

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

IN THE MATTER OF TRADING ACTIVITIES OF ADITYA KUMAR SHARMA AND ABHILASH SHARMA

S. NO.	NOTICEES / DIRECTORS	PAN
1.	NIRMAL PUJARA	AFVPP5397P
2.	JAYANT PUJARA	AFTPP9082R
3.	MRINAL KANTI ROY	ACYPR1208F

- SEBI had conducted an investigation into the trading activity of Aditya Kumar Sharma (hereinafter referred to as Aditya), Abhilash Sharma (hereinafter referred to as Abhilash) and three investment companies viz. Amar Investments Ltd (hereinafter referred to as Amar Investments), Rishra Investments Ltd (hereinafter referred to as Rishra Investments), Shibir India Ltd (hereinafter referred to as Shibir India) (collectively referred to as “Investment companies”) and Shakuntala D. Wadhava (hereinafter referred to as Shakuntala) in the shares of various companies in Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) during the period from January 01, 2008 to May 31, 2008.
- During the period of investigation, Aditya, Abhilash, Shakuntala (related to promoters of the investment companies) and 3 investment companies were found to have traded in several scrips wherein buy/sell orders of the above referred three investment companies and Shakuntala had matched with the orders of Aditya and Abhilash on a continuous basis in several scrips. Aditya and Abhilash and the three Investment companies are based in Kolkata. While Aditya was the employee of Shibir India, the other two companies Amar Investments and Rishra Investments also used to take the services of Aditya for stock market activities, even though Aditya was not directly employed by them. Abhilash was found to have been connected with Aditya as she was sharing the same residential address as that of Aditya.
- Details of Investment Companies, Shankuntala, Aditya and Abhilash**
 - Details of Investment Companies:** - Amar Investments, Rishra Investments and Shibir India

are three Investment companies registered with RBI as NBFCs. They are connected entities as they have common promoters, common office address and common telephone numbers. As per the Annual Report 2007-08 of the respective companies, Nirmal Pujara was director in all the three investment companies. The investment companies vide letter dated October 23, 2008 submitted that Jayant Pujara was the Authorised Signatory on behalf of all three investment companies. Full details of these investment companies are mentioned in the table below:

Particulars	Amar Investments	Shibir India	Rishra Investments
Directors as per Annual Report 2007-2008	1. Nirmal Pujara 2. Dr. G. Goswami 3. G. J Wadhwa	1. Nirmal Pujara 2. Dr. G. Goswami 3. N. Das 4. S M Palia	1. Nirmal Pujara 2. Dr. G. Goswami 3. Mrinal Kanti Roy
Authorised Signatory as per letter dated 23-10-2010 of the respective company	Jayant Pujara	Jayant Pujara	Jayant Pujara
Names of persons who were involved in the decision making for dealing in the shares/securities and communication of orders to brokers.	1. Nirmal Pujara, Director 2. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Nirmal Pujara and also confirmed vide letter dated 14-01-2010)	1. Nirmal Pujara, Director 2. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Nirmal Pujara and also confirmed vide letter dated 14-01-2010)	1. Nirmal Pujara, Director 2. Mrinal Kanti Roy, Director 3. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Mrinal Kanti Roy and also confirmed vide letter dated 14-01-2010)
PAN	AACCA1004D	AAHCS5421K	AABCR2630P
Address	All 3 shared common address "25, Princep Street, Kolkata – 700072.		
Telephone	All 3 shared common phone 033-22377880 to 85 & 40054010		
Main Promoters	1. Damodardas J. Wadhwa 2. Gordhandas J. Wadhwa 3. Shakuntala D. Wadhwa, Having shareholding of 75% (approx.) in the above mentioned investment companies.		
Nature of entity	All 3 investment companies are Public Limited companies listed on Calcutta Stock exchange and registered with RBI as NBFC		

Particulars	Amar Investments	Shibir India	Rishra Investments
Main Business	Investment/trading/buying, selling of shares, stock, debenture, bonds etc. and investment in properties.		

3.2 Shakuntala is a preference shareholder of Rishra Investments and equity shareholder of Amar Investments and Shibir India. From her correspondence address shown in her bank accounts with Indusland Bank, ABN Amro Bank, ING Vysya Bank, HDFC Bank, ICICI Bank and in her share trading account with broker- Karvy Stock Broking Ltd, it was seen that it was the common address of the three investment companies named above.

