WTM/MPB/EFD1-DRA4/31/2019

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

In respect of:

S. No.	**Name of the Entity**	**PAN**
1.	**Mr. Jayesh Kanungo**	**AABPK7808F**

In the matter of Grandma Trading and Agencies Ltd.

BACKGROUND

1. Grandma Trading and Agencies Ltd. (hereinafter referred to as "**GTAL / Company**") was in the business of export of soya oil until the year 1996 after which the said business was discontinued. The company thereafter has been engaged in the business of textile, fabric and yarn trading and other commission agency business. The company has been listed on BSE Ltd. since 1982. It is listed only on BSE Ltd.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of GTAL 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**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") by certain entities in the scrip of GTAL during the period April 4, 2012 to March 13, 2015 (hereinafter referred to as "**Investigation Period**").

3. During the investigation period, corporate announcements were made by the company regarding stock split, declaration of financial results and meeting of the Board of Directors of the Company. Further, it is observed from the Investigation Report (hereinafter referred to as "**IR**") that GTAL earned profit (net) of ₹ 0.08 crore until 2012 which increased to ₹ 0.62 crore during year ending 2013. The net profit started decreasing after 2013 and fell to ₹ 0.15 crore in the year ending 2014 and thereafter increased marginally to ₹ 0.16 crore in the year ending 2015 and 2016.

4. During the investigation period, 84,49,340 shares were traded through 29,813 trades. Trading in GTAL was suspended w.e.f September 10, 2001 on account of non-payment of annual listing fees and later revoked w.e.f June 27, 2011. However, no trades were executed from the date of revocation of suspension i.e. June 27, 2011 till April 3, 2012. The price and volume in the scrip during the investigation period and post investigation period is as follows:

Period	Particulars	Open	High	Low	Close	Avg. Volume
April 4, 2012 to March 13, 2015 -Investigation period	Price	₹ 15 (04/04/12)	₹ 309.95 (13/11/14)	₹ 12.05 (11/03/15)	₹ 12.95 (13/03/15)	17788
	Volume	200 (04/04/12)	309667 (03/03/15)	10 (14/09/2012, 12/02/2013, 13/03/2013, 10/05/2013, 14/05/2013,15/05/2013, 23/05/2013, 26/02/15)	135373 (13/03/15)	
March 16, 2015 to June 16, 2015- Post Investigation period	Price	₹ 12.05 (16/03/15)	₹ 25.4 (11/06/15)	₹ 12 (16/03/15)	22.6 (16/06/15)	122900
	Volume	223312 (16/03/15)	543096 (31/03/15)	1 (14/05/15)	15701 (16/06/15)	

5. On the basis of price movement, 4 patches were identified. The open, high, low, close price of the scrip before, during the period of investigation are as under:

Period	Particulars	Open	High	Low	Close	Avg. Volume per day
Patch I April 4, 2012 – June 12, 2013	Price(₹)	15	235.25 (12/06/2013)	15 (04/04/2012)	234	258
	Volume(No. of shares)	200	6,884 (12/06/2013)	10 (14/09/2012,12/02/2013, 18/03/2013,10/05/2013, 14/05/2013,15/05/2013, 23/05/2013)	6884	
Patch II June 13, 2013 – March 31, 2014	Price(₹)	230	294 (24/03/2013)	230 (13/006/2013)	288	23,211
	Volume(No. of shares)	11360	59,537 (05/09/2013)	1,510 (22/03/2014)	37818	
Patch III April 1,2014 to February 25, 2015	Price(₹)	287.5	309.95 (13/11/2014)	135 (06/02/2015)	179.8	14,457
	Volume(No. of shares)	23000	84,887 (15/01/2015)	17 (08/12/2014)	22	
Patch IV February 26, 2015 – March 13, 2015	Price(Rs.)	19.5	23.4 (27/02/2015)	12.05 (11/03/2015)	12.8	75,496
	Volume(No. of shares)	10	3,09,667 (03/03/2015)	10 (26/02/2015)	135373	

SHOW CAUSE NOTICE

6. Consequent to the investigation, a show cause notice dated August 7, 2017 (hereinafter referred to as "**SCN"**) was sent to Mr. Jayesh Kanungo (hereinafter referred to as "**Noticee"**) in the extant matter. The SCN *inter alia* alleged as follows:

- The LTP analysis of the 4 patches was done and the details of patch 1 qua the Noticee is given below:

  LTP Analysis: Patch 1 - Price Rise - April 4, 2012 to June 12, 2013:

  - During this period, the price of the scrip opened at ₹ 15, reached a high of ₹ 235.25 and closed at ₹ 234. An analysis of sellers during patch 1 was carried out. The following table illustrates the sellers to top 10 LTP contributors:

Sl. no	Seller Name	Total No. of trades (LTP >0)	Total no. of orders (LTP >0)	No. of instances with sell order of 15 shares or less	No. of instances with sell order of 25 shares or less	Positive LTP contribution (₹)	% of positive LTP to Total Market positive LTP	No. of shares held before these trades (NSDL/ CDSL Statements)	Balance no. of shares held after LTP trades in Patch 1 (NSDL/ CDSL Statements)
1	Sagar Dhanvant Jajal	7	7	4	2	35.35	15.98%	150	0
2	Chandrika Dhanvant Jajal	5	5	5	0	21.8	9.85%	100	40
3	Jayesh Narottamdas Gandhi	9	9	4	4	21.65	9.79%	1100	925
4	Roop Chand Jain	3	3	0	2	17.85	8.07%	800	560
5	Bharati Jayesh Gandhi	11	11	4	7	17.4	7.86%	1700	1480
6	Arun Jain	2	2	2	0	14.5	6.55%	400	370
7	**Jayesh Kanungo**	**5**	**5**	**1**	**4**	**13.75**	**6.21%**	**1100**	**1000**
8	Shashikant Nangalia	2	2	0	0	11.15	5.04%	200000	197050
9	Rahul V Agrawal	1	4	0	0	9.65	4.36%	250000	247353
10	Nakul G Kanunga	3		0	3	8.5	3.84%	800	730
11	Rajendra Jain HUF	1	1	1	0	7.55	3.41%	1100	1085
12	Renu Chatarlal Jain	1	1	1	0	5.9	2.67%	2500	2490
13	Manjula Dinesh Jain	1	1	1	0	5.1	2.31%	3000	2985
14	Nikhil Dinesh Jain	1	1	1	0	4.85	2.19%	3000	2985
15	Deval Jayesh Gandhi	2	2	2	0	2.3	1.04%	Nil	Nil
16	Vaibhav Jain	1	1			1.15	0.52%	50	0
Total (16 entities)						**198.45**	**89.69%**	**-**	**-**

- It is observed that the Noticee has traded on 5 days through 5 trades. Each of these trades was first trade. All these trades have resulted in positive LTP contribution. Total LTP contribution by the Noticee is ₹ 13.75 (6.21% of the total market positive LTP).

Trade Date	Buyer Name	Seller Name	LTP at Sell Order Entry	Trade Price	LTP Difference	Buy Order Disclose Volume	Sell Order Disclose Volume	Buy Order LMT	Sell Order LMT
18.02.2013	Deepak H Parekh	Jayesh Kanungo	28.05	29.45	1.4	500	20	09:15:00	13:17:12
21.02.2013	Anil Singh	Jayesh Kanungo	30.9	32.4	1.5	300	20	09:15:00	11:27:29
27.02.2013	Shashi Rungta	Jayesh Kanungo	34	35.7	1.7	1000	15	09:15:00	11:14:55
17.04.2013	Manjula Nanalal Parikh	Jayesh Kanungo	76.9	80.7	3.8	300	20	13:30:00	14:10:05
08.05.2013	Milan Shah	Jayesh Kanungo	107.9	113.25	5.35	200	25	13:30:00	13:30:15

- As can be seen from the above table, none of the buy order quantity was less than 200 shares. Thus, buy orders for large quantity of shares were available before placing sell order but the seller i.e. the Noticee was repeatedly placing sell orders for small quantity of shares despite having sufficient number of shares and contributing to significant positive LTP.

- Thus, it is alleged from the trading pattern that the Noticee was not acting as genuine seller and had no bona fide intention to sell because in-spite of sufficient buy orders being available in the market, he released very small quantity of shares in each transaction and performed not more than one transaction a day. Further, it is alleged that by these trades, he matched the price of prevailing buy orders which were placed at a higher price than the last traded price and thus contributed to increased scrip price with each of his trades. In view of the repeated nature of such trades by the Noticee, it is alleged that the culpability of the Noticee in increasing the price is thus established. Moreover, it is alleged that it is evident from the above trading pattern that the intention of the Noticee was to mark the price higher and not merely to enter into sale transactions carried out by him. Hence, it is alleged that the Noticee has contributed to manipulation in the scrip price and created a misleading appearance of trading in the scrip by such trades.

- In view of the above it is alleged that the Noticee has violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a), (e) of PFUTP Regulations.

- Noticee was advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should not be initiated against him for the alleged violation of the provisions of PFUTP Regulations. Further, Noticee was advised to submit a reply to the SCN within 21 days from the date of receipt of the SCN.

7. It is noted from the records that the SCN came back undelivered. Therefore, the SCN was affixed at the last known address of the Noticee.

REPLY & HEARING

8. Considering the facts and circumstances of the case, the Noticee was granted an opportunity of hearing on February 13, 2019 at SEBI Bhavan, Mumbai through newspaper publication published on January 25, 2019 in Times of India, Nav Bharat Times and Lokmat. In response to the same, the Noticee vide his letter dated February 12, 2019 submitted a reply to the SCN wherein he *inter alia* submitted as follows:

- I had sold 100 shares of the company in the ordinary course at the then prevalent prices. The total payout for the said 100 shares was ₹ 6,121/-.
- Merely because I have placed first trades in the scrip, no adverse inferences can be drawn against my trades. Admittedly, it is not as if I have placed orders immediately after opening of the market. It may be noted that it is not the case that there were no buy orders and I had placed the sell orders first in the system. Further, as per the data provided by SEBI there is huge time gap between the buy and sell orders.
- Under the circumstances, when the buyers are available at particular price, I as a seller cannot be expected to place sell orders at prices lower than the available buy orders. For placing the sale orders at then extant prices, I cannot be faulted and alleged to have contributed to positive LTP. If anyone has contributed to positive LTP the onus has to be on the buyers only and not on innocent sellers like me who had *bona fide* sold the shares at the then prevalent prices.
- There is no allegation that I have indulged in any synchronized/circular/square off trading etc. There is no allegation that I am related to counter party to my trades.
- It may be appreciated that every trade which takes place on the platform of stock exchange results in disturbance of the price. Just because price gets disturbed either upwards or downwards, same cannot result in allegation that the trades are non- genuine.
- There is no law which prohibits that a trader from putting orders for small

quantity of shares if he is having sufficient number of shares.

- While levelling the allegation that I have "repeatedly" placed sell orders, it has been overlooked that whole allegation is based on mere 100 shares, spread over mere 5 days (with enormous time gap between them). If my objective were to increase the price or contribute to positive LTP, as insinuated, I would have continuously traded on daily basis and would have also sold further 1,000 shares, which is not the case.
- Quantum of orders to be placed and number of orders to place is totally within the discretion of the trader.
- It may also be noted that price of the scrip was already in upward mode prior to my sales, the price had started increasing from ₹ 15/ (April 2012) to ₹ 28/- (12/02/2013) and thereafter went up to ₹ 285/- (25/11/2013).

9. On the day of scheduled hearing, the Noticee / his authorized representative failed to appear without providing any reason. It is noted from the records including the written submission of the Noticee that he has not requested to adjourn the scheduled hearing. In view of the same, I note that the Noticee has failed to avail the opportunity of personal hearing granted to him and therefore, I now proceed to adjudicate the matter based on the material made available on record.

<u>FINDINGS & CONSIDERATIONS</u>

10. I have perused the SCN, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

(i) Whether the Noticee has manipulated the price in the scrip and has created a misleading appearance of trading in the scrip of GTAL during the period April 4, 2012 to June 12, 2013?

(ii) If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?

(iii) If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?

Issue No. 1 *- Whether the Noticee has manipulated the price in the scrip and has created a misleading appearance of trading in the scrip of GTAL during the period April 4, 2012 to June 12, 2013?*

11. It is noted from the material made available on record that the Noticee has executed 5 sell trades in the scrip during the patch-1 which were over the LTP, for 100 shares. Noticee's LTP contribution in the scrip is ₹ 13.75/- which is 6.21% of positive LTP contribution in the scrip. From the material made available on record, I note that though the Noticee was holding substantial number of shares, 1,100 shares during patch-1, the Noticee was releasing small quantity of shares (15-25 shares) even though there were large pending buy orders over the LTP. The days when the Noticee had executed the said 5 trades, pending buy orders were in the range of 200 shares to 1,000 shares. It is observed that when the Noticee was trading, February 12, 2013 to May 8, 2013 which is almost 3 months, the scrip was traded only on 29 days out of 53 trading days i.e., there were days when the scrip was not traded at all. Out of the said 29 trading days, in all trading days only 1 trade was executed in the scrip. This coupled with the fact that the average volume in the scrip when the Noticee was trading was 19 shares would make a prudent investor to sell its shares at the very first opportunity that he/she is coming across particularly when the fundamentals of the company did not indicate any reason why the scripprice should show a sharp or sustained increase in price. In the given situation, there were considerable buy order quantity pending in the system and that too over the LTP. It is not the case of the Noticee that on multiple occasions he had placed sell orders for more than 25 shares and the order was not executed. Rather in the instant case as noted from the order log trade log, Noticee's sell orders were placed after buy orders, so he could see that there were pending buy orders in the system for more than 25 shares on all the occasions but still the Noticee chose to execute his sell trades in miniscule quantity. The aforesaid facts and circumstances indicate that the Noticee's behavior was not that of a prudent / reasonable seller. Therefore, the submission of the Noticee that quantum of orders to be placed and number of orders to be placed is totally at the discretion of the trader, in the given matter, is not acceptable.

12. Furthermore, it is noted that just before the Noticee started trading in the scrip, the scrip had traded only on 8 days out of 124 trading days during the period August 19, 2012 to February 17, 2013 (6 month period) and the average volume in the scrip during that period was 21 shares. Further, on all 8 trading days only one trade was executed in the scrip. The said figures will not inspire confidence in a reasonable seller that many opportunities to sell may arise.

13. Noticee at frequent interval has executed the miniscule quantity of sell trade in the scrip over a period of almost 3 months. Noticee has traded on 5 days out of 29 trading days i.e. every 6th day, Noticee has executed a trade in the scrip. Therefore, the submission of the Noticee that if his objective was to increase the price or contribute to positive LTP, he would have continuously traded on a daily basis and would have sold further 1,000 shares, is not acceptable.

14. In view of the above trading pattern of the Noticee in the scrip, it is held that the same is not genuine, but is manipulative in nature.

15. Noticee has submitted that every trade disturbs the price of the scrip and just because price gets disturbed either upwards or downwards, same cannot result in allegation that the trades are non-genuine. In this regard, it is noted that every trade in the scrip has an impact on the price of the scrip. In the instant matter, the price of the scrip increased from ₹ 15/- to ₹ 234/- i.e., an increase of 1460% without any contributing fundamental reasons, which in itself would cast a shadow of doubt on the genuineness of the increase. Further, 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 / non-genuine trades, 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. 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…"

16. It is noted from, Noticee's trading history that during the financial years 2012-2013 and 2013-2014, when the Noticee was executing trades in miniscule quantity over the LTP in the scrip of GATL, Noticee had traded in one other scrip excluding GATL wherein as a seller he had traded for 7,500 shares in one day in the financial year 2012-2013. Further, in the financial year 2013-2014 also Noticee had traded in one other scrip for 2 shares excluding GATL as a buyer.

17. Thus, from the above, it can be gathered that during the normal course of Noticee's trading, Noticee was not active in the securities market during the financial years 2012-2013 and 2013-2014 barring his trading in the scrip of GATL which has already been held to be manipulative and the trading in GATL was not consistent with the other one off trades done by him.

18. In view of the above, the findings that have been gathered from various circumstances for instance overall trades executed in the scrip (number of trading days and number of trades) including the average volume at the time of Noticee's trading and during patch-1, volume of the trade effected by the Noticee vis-à-vis his holding, the period of persistence in trading in the scrip, the particulars of the buy

and sell orders, trading behavior in other scrips, the totality of the picture that emerges leads to the conclusion that these trades were non-genuine and the Noticee by executing the aforesaid sell trades has manipulated the price of the scrip and has created a misleading appearance of trading in the scrip.

<u>Issue No. 2</u> *- If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?*

19. Before embarking upon the necessary discussions, I would like to reproduce the relevant provisions of PFUTP Regulations:

Regulation 3. Prohibition of certain dealings in securities

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 there under;

(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 there under.

Regulation 4. 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;

20. In view of the conclusion arrived at paragraph 19 wherein it has been held that the trades for miniscule quantity executed by the Noticee over the LTP in the scrip in the context of overall trading in the scrip and his own trading behavior in other scrips, are manipulative and misleading in nature, it is also held that such trades are fraudulent in nature and would operate as deceit upon any person trading in the extant scrip. Further, as discussed in preceding paragraphs, Noticee by executing impugned trades in the scrip has also manipulated the price of the scrip. I therefore, find that Noticee has violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

Issue No. 3 - *If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?*

21. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed. The said Regulations apart from other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By executing manipulative trades, as has been executed by the Noticee in the instant matter, the price discovery system itself is affected. It also has an adverse impact on the fairness, integrity and transparency of the stock market. In view of the same and considering the violations committed by the Noticee, I find that it becomes necessary for SEBI to issue appropriate directions against the Noticee.

ORDER

22. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain Mr. Jayesh Kanungo (PAN: AABPK7808F) from accessing the securities market for a period of two years from the date of this order and further prohibit him from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years, from the date of this order. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticee shall remain frozen.

23. The order shall come into force with immediate effect.

24. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

DATE: March 26, 2019 | **MADHABI PURI BUCH**
PLACE: Mumbai | **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA