high of ₹317. Therefore, when a scrip which has traded at price of 300/- plus with higher volumes, the trade entered by undersigned at ₹65/- to ₹85/- cannot be held to be manipulative or unfair or fraudulent which attracts provision of SEBI (PFUTP) Regulations.

(f) From the financial performance of the Company as mentioned in the SCN, Jolly Plastic had good financial health and further it was a profit making Company and had positive networth.

(g) It is an admitted position in the Show Cause Notice that, undersigned has not been connected with any of the other Noticees and the Counterparty with whom the trades were executed for a period of 7 days, there was no connection as such. Since, there has been no connection; no malafide intention can be attributed to the trades executed by undersigned. The undersigned has not been made part of either of the Group created by the Ld. Adjudicating Officer.

(h) The holding of Dhiren Agrawal was negligible and no substantial profit has been made out of such trades. It is also a matter of record that, due to price rise in the said 7 days period, no benefit has been accrued.

(i) The undersigned have been active trader in the stock market and Jolly Plastic was not the only scrip in which trading was done. Jolly Plastic trade was executed since it had corrected substantially from its 52 week high of ₹317. Further, it is also important to note that, the LTP of Jolly Plastic was ₹122/- which is again substantially high as compared to the price at which trade was executed in 7 days.

(j) In Sanjay Jethalal Soni & Ors Vs. SEBI in Appeal No 102 of 2019, Hon'ble SAT vide Order dated November 13, 2019 held that:
"Even on merits, we find that during the investigation period the observed variations in prices as well as of quantities traded are less than what was the trend during the pre-investigation period. Table at page 3 of the impugned order gives these details. Similarly, we also note that the percentage of matched trades are negligible except in respect of 2-3 appellants. Given these facts the alleged intention to manipulate becomes

a weak ground for issuing a second show cause notice after considerable delay".

(k) Therefore, in light of the above, it is prayed that the Adjudication proceedings be dropped against the Noticee.

CONSIDERATION OF ISSUES

12. After perusal of the material available on record, I have the following issues for consideration viz.,

    I. Whether the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003?

    II. Whether the Noticees are liable for monetary penalty under Section 15HA of the SEBI Act?

    III. *If so, what quantum of monetary penalty should be imposed on the Noticees?*

FINDINGS

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

ISSUE I: Whether the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003?

14. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PFUTP Regulations), 2003 which reads as under:

Regulation 3 of SEBI (PFUTP) Regulations: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

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

Regulation 4 of SEBI (PFUTP) Regulations: - Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

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

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

15. It has been alleged that the Noticee had manipulated the price of JPIL scrip and created a misleading appearance of trading in the scrip. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances and the motive, thereafter, automatically falls in line.

16. It is noted from the material made available on record that during patch 5, the scrip was in physical rolling settlement with the market lot size being 100 shares. I also note from the records that the scrip of JPIL was traded in "P" Group at BSE w.e.f September 2, 2014, which means the scrip, was traded

and settled in physical mode. The price volume date for the Patch-5 of investigation period is as under:

Date	Open Price	High Price	Low Price	Close Price	No. of Shares traded
09-Jul-14	51.95	51.95	51.95	51.95	10600
21-Jul-14	51.95	51.95	51.95	51.95	200
19-Aug-14	53.75	54.5	53.75	54.5	300
20-Aug-14	51.8	57	51.8	57	200
21-Aug-14	55	55	55	55	100
02-Sep-14	52.25	52.25	52.25	52.25	100
03-Sep-14	49.65	54.85	49.65	54.85	800
04-Sep-14	57.55	57.55	55	57.55	500
05-Sep-14	58	58	58	58	100
11-Sep-14	60.9	60.9	60.6	60.8	800
15-Sep-14	63.8	63.8	63.8	63.8	100
16-Sep-14	66.95	66.95	66.95	66.95	200
17-Sep-14	70.25	70.25	70.25	70.25	100
18-Sep-14	73.75	73.75	73.75	73.75	200
19-Sep-14	77.4	77.4	77.4	77.4	100
22-Sep-14	81.25	81.25	81.25	81.25	300
23-Sep-14	85.3	85.3	85.3	85.3	200
24-Sep-14	89.55	89.55	89.55	89.55	100
26-Sep-14	94	94	94	94	200
29-Sep-14	98.7	98.7	98.7	98.7	100
30-Sep-14	103.6	103.6	103.6	103.6	500
01-Oct-14	108.75	108.75	108.75	108.75	400
13-Oct-14	106.6	110	106.6	109.9	16400
14-Oct-14	109.95	112.05	109.95	110.3	11600
16-Oct-14	108.1	108.1	108.1	108.1	100
17-Oct-14	105.95	110.25	105.95	109.4	70700
21-Oct-14	107.25	110	107.25	110	73500
22-Oct-14	109	111	109	111	40100
27-Oct-14	112	112.4	112	112.3	20100
28-Oct-14	110.1	114.4	110.1	114.4	30200
29-Oct-14	116.5	116.5	116.5	116.5	100
30-Oct-14	115.5	118.8	115.5	118	30300
31-Oct-14	115.65	116	115.65	116	200
03-Nov-14	116.5	116.9	116.5	116.9	30000
05-Nov-14	114.7	116.5	114.7	116.5	19000
07-Nov-14	116.5	116.5	116.5	116.5	100
10-Nov-14	116.5	118.5	116.5	118.25	91000
11-Nov-14	119.25	119.25	119.25	119.25	48300
12-Nov-14	119.3	119.3	118.5	118.5	9000
14-Nov-14	116.15	116.5	116.15	116.5	50300

17-Nov-14	116.15	118	116.15	118	20200
18-Nov-14	117	120	117	120	20500
19-Nov-14	117.6	118.5	117.6	118.5	50100
20-Nov-14	118	120	117.9	120	105500
25-Nov-14	120	120	120	120	20800
27-Nov-14	118.5	122	118.5	122	42200

17. I note from the above table that during Patch-5 of the investigation period, the price of JPIL scrip rose from ₹51.95 (open price on July 9, 2014) to ₹122 (close price November 27, 2014). The close price as on June 25, 2014 was ₹ 49.5. From the trading volume in the scrip of JPIL during the Patch-5, I note that that it was illiquid scrip.

Buyer Name	LTP impact all trades in ₹	QTY traded (all trades)	No of trades (all trades)	LTP impact (with LTP diff > 0) in ₹	QTY traded (with LTP diff > 0)	No of trades (with LTP diff > 0)	LTP impact (with LTP diff < 0) in ₹	QTY traded (with LTP diff < 0)	No of trades (with LTP diff < 0)	QTY traded (with LTP diff = 0)	No of trades (with LTP diff = 0)	% of Positive LTP to Total Market Positive LTP
Dhiren Agrawal HUF	24.4	800	8	24.4	700	7	0	0	0	100	1	20.24
Chandrakanta Laddha	11.05	2300	20	14.4	600	6	-3.35	200	2	1500	12	11.95
Raghav Bahl	9.15	250300	172	13	41000	16	-3.85	700	4	208600	152	10.78
Indravadan P Mehta	5.2	100	1	5.2	100	1	0	0	0	0	0	4.31
Kapilkumar Jadhav	5.2	700	5	5.2	100	1	0	0	0	600	4	4.31
Ram Bhopal Agarwal Sons HUF	5.15	200	2	5.15	100	1	0	0	0	100	1	4.27
Uttam Bagri HUF	4.9	100	1	4.9	100	1	0	0	0	0	0	4.07
Mould Trading P Ltd	4.7	63000	30	7.2	35900	9	-2.5	800	3	26300	18	5.97
A M Trader	4.45	100	1	4.45	100	1	0	0	0	0	0	3.69
Arif Shaikh	2.9	800	5	3.2	700	4	-0.3	100	1	0	0	2.66
Top 10 Sub Total	**77.1**	**318400**	**245**	**87.1**	**79400**	**47**	**-10**	**1800**	**10**	**237200**	**188**	**72.25**
Rest Of Market	**-4.6**	**498100**	**234**	**33.45**	**155500**	**37**	**-38.05**	**20500**	**24**	**322100**	**173**	**27.75**
Market Total	**72.5**	**816500**	**479**	**120.55**	**234900**	**84**	**-48.05**	**22300**	**34**	**559300**	**361**	**100**

18. I note from the above that the Noticee executed 8 trades in the scrip of JPIL for 800 shares. Out of the said 8 trades, 7 trades were over the LTP for 700 shares. From the above table, I note that the Noticee has contributed ₹24.4 to

positive LTP (20.24% of market positive LTP) through 7 trades for 700 shares.

19. The details of the 7 trades mentioned in the above para, which contributed to positive LTP contribution of ₹24.4 are furnished hereunder:

Trade Date	Buyer Name	Seller Name	Buy Order Time	Buy Order Price	Buy Order Disclose Quantity	Sell Order Time	Sell Order Price	Sell Order Disclose Quantity	Trade Price	LTP Difference
15.09.2014	Dhiren	Nailesh Rajnikant Kamdar	09:29:25	63.8	100	12:01:42	63.8	100	63.8	2.9
16.09.2014	Dhiren	Vashisth V Pandit	11:02:58	66.95	100	15:22:24	66.95	100	66.95	3.15
17.09.2014	Dhiren	Ramaswamy Manickam Subramaniam	09:25:07	70.25	100	13:08:26	70.25	300	70.25	3.3
18.09.2014	Dhiren	Madhukar Appaji Jadhav	09:47:55	73.75	100	12:02:55	73.75	100	73.75	3.5
19.09.2014	Dhiren	Ramaswamy Manickam Subramaniam	09:34:03	77.4	100	10:54:19	77.4	200	77.4	3.65
22.09.2014	Dhiren	Ramjibhai Govindbhai Makani	09:23:36	81.25	100	10:42:29	81.25	100	81.25	3.85
23.09.2014	Dhiren	Kotturu Madhusudhana Rao	09:17:24	85.3	100	12:00:21	85.3	200	85.3	4.05

20. I note from the above table that in respect of the 7 positive LTP contributing trades, the buy order was placed for small quantities (100 shares i.e. 1 lot) before the sell order and at prices significantly above LTP, which were subsequently matched by sell orders. I also note from the above table that the Noticee was found to be placing buy orders in the minimum lot within the first hour of opening of the trading session on most days. I note from the price volume analysis tabulated in para 16 above, that on all the 7 days when the Noticee contributed significantly to LTP, the price of the scrip was hitting the upper circuit. It is pertinent to note that before the Noticee started trading in the scrip on September 15, 2014, there were not many instances of the price of the scrip hitting the upper circuit. I am of the view that a prudent investor interested in buying shares would buy at a lesser rate. However, in the instant case, the Noticee was found to be placing buy order above LTP at upper circuit level. Further, from the facts and circumstances, it can be inferred that the Noticee was fully aware that closing price registered on the previous day

was resultant of the trades carried out by him. Despite being fully aware, the Noticee had consistently placed at higher price (upper circuit) from LTP, (*price registered due to trades carried out by the Noticee alone*) on 7 consecutive days suggesting that such pattern of trading was not on the basis of buying interest by genuine investors. Had the Noticee been genuine investor, he would have placed buy orders at lesser price and not at upper circuit limit, on all days, indicating that he had no genuine interest in the scrip. It is pertinent to note that immediately preceding and following the trades of the Noticees, the trading behavior in the scrip of JPIL is found to be similar.

21. It is appropriate to note that the Noticee could have placed a buy order of 700 shares at ₹ 63.8 (his first buy order price) on September 15, 2014 itself, but he chose to place buy orders for a minimum lot size on 7 consecutive days with each buy order at higher than LTP. I note that the Noticee continued this pattern until the buy order dated September 23, 2014 placed at ₹85.30. If the Noticee was a genuine buyer and had an intention to hold a good amount of shares of the company then he would have placed buyer orders such that he could get maximum shares on its first trading day at a price of ₹63.8 rather than buying 1 lot each on consecutive days and at much higher price. Further, I note that the Noticee's buy orders were placed well before the sell order at a great positive variance from the LTP, which was in the range of ₹2.9 to₹4.05. Thus, the Noticee was continuously willing to pay more to acquire the shares, which is completely opposite of a reasonable buyer behavior of buying shares at a low price. No rational buyer would keep buying at a higher price, rather would buy at a lower price as part of an averaging strategy, if he believes that the fundamentals of the Company are sound, which in the instant case is missing. Therefore, the timing of trading and the consistent pattern of placing buy orders first at upper circuit and subsequent sell orders matching strongly hints that such trades were carried out only to register closing price for the day. Further, the fundamentals of the company also do not justify Noticee's persistence of putting buy orders over the LTP. Therefore, I find that the

trading rationale of the Noticee is inconsistent with the normal trading pattern, suggesting that the Noticee was part of the overall scheme of manipulating price of the scrip.

22. I am of the view that it is not necessary to have any direct connection with the counter party especially in illiquid stock with low floating stock, as volumes and value of trading involved would be miniscule. Even if either party is manipulative, it is sufficient to manipulate, as unsuspecting gullible investors would be attracted to deal in the scrip who could be counterparties. It is necessary to examine trading patterns of parties with respect to their strategy and rationale for such dealings. I note that the Noticee is a trader and therefore the pattern of trading should be consistent with its trading strategy i.e deal in volumes with fewer margins and not otherwise. The Noticee submitted that being a trader he had dealt in other scrips during the said period. However, the Noticee failed to submit that he had dealt in P segment scrips and trading patterns in such scrips were also similar to what he had dealt in the instant scrip. In the absence of the same, I find it appropriate to draw conclusions based on the trading pattern and rationality attached to such trading.

23. The pattern of trading in the present case shows that there was a well thought out plan behind placing of orders by the Noticee. The company had weak financials, which is discussed in pre-paragraph 2 above and there was no significant change in the economic fundamentals of the company during the Patch-5 of the investigation period, when the price of the scrip rose by 134.84%. Against this scenario, the unusual rise in the price of the scrip from ₹ 51.95 to ₹122 during Patch 5 of the investigation period is perplexing. Considering the trading pattern of the Noticee and the method and manner of placing the orders, I am of the view that Noticee had executed irregular trades to inflate the share price by trading in minimum lot above the last traded price consistently over a period of time.

24. It is evident from the trading pattern of the Noticee that the intention of the Noticee was to create a misleading appearance of trading in the scrip by marking the price higher and was not merely entering into the buy transactions. The trades executed by the Noticee were not done in normal course of dealing in securities and are devoid of any bonafide intentions. In this regard, I note that the Hon'ble Supreme Court in Kanaiyalal Baldev Bhai Patel v. SEBI [supra] have explained that: *"...The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"*

25. In this connection, I would like to refer to the observations made by the Hon'ble SAT in its order dated March 21, 2014 in Saumil Bhavnagari Vs. SEBI which are as under: *"… but by purchasing shares at the higher price in LTP in most of the trades, the Noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the Noticee's trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible investors. By purchasing at a higher price in most of his trades, the Noticee had given the wrong impression about the price of the scrip in the market. It is an accepted state of affairs that in cases of manipulation of the volume and / or price of particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant."*

26. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of Shri Lakhi Prasad Kheradi Vs. SEBI decided on June 21, 2018 wherein the Hon'ble Tribunal was addressing the issue wherein the entity had contributed to 9.17% of the market New High Price in 9 trades for 1 share each for the total value of 9 shares within a span of two weeks. The Hon'ble Tribunal observed as follows:

"…Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades…"

27. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on miniscule quantities traded. It must not be forgotten that every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicate a fraud.

28. In this regard, the observations of Hon'ble Supreme Court of India in SEBI Vs. Kishore R Ajmera et.al. decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot

be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

29. Taking support of the observations of Hon'ble Apex Court in Kishore R Ajmera matter, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of attending circumstances an inference will have to be drawn.

30. In the instant matter Noticee has repeatedly bought shares in the minimum lot over the LTP at frequent intervals. If the Noticee was a genuine buyer then he had the opportunity to buy shares in more than 1 lot on multiple occasions but still the Noticee chose not to buy shares in more than 1 lot at a time and continued to execute buy trades at successive higher prices by buying just 1 lot at a time on 7 instances. Further, the fundamentals of the company also do not support the persistent interest shown by the Noticee in buying the scrip at prices higher than LTP

31. The Noticee in his submissions put forth a contention of inherent risk of failure of physical delivery of shares and accordingly justified in placement of orders in minimum lot for 7 days. In this connection, it is pertinent to note that in order to minimize default risk, Stock Exchange prescribes that both buyers and sellers are required to pay margin, which is a percentage of their dues upfront at the time of placing their order. Thus, the risk management system set up by stock exchange mitigates the risk of default by buyer / seller on payment or delivery obligations. Further, the Noticee despite attributing the inherent risk in physical settlement acted exactly contrary and had gone ahead and bought on seven days instead of one go clearly suggests that he was merely trying to

manufacture a convenient explanation in order to hide the true motive / intention. Therefore, I find no merit in the contention put forth by the Noticee in this regard and accordingly note that his submissions are inconsistent with his trading pattern of placing buy orders at upper circuit consistently and consecutively on 7 days

32. In view of the various judgements of Hon'ble Supreme Court and Hon'ble SAT and on the basis of the findings in the foregoing paragraphs, I find that the alleged trading behavior of the Noticee by way of buying shares in minimum lot at above LTP was with an inherent motive to manipulate the price of the scrip, can't by any means be held to be trades executed by a prudent trader in the normal course of trading. I am of the opinion that no trader would buy one lot with more margin, rather the trading strategy of traders would be to buy more shares with less margin. The trading behavior of the Noticee has certainly been very unusual and apparently lacks honesty of intent of a genuine investor of the securities market. Instead, the pattern of trades adopted by the Noticees to place buy orders above LTP in minimum lot, clearly establish that his trades were executed with only a manipulative design to raise the price of the said scrip in complete disregard of business prudence as no buyer in his right business wisdom would like to buy shares repeatedly at a price always above the LTP. Therefore, for the reasons recorded above, I conclude that the alleged trades of the Noticee as abnormal, deceptive, misleading, artificial and manipulative in nature and substance, which were executed with a malicious intent to fraudulently cause rapid rise in the price of the scrip of JPIL against the call of market fundamentals of the scrip, financial position of the Company and against the accepted regulatory norms governing the securities market. Accordingly, I hold that the Noticee has violated the provisions of Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) and (e) of SEBI (PFUTP) Regulations.

ISSUE -II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?

33. Pursuant to detailed analysis as brought out above, it is established that the Noticee manipulated the price of the scrip and created a misleading appearance of trading in the scrip by trading in minimum lot above LTP, which are not trades executed in normal course of trading and investment in securities market. The Noticee has deliberately manipulated the price of the scrip and created a misleading appearance of trading in the scrip to induce innocent investors in the securities market thereby contravening the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a), and 4 (2) (e) of SEBI (PFUTP) Regulations, 2003. Therefore, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher".

ISSUE – 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?

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

Section 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.

35. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default.

36. It is difficult, in cases of such nature, to quantify with mathematical precision the disproportionate gains or unfair advantage enjoyed by an entity and the consequent loss suffered by the investors. General public and normal prudent investors could have been easily carried away by such unusual change in the prices in the scrip of JPIL and were bound to get induced into investing in the said scrip looking at the steep rise in its price without realizing that the price rise was been artificially introduced by manipulative trades executed by the Noticee. This kind of trading behavior seriously affects the normal price discovery mechanism in the securities market. Therefore, I am of the view that people who indulge in manipulative, fraudulent and deceptive transactions, or abet in carrying out such transactions which are fraudulent and deceptive in nature, should be suitably penalized for such acts of omissions and commissions.

ORDER

37. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹5,00,000/- (Rupees Five lakh only) on the Noticee i.e., Dhiren Agarwal HUF, under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), (2) (a) and (e) of SEBI (PFUTP)

Regulations, 2003.

38. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

39. The Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

40. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-IV, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

41. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

42. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: 23 June 2020 **B J DILIP**
Place: Mumbai **Adjudicating Officer**