4. Investigation revealed that Aditya was an employee of Shibir India. Amar Investments and Rishra Investments also used to take the services of Aditya for stock market activities, even though Aditya was not directly employed by the said companies. Abhilash was sharing the same address as that of Aditya i.e. at 2nd Floor, 73, Canal Street, Shreebhumi, Kolkata – 700048 and was therefore a connected entity as far as the transactions are concerned. Both Aditya and Abhilash had executed trades in shares through a common broker SMC Global Securities Ltd (hereinafter referred to as “SMC”). Investigation conducted by SEBI revealed that circular/reversal/matched trades were carried out by and between Aditya (an employee of Shibir India), Abhilash, the aforesaid three Investment companies and Shakuntala in the shares of various companies listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) in a fraudulent and manipulative manner, as elaborated later in this order.

5. Consequently, based on the investigation, a common Show Cause Notice (SCN) dated September 29, 2011 was issued against Aditya, Abhilash, Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy alleging violation of Regulations 4(1), 4(2)(a) and (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003. The relevant Regulations are extracted below:-

- *Regulation 4(1): Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- *Regulation 4(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:-*
 - *Regulation 4(2)(a): Indulging in an act which creates false or misleading appearance of trading in the securities market*
 - *Regulation 4(2) (e):- any act or omission amounting to manipulation of the price of a security.*

6. Allegations in SCN

6.1. It was alleged in the SCN that Aditya, Abhilash along with the three noticees herein have executed circular/reversal/matched trades amongst themselves at BSE and NSE during the investigation period from January 01, 2008 to May 31, 2008. In the first pattern of fraudulent and manipulative trades, it was alleged that Aditya/Abhilash purchased various scrips, as identified in the investigation, at a lower price from one of the investment companies and subsequently, on the same day, Aditya/Abhilash squared off their position in the shares at a higher price by selling them to same/different investment company. It was alleged in the SCN that the said circular/reversal/matched trades had created artificial and false volume in the scrips. It was further alleged that Aditya/Abhilash had earned profit on all such transactions and these 3 companies have incurred losses. This was achieved by manipulating the price downwards from the current/ruling price of the scrip in the first leg and then manipulating the price upwards from the current/ruling price of the scrip in the second leg. The price was brought down in the first leg and brought up in the second leg by simultaneous placing of orders of Aditya/Abhilash and 3 investment companies at the same/almost the same time.

6.2. Similarly, another pattern of circular/reversal/matched trading was alleged in the SCN wherein Aditya/Abhilash had first sold the shares at a higher price to one of the investment companies in the first leg and later squared off their position by buying at lower price from the same/different investment company in the second leg. The price of scrip was again manipulated in these cases also by simultaneous placing of orders by Aditya/Abhilash and three investment companies at the same/almost the same time. In the SCN, it was further alleged that in a few instances, it was also observed that Aditya & Abhilash had traded ahead of investment companies and Shakuntala and also squared off their outstanding position by matching their orders with the investment companies. In these cases, it was alleged in the SCN that the artificial volume was created in the scrips and prices were manipulated by the said persons. Considering the facts and circumstances of the case, documents available on record and submissions given by Aditya, a suitable order was passed on December 20, 2017 against Aditya & Abhilash.

7. Personal hearing and Consent Proceedings

7.1 The SCN was served on Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy by Registered Post (hereinafter collectively referred to as Noticees). The noticees were given opportunity of personal hearing on January 20, 2017. During the personal hearing on January 20, 2017, Advocate Mr.

Ravichandra Hegde appeared along with Mr. Luckyraj Indorkar and Pramod Kathane, Advocates and *inter alia* submitted that their employee Aditya Sharma while executing fraudulent trades during the investigation period acted beyond their instructions. They further submitted that SEBI in its SCN has not brought out the link between them and Abhilash Sharma. During the personal hearing, they also requested for copy of the reply of HDFC Bank to SEBI relating to debit and credit of funds in the account of Aditya Sharma, if available. The hearing was postponed to February 15, 2017.

7.2 In the meantime noticees vide letter dated February 11, 2017 filed reply to the SCN, *inter alia* jointly submitting that:-

- *Rishira Investments Limited (Rishira), Amar Investments Limited (Amar) and Shibir India Ltd (Shibir) are the three investments companies promoted by Mr. G J Wadhwa. The companies were incorporated in the early seventies only for the purpose of trading and investing in shares and securities. In simple terms, the three investment companies are closely held companies which were incorporated with a view to only trade and invest in securities market.*
- *The three companies registered as Non-Banking Financial Companies were listed on Calcutta Stock Exchange. The three companies are not very active in terms of trading although there has been a gradual increase in profits of the companies over a period of one decade. Until the board resolution was passed in the companies on 31.01.06, 31.01.06 and 02.09.06 for Amar, Rishira and Shibir respectively authorizing the present authorized representatives to place orders and trade on behalf of three companies, it was solely Mr. Wadhwa who used to actively trade in securities market on behalf of the three investment companies. As Mr. Wadhwa was growing older, the Wadhwa family considered it appropriate to reduce the burden of Mr. Wadhwa and decided to appoint the close relatives of the Wadhwa family to coordinate with Mr. Wadhwa and take care of the trading activities of the companies.*
- *It was in this backdrop, the three companies passed the said resolutions and authorized the present directors/authorized representatives to trade on behalf of the companies under the guidance and supervision of Mr. Wadhwa. The three companies have common instructions and policy for investments and there is no separate trading or investment strategy for the companies. The three companies were formed only with a view to ensure that the investment and trading limit are not excessive and divided in between the three companies. There is no other rationale in setting up the three companies save and except dividing the total investment limits considered appropriate from time to time by the Wadhwa family members. In other words, the idea behind three companies was to ensure that no single company took heavy exposure and any loss in one company should balance the loss by making profits in other companies.*
- *The three companies have been carrying out all their activities with due compliances with all the statutory regulation and applicable laws and there has been no regulatory intervention whatsoever against any three companies till date.*

With lesser paid up capital and market capital, none of the three companies can be compared with any modern day strong investment companies. All the investment decisions are in the hands of the director, subject to ultimate control and supervision of Mr. Wadhwa. As Mr. Wadhwa turned 90 in 2015, the family members decided that the companies be delisted from the stock exchange to avoid unwanted costs given the fact that the trading activities of the companies were stopped. Mr. Wadhwa is presently 93 years old. The process of delisting of the three companies is underway.

- *In the year 2003, a need was felt to have on board some responsible representative who has experience in the securities and financial markets and who can strategically trade and transact in securities on behalf of the three companies. As the promoter group was against involvement or induction of any new directors or external individuals on the board, the relatives and close family friends were appointed as the key managerial persons in the companies. It was also decided to engage the services of advisors and experts to trade in securities and / or assist the companies in making appropriate trading decisions and suggestions. Accordingly, Mr. Aditya Sharma was appointed as Market Trader by Shibir in the year 2003. It was always decided that the said employee would be looking after all the three investment companies and not confined to Shibir which hired Aditya Sharma after interviewing and having believed about the expertise of Aditya Sharma.*
- *Aditya Sharma was appointed by Shibir as Aditya Sharma was selected during the interview held in the company whereby Aditya showed his skills and understanding of the securities market. Although Aditya Sharma was employed by Shibir, the appointment letter clarifies that he was supposed to carry out instructions and assignment given to him by other group companies as well.*
- *Aditya Sharma used to interact with various stock brokers and analysts and discuss the views of the market with the directors and also with Mr. Wadhwa. It was based on the said views and discussions, and also considering the market scenario, decisions were being taken by the directors and authorized representatives. Once the decision was taken which ought to be in line with the board perspective of the guidelines provided in the investment policies, the said decision was informed to Aditya Sharma to place the respective order with the trading members. There were no meetings or minutes recorded about such decisions as long as the investment and trading decision is in line with the investment policies. In other words Aditya Sharma used to propose some scrips which are worthy of investments and trading which were internally discussed within directors. The board was directed to consider the suggestions and recommendations of Aditya Sharma and thereafter decide if at all considered appropriate and after taking views and concurrence of Mr. Wadhwa as much as possible.*
- *The views of Sharma along with the views of the directors were sometimes discussed with Mr. Wadhwa, given his wide experience in the securities market. Once there was a consensus on the investment decisions, the details of the scrip to trade and invest were passed on to Aditya Sharma who thereupon used to communicate to the brokers to execute the orders. At no point of time was there any specific price mentioned to Aditya Sharma as always, which practice was prevalent since the year 2003.*

- *Aditya Sharma used to place order on behalf of the investment companies to the stock brokers who used to confirm the trade particulars to Aditya Sharma and also the directors. Aditya Sharma used to collect the contract note and get the same verified and then approved from the accounts department before issuance of the cheque for the required amount of dues towards the trades. It was observed that Aditya's recommendation was strong and he had sufficient knowledge of the securities market and the share movement of various scrips. It was only in some cases, Mr. Wadhwa used to interact directly with Aditya Sharma to understand the recommendations of Aditya Sharma. Aditya Sharma used to carry out the trades after approval communicated to him by the directors. However, it was a general instruction that no trades would be executed without the approval of the directors of Mr. Wadhwa.*
- *In and around October 2009, it was observed that Aditya Sharma abstained from work for several days without any intimation or notice whatsoever. Several attempts were made to find out the whereabouts of Aditya Sharma. However, it was only after SEBI initiated investigation summons were issued to the three investment companies, the directors came to know of the fraud committed by Aditya Sharma. It was then learnt that Aditya was absconding for a reason to avoid confrontation on the fraud committed by him. The three investment companies were victims of his fraud whereby the companies incurred huge losses at the cost of profits earned by Aditya Sharma and his accomplice Abhilash Sharma.*
- *Several attempts were made to seek explanation from Sharma which were in vain. Summons were issued by SEBI to three companies with a direction to be served on Aditya Sharma which were accomplished. It was after evasive responses from Aditya Sharma about the subject trades and his relationship with Abhilash Sharma who shared a common address with Aditya Sharma, the three companies decided to file a Police Complaint against Aditya Sharma. Copy of the Criminal Complaint is enclosed in the Compilation.*
- *Responses were provided to SEBI during the investigation based on the available records with limited capacity to respond to the specific queries of SEBI on the subject trades which were placed by Aditya Sharma in a fraudulent manner and with deceit only to benefit his accomplice and himself from the trades of the three investment companies. In all responses, it was clarified by the investment companies about the victimization of the companies and their ignorance on the alleged trades. While it is true that all the underlying trades were authorized by the companies, the manner in which the orders are placed was smeared with fraud and intention to deceive the three companies, which can never be an instruction from the companies.*
- *No trace of even iota of evidence is brought on record to show the motive of the Directors in incurring such huge losses. No evidence is provided to show if the Directors were indirectly benefitted from either Aditya Sharma or Abhilash Sharma.*
- *An allegation of FUTP is a serious charge. Therefore there ought to be some evidence to show meeting of minds between the Directors and Aditya Sharma to carry out such trades. This becomes critical especially when it is an admitted fact that Aditya Sharma had placed the subject orders on behalf of the investment companies. No nexus*

is established whatsoever by SEBI nor is any explanation provided as to why such trades were executed to incur loss by the investment companies. While it is recorded that Aditya Sharma and Abhilash Sharma have made huge profits from the subject trades, it is more the reason a necessity to establish the benefits occurred to the investment companies or the directors on account of such trades.

- *All the trades were placed through the brokers and there was no trading BOLT provided by the stock brokers to the client. This is a case where according to SEBI all the orders were placed by Aditya Sharma on behalf of the investment companies. In such scenario, the first suspicion to arise is at the broker level given at the haphazard orders placed by the client. No action is taken against the brokers.*
- *No action has been taken against Aditya Sharma and Abhilash Sharma for the alleged failure to comply with the summons.*
- *It is settled position of law that there cannot be a meaningful proceedings absent the completeness in the underlying investigation or fact finding report which renders the entire proceedings a mere formality. The notice extracts the allegations recorded in the investigation report and calls upon the Noticees to respond to the allegations and show cause as to why action of debarment be not passed against the noticees.*
- *Alternatively, if learned Member decides to not direct re-investigation, it is humbly submitted that the noticee directors to be permitted to cross examine the stock brokers, Aditya Sharma and Abhilash Sharma before continuing with adjudication on the merits of the case as all the facts are yet to be brought on record for a proper adjudication of the controversy.*
- *It is a settled position of law that the directions contemplated under section 11 and 11B is action oriented and remedial in nature. Even assuming the learned member comes on a conclusions (for sake of argument only) that noticee directors were acting in connivance with Aditya Sharma, restraining the noticee directors in 2017 for the alleged actions committed in the year 2008 cannot be a solution to protect the interest of investors. No remedial purpose is accomplished by restraining the Directors after a period 9 years only because the proceedings are initiated under section 11 and 11B. This is therefore an appropriate case whereby the learned member exercises the powers vested in the Board and refer the matter to adjudication under Chapter VIA of the SEBI Act as is regularly done in several cases by SEBI. The adjudication proceedings results in monetary penalty if and only if the allegations are established. Such measures could accomplish the task of taking up the investigation against the noticee Directors for which a penalty is imposed if found guilty.*
- *We submit there is no case made out in the Notice or in the investigation report which establishes the role of the Noticee Directors in the alleged manipulative trades. Not only has SEBI failed to describe the roles of the Noticee Directors in the present matter, but has also failed to establish the nexus and common intention between the noticee to manipulate the trades. On the contrary, the notice records that it was Aditya Sharma and Abhilash Sharma who manipulated the prices of the scrip and made huge profits while the investment companies incurred a loss. In such a situation, the least which is expected from SEBI is to identify and ascertain if at all there was a prior*

meeting of minds to manipulate the scrip and whether there was any benefit to the investment companies or the directors in such manipulative trades by share profits or otherwise.

- *The investment companies have been a victim of fraud whereby the 'Market Trader' Aditya Sharma committed a fraud on the companies for taking advantage of the trust reposed to him while assigning him the role of placing the orders on the exchanges through the stock brokers.*
- *SEBI's case all through the proceedings is that Noticee Director failed to detect the loss and raise suspicion after the losses were incurred by the Investment companies. Even during the investigation the repeated questions posed to the Noticee Directors clarifies that SEBI's inference against the Noticee Directors is merely because they failed to observe and catch loss at the relevant time. It is pertinent to note that the scrips selected to be trades were not purchased regularly by the companies and no prudent human being can identify the loss caused to them admittedly when there is no reversal of trades in a single day in most of the cases. Only in case where an entity is actively involved in a day trading or arbitrage, each and every trade is analyzed to check the profit and loss unlike the present case where the company believed in holding on to the investment.*
- *The basic ingredients of "fraud" in such manipulative trades is an intention to deceive (as per the definition of fraud) and non-delivery based transaction with no intention to take delivery and to reverse the trades. In the instant case, there has been a delivery based transactions on the screen of the exchange with due compliance with all the rules and regulations of the exchanges.*
- *There is no evidence of reversal of trades in the scrip except in some instances where Rishra is involved.*
- *At all times, the orders placed by Aditya Sharma and Abhilash Sharma were before the orders placed by the investment companies whereby Aditya ensured that the orders of investment companies are matched with the orders which he had previously placed seconds before the orders of the investment companies. This is therefore a clear case of front running which SEBI is conscious of as evident from the query raised by SEBI to the stock brokers while commenting the trades of Aditya Sharma and Abhilash during the relevant period.*
- *In all the front running cases, SEBI has always held that the front runners are responsible for the manipulative trades who took advantage of the knowledge they had of the impending orders which are being placed by the companies. We crave leave to refer to and reply such cases during the course of hearing.*
- *Considering the entire facts of the matter, they urged that :*
 - (a) *That the investment companies are victims of fraud and there is no involvement of the noticee directors in the entire matter.*
 - (b) *That there has been a failure to conduct a complete investigation in the matter and critical issues in the matter which forms a material bearing on the adjudication and outcome of the proceedings have been overlooked by SEBI.*
 - (c) *Therefore SEBI should re-investigate the matter, failing which there would be a grave prejudice and hardships caused to the noticee directors as well as the investment companies.*

- (d) *SEBI to permit the Noticee Directors to cross examine the witness, whose statements are provided to the noticee directors and whose statements are placed on record.*
- (e) *In the interest of all the parties and to avoid inconvenience to all parties direct the matter to be adjudicated under the adjudication proceedings.*
- (f) *In the alternative, permit the noticee directors to approach SEBI for a consent order.*

7.3 On February 15, 2017, during the personal hearing, the Authorized Representatives of the noticees reiterated their reply dated February 11, 2017. At the end of the personal hearing on February 15, 2017, noticees requested for 7 days' time to file a Settlement Application and the same was granted. The documents sought by the noticees during the personal hearing on January 20, 2017, i.e. copy of the reply of HDFC Bank to SEBI relating to debit and credit of funds in the account of Aditya Sharma, was not available with SEBI, therefore the same was not given to the noticees.

7.4 After receiving the Settlement Application of noticees, the same was considered and rejected on October 16, 2017 for non-submission of revised settlement terms within the stipulated period. The decision of SEBI was intimated to the noticees vide letter dated October 17, 2017.

7.5 It is pertinent to note the submissions of Aditya that are relevant for consideration of issues against the Noticees and the same are summarised hereunder :-

- a) *At no point of time, he was a director/ authorized signatory/ executive signatory in any bank / demat account;*
- b) *He had no decision making authority on behalf of any of the abovementioned three investment companies;*
- c) *On instruction/guidance of Nirmal Pujara his trading account was opened with the broker on 19th January 2008 and was closed in May 2008. He further submitted that in his account only these transactions happened in his lifetime;*
- d) *The trades executed in his trading account were done as per the instructions/ orders of Nirmal Pujara, Jayanta Pujara and Mrinal Kanti Roy and they all are the beneficiaries for the transactions done in his trading account;*
- e) *The first transaction and last transaction was executed in these companies and to complete these transactions, they used my trading account. It is evident that there are series of transactions and it cannot happen until and unless these are planned and executed by the investment companies and their directors and authorized signatories jointly;*
- f) *Nirmal Pujara and Jayanta Pujara are not the promoters of these three investment companies. They are relatives of the promoters of these three companies and of Shakuntala D Wadhwa. Mrinal Kanti Roy is a chartered accountant;*

- g) He had drawn attention to the statement on oath given by Nirmal Pujara and Mrinal Kanti Roy on November 15, 2010, wherein in reply to Q.10 “Who used to take decision for transactions during the investigation period?” Nirmal Pujara and Mrinal Kanti Roy replied that the said decision for investment was taken by the authorized person / Directors of the company. No Transactions executed without the consent of authorized person/ directors of these investment companies. One of the authorized person for all 3 investment companies is Nirmal Pujara and M.K. Roy is authorized person for Rishra;
- h) Board of Directors of all these three investment companies have clearly stated that any of the two directors / authorised signatories jointly are authorised to take decision for purchase and sale of equity shares and are jointly authorised to sign demat instruction slips to transfer shares to broker and also are jointly authorised to sign the cheques for payments to brokers. Nirmal Pujara as director and Jayant Pujara as authorised signatory are common signatories and decision making authority in all these three companies and Mrinal Kanti Roy as Director in Rishra Investments and Damodardas Wadhwa as authorised signatory in Shibir India Ltd are also jointly authorised with Nirmal Pujara and Jayant Pujara to take decision to buy and sale to sign all the cheques and demat instruction slips jointly;
- i) The replies as per SCN, submitted by the said three investment companies, Shibir India Ltd, Rishra Investments Ltd and Amar Investments Ltd to SEBI on 23/10/2008 and 14/02/2010 along with the Board Resolution copies, which clarifies in detail all the answers such as on what basis the transaction took place, who took decision to trade and to complete the chain of flow of information etc;
- j) As mentioned in SCN, Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy were the authorised persons to deal in securities and to place orders with the brokers as per KYC submitted by Rishra Investments, Amar Investments and Shibir India to brokers Microsec capital and Anand Rath Securities;
- k) The brokers Microsec capital and Anand Rath Securities replied to SEBI that Nirmal Pujara had placed the orders on behalf of the investment companies;
- l) It appears from the SCN that when SEBI summoned Nirmala Pujara and Mrinal Kanti Roy to appear at its office on 15/11/2010, after returning back they decided to file complaint case on behalf of Shibir India Ltd by furnishing false information against him before the metropolitan magistrate Court just to distance themselves from him so that they can show SEBI that they are innocent;
- m) In reply to the SEBI letter dated 18/10/2010, Amar Investment vide its letter dated 15/11/2010 in answer to SEBI’s Question no. 21 had replied that the company’s holding of shares were further enhanced / reduce for tax purposes and not for any other purposes as being alleged or apprehended by the Investigating authority;
- n) It shows that Nirmal Pujara, Mrinal Kanti Roy and Jayant Pujara wanted to take benefit personally, book losses for tax planning purpose for these companies and Shakuntala D Wadhwa, so they deliberately entered into these transactions with him, if they would have transferred the shares through stock exchange directly from one investment company to other then they would not have seen benefitted, so they executed the trades in such

manner that one investment company is selling the shares in market and other investment company is buying or Shakuntala D Wadhwa is selling and the investment company is buying by using his trading account.

- o) When the Court fixed date on 03/09/2012 as last chance for evidence then Nirmal Pujara appeared and submitted his deposition on oath wherein he gave his submissions in front of Ld. Metropolitan Magistrate that he is authorized representative of Shibir India Ltd and Aditya Sharma was his employee and said that we used to give verbal instruction to the accused no. 1 and he used to carry on transaction according to the instructions;*
- p) That after filing the complaint case against him, Nirmal Pujara deliberately did not appear in the Court for 23 times in the last five years, it clearly appears that they have filed the Court case only to safeguard themselves from any SEBI proceedings so that they put everything on him;*
- q) As an ordinary small employee he followed the instructions on his employer for his livelihood”*

8. Consideration of Issues.

8.1. I have carefully perused the replies to the SCN and the submissions made by Aditya, as the same is relevant for consideration.

8.2. There are two issues that need to be considered to evaluate the validity of the charges made out against noticees in the SCN.

- a. Do the transactions cited in the SCN show evidence of price and/or volume manipulation?
- b. If so, have the Noticees played a part in putting through the transactions?

8.3. Investigations have revealed 13 sets of transactions cited in the SCN involving the scrips of Rajshree Sugars, KSB Pumps, Fag Bearings, Aventis Pharma, Goodyear India, Gillette India, Hitesh Gear, Akzo India, Kansai Nero and Kenna Metal. A close look at these transactions as brought out in various tables at para 6 of the SCN clearly reveals an unmistakably similar pattern. In all these cases, the transaction originated with a sale from one of the three investment companies to Aditya (or Abhilash) at a price much below the last traded price. This has been schemingly executed by placing matching buy and sell orders with minimal time difference at almost similar prices and volumes. This was followed by Aditya (or Abhilash) who placed sell orders for the same scrip almost matching both in terms of price and volume with a buy order from one of the three investment companies (or Shakuntala) matching within a minimal time difference. The price at which the sell leg order is placed by Aditya / Abhilash was much above the last traded market price. As a result, in all the transactions, Aditya (or Abhilash) executed buy orders at much below the prevailing market price (last traded price) and exited the scrips at

much higher than the last traded price, making a neat profit in the bargain. Since counterparty to these transactions was either one of the three investment companies (or Shakuntala), the corresponding loss was borne by one of the three companies or Shakuntala. All these transactions constitute a very significant chunk of the total volumes transacted in the scrip in the market as a whole. Thus clearly, these transactions could achieve the following objectives :

- I. By executing the transactions in large volumes (in comparison to the normal volumes transacted in the scrip), the transactions created an optical illusion of the scrip being very actively traded. Such artificial volumes induced the gullible investors to enter the scrip in the hope of further upward moves in the scrip.
- II. By placing the buy and sell orders at a price much below/ above the last traded price, Aditya/Abhilash got the dual benefit of buying the scrip at an artificially depressed price and selling the same scrip at a highly inflated price. Besides blatant price manipulation, this resulted in Aditya/ Abhilash making windfall profits at the expense of the three investment companies (or Shakuntala).
- III. I note that the 'huge volumes' of both buy and sell orders placed by the Noticees had its own significance, in the kind of scrips that were chosen to be manipulated by them. The scrips were barely liquid and not many market participants were trading. The abnormally huge size of the orders had the effect of subsuming other smaller orders which were "waiting-to-be-executed" on the system by immediately matching with them on a price time priority basis and leaving behind a substantial part of the "huge orders" to match with the Noticees' contra-orders at the price quoted by the Noticees. By doing this, the Noticees achieved the desired manipulative effect (i.e. inflating or depressing the price).

8.4. The manner in which the above transactions were ordered and executed clearly indicates that there was a well thought out strategy behind these transactions to circumvent the normal price discovery process in the market and perpetrate fraud both in terms of creating artificial volumes and price manipulation. Therefore, the answer to the issue raised at paragraph 8.2(a) is clearly in the affirmative.

8.5. The second issue relates to the involvement of noticees in the above fraudulent transactions. As already stated in table at para 3.1, the noticees were involved in the decision making for dealing in particular securities and were authorised signatory for issuance of cheque for the three investment companies. The replies submitted by the noticees dated October 23, 2008 during the investigation are very significant. Out of the 13 instances brought out in the SCN, the investment companies had initially accepted that they had carried out 8 of these transactions. The three investment companies

in the aforesaid letter tried to justify the transaction *inter alia* stating that “We wish to state we are an investment company incorporated on 14-07-1976 / 15-07-1976 / 31-01-1976 and our main business is investment and dealing in shares and securities. All the transactions referred in your letter were therefore carried out as part of our such business activity, however as desired we give hereunder the basis of transactions for each such trade for your kind information.” Subsequently, vide letter dated 15.11.2010, Nirmal Pujara on behalf of the investment companies submitted that “The company M/s Amar Investments Limited has large portfolio and also the group companies have large portfolio and there is **shuffling** of the portfolio within the group companies for tax planning purposes and that also through the stock exchange mechanism of buying and selling by paying or receiving the consideration to the Broker for the shares purchased or sold by the company Amar Investments limited”(emphasis supplied). From the above submission, it is established that the noticees employed the technique of shuffling the portfolio of the investment companies for the purpose of tax planning, misusing the stock exchange mechanism. It is therefore inferred that the noticees connived with Aditya who was connected to Abhilash for doing these transactions.

8.6. The noticees subsequently shifted their stance and stated that the investment companies are victims of fraud and they suffered losses in the hands of Aditya. They have also contended that Aditya acted without instructions, inflicting severe monetary loss to the investment companies. I am unable to accept the defence submitted by the noticees. As submitted by the noticees, the three investment companies are listed companies and their main business is investment and dealing in shares and securities. Out of the noticees, M N Roy is a Chartered Accountant and other two are well experienced in business. In such a scenario, it is next to impossible to believe that Aditya had continuously deceived these noticees and traded against the investment companies inflicting severe loss to the investment companies while these noticees had been continuously issuing cheques. Another defence taken by the noticee is regarding profit. Noticees have contended that they have not received any profit and it was Aditya and his connected entity Abhilash who actually received profit. Aditya in his reply on the other hand, had submitted that his demat account and the bank account were operated by the three noticees. In my view, it is immaterial as to who was the ultimate beneficiary of the profit. Among the claims and the counter claims made by the two sets of manipulators, SEBI is concerned only with the misuse of stock exchange mechanism for carrying out the manipulative transactions as detailed in paragraphs 8.3 and 8.4 above.

8.7. At this stage, it is relevant to draw attention to the observation of the Hon’ble Supreme court in its recent order dated in February 8, 2018, SEBI Vs. Rakhi Trading Pvt. Ltd. (Civil Appeal No. 1969 of 2011) :-

*In N. Narayanan's case, Supreme Court expressed a 'word of caution' that SEBI-the regulator is to ensure stringent enforcement, and efficacy of cleanliness of the market place; otherwise SEBI will be failing in their duty to promote orderly and healthy growth of the securities market. I am conscious as supervisory functionary/ regulating body, SEBI has the duty and obligation to protect ordinary genuine investors and SEBI is empowered to do so under the SEBI Act, 1992 so as to make security market a secure and safe place to carry on the business in securities. At the same time, under the guise of supervisory intervention, SEBI cannot affect the development of the market or market oriented creativity. **Intense supervision might distort the path of securities market development; but SEBI cannot be a silent spectator to unfair trade practices/manipulative market for some ulterior purpose like tax evasion etc.** To find the right balance between market forces and Regulatory body's intervention, SEBI has to deal sternly with those who indulge in manipulative trading and deceptive devices to misuse the market and at the same time ensuring the development of the market. (emphasis supplied)*

- 8.8. Noticees have also submitted that in order to prove “fraud”, prior meeting of minds must be demonstrated. With regard to the fraudulent transactions of noticees as found hereinabove, I deem it relevant to refer to the following observations of the Hon’ble SAT, in the matter of Ketan Parekh Vs. Securities and Exchange Board of India (Appeal No. 2 of 2004):

*“.....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. **Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties.** This list of factors, 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 these that an inference will have to be drawn.”(emphasis supplied)*

In view of the above, prior meeting of minds is inferred from the trading pattern of the noticees. Apart from the 13 instances brought out in the SCN, about 24 additional instances of such manipulative trades were also brought out at Annexure 4 of the SCN.

- 8.9. Noticees had requested in their reply dated February 11, 2017 for cross examination of stock brokers, Aditya and Abhilash. However, during the hearing held on January 20, 2017, this request was not made, even though arguments on merits were advanced and time was sought for making further submissions. During the hearing held on February 15, 2017, the advocates were present in the hearing along with the noticees / authorised representatives and after advancing arguments on merit, they sought time to go in consent. In short, the noticees have not been serious about the request for cross-examination and the same appears to be a ground set up in advance to challenge any adverse

order or direction that may be passed against them, in the instant proceedings, before the Appellate Tribunal. In this connection, Hon'ble Supreme court has observed that :-

“Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the Appellate Authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official. As has been rightly noted by the High court in the impugned judgment where the reliance is only on accounts prepared by a person, cross-examination is not necessary. But where it is based on reports alleging tampering or pilferage, the fact situation may be different. Before asking for cross-examination the consumer may be granted an opportunity to look into the documents on which the adjudication is proposed. In that event, he will be in a position to know as to the author of which statement is necessary to be cross-examined. The applications for cross-examination are not to be filed in a routine manner and equally also not to be disposed of by an adjudicator in casual or routine manner. There has to be application of mind by him. Similarly, as noted above, the consumer has to show as to why cross-examination is necessary.”

As observed by Hon'ble Supreme Court in the aforesaid order, noticees have failed to establish the need for cross examination.

8.10. Further, on merits, I note that the details of trades that were executed by the noticees on the one side and Aditya & Abhilash on the other are matters on record and cannot be controverted even if an opportunity of cross examination were to be offered. Further, I am not relying on the statement of any person to adjudge and ascertain as to who carried out the trade or at whose insistence the trades were carried out. Rather, I am guided to the conclusion by the pattern of trades, the frequency with which they were carried out and the ulterior objectives underlying such trades. Cross-examination of Aditya is not relevant insofar as SEBI has not relied upon his reply to arrive at the findings against the Noticees. On the other hand, SEBI has also initiated action against Aditya and Abhilash along with the noticees for the subject trades. Besides the request being a ruse, I do not find that denial of the request for cross-examination would prejudice the right of noticees to defend their case properly, in any manner.

9. In view of the above, I find that Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy have violated Regulation 4(1), 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003.

10. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act read with Regulation 4(1), 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, hereby direct that Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy prohibited from buying, selling or dealing in the securities market, directly or indirectly, in any manner whatsoever, for a period of five years.
11. This order shall come into force with immediate effect.
12. Copy of this order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: February 23, 2018

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA