

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 45/2008]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

SYSTEMATIX SHARES AND STOCKS (INDIA) LIMITED

(formerly known as SOUHTERN SHARES AND STOCKS LIMITED)

SEBI Registration No:INB011132736

(PAN. AAEC8827N)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of M/s Advik Laboratories Limited (hereinafter referred to as “**ALL**”) whose shares opened at Rs.19.91 on September 29, 2003, touched its high of Rs. 31.70 on December 30, 2003 - 59% rise in 67 trading days and closed at Rs.29.30 on January 5, 2004. The volumes also registered sharp rise from daily average of 400 shares before the investigation period to daily average of 8,50,000 shares during the investigation period at the Bombay Stock Exchange (hereinafter referred to as “**BSE**”).

2. On analysis of the trading data, SEBI conducted an investigation in respect of buying, selling and dealing in the shares of ALL during the period from September 2003 to January 2004. The role of the brokers and their clients who had traded in the scrip of ALL were scrutinized. It was alleged that through collusion with the brokers and other clients, certain entities transacted in the shares of ALL in such a manner that led to creation of artificial volumes in the scrip and was designed to create a false market leading to significant price movement in the scrip.

3. It was alleged that the promoters of ALL, entities related to or associated with the promoter group of ALL and the brokers, including the Systematix Shares and Stocks (India) Ltd. {formerly known as Southern Shares and Stocks Ltd.} (hereinafter referred to as “**Noticee**”/”**SSSL**”) dealt in the scrip of ALL in violation of the provisions of various regulations made under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

4. A group of seven brokers consisting of (1) Mansukhlal Upadhyay (424), (2) the Noticee (182), (3) Ajmera Associated Pvt. Ltd. (911), (4) Parivar Finance & Investments Ltd. (193), (5) Pilot Credit Capital Ltd. (909), (6) Shripal Jain (646) and (7) Shailesh M. Nissar (707) entered into trades with one another for 3,13,59,519 shares which accounted for around 50% of the quantity traded during the investigation period. It was observed that the top five members, viz., M. M. Upadhyay, Shailesh M. Nissar, the Noticee, Shripal Jain and Ajmera Associates Pvt. Ltd. placed valid buy orders for 4,58,86,143 share and valid sell orders for 5,99,92,109 shares which account for

around 67% and 77% respectively of the total valid buy orders and total valid sell orders placed during the investigation period.

5. It was also observed that Chirag Pujara, who appeared to be acting in concert with the promoters of ALL and entities related to and/or connected with the promoters of ALL, had traded through the Noticee and therefore, it was alleged that the Noticee had violated the provisions of regulations 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”) and clauses A (1), (2), (3), (4) and (5) and of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of SEBI (Stock brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as “**Brokers Regulations**”).

APPOINTMENT OF ADJUDICATING OFFICER

6. Mr. Piyooosh Gupta was appointed as Adjudicating Officer vide order dated August 06, 2007 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of PFUTP and Brokers Regulations committed by the Noticee.
7. Consequent upon the transfer of Mr. Piyooosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. Show Cause Notice (hereinafter referred to as “**SCN**” No. EAD-5/VSS/JR/115202/2008 dated January 25, 2008) was issued to the

Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under sections 15HA and 15HB of SEBI Act for the alleged violation specified in the said SCN.

9. The Noticee vide letter dated February 20, 2008 requested for copy of the documents and other material relied upon in making the allegations. The same were made available to the Noticee vide letter dated March 19, 2008. Thereafter, the Noticee vide letter dated April 3, 2008 replied to the SCN stating, inter-alia, that it had not violated the provisions of PFUTP and Brokers Regulations. It had also sought an opportunity of personal hearing.

10. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 26, 2008 at SEBI Head Office, Mumbai vide notice dated July 29, 2008. Mr. C.P. Khandelwal, Chairman, Mr. Sunil Sarda, Director and CEO, Mr. Pradeep Gotecha, Vice President and Mr Aditya Bhansali, Consultant, appeared on behalf of the Noticee. The submissions made vide letter dated April 3, 2008 were reiterated. The Noticee categorically submitted that it was unaware of any relationship between Chirag Pujara and the promoters of ALL. The Noticee vide letter dated September 16, 2008 made further submissions denying the allegations.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :
 - a) Whether the Noticee has violated regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP and clauses A (1), (2), (3), (4) and (5) of

Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations?

- b) Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15 HA and 15 HB of SEBI Act?
- c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

12. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP and Brokers Regulations, which reads as under:

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;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) ...

(d) ...

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

(f) ...

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code Of Conduct For Stock Brokers

A. GENERAL

(1) *INTEGRITY*: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) *EXERCISE OF DUE SKILL AND CARE*: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) *MANIPULATION*: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) *MALPRACTICES*: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) *COMPLIANCE WITH STATUTORY REQUIREMENTS*: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

13. I find that the charges against the Noticee have been made based on the following:

- The top 5 brokers viz: Mansukhlal Upadhyay, Shailesh M. Nissar, the Noticee, Shripal Jain and Ajmera Associates Pvt. Ltd. contributed 65% of gross purchases and 73% of the gross sales.
- The total quantity traded amongst the group of seven brokers, viz. (1) Mansukhlal Upadhyay, (2) the Noticee (3) Ajmera Associated Pvt. Ltd., (4) Parivar Finance & Investments Ltd., (5) Pilot Credit Capital Ltd., (6) Shripal Jain and (7) Shailesh M. Nissar as compared with the total quantity traded was 3,13,59,519 shares, which accounted for 51.88 % of the total quantity traded during the investigation period.
- Out of the aforesaid 3,13,59,519 traded quantity, 1,20,91,831 shares (38.55%) were traded within time difference of less than 1 minute.
- In case of the remaining trades among these members (1,92,67,688 {61.45%}), though the time difference was more, these trades appear to be pre-meditated as there was no other major market participants in this scrip. The majority of the above members have counterparty concentration of around 70%.
- Chirag Pujara (who is alleged to have acted in concert with the promoters of ALL and entities related to and/or connected with the promoters of ALL) purchased 80,41,902 shares and sold 84,09,862 shares during the investigation period dealing through two brokers viz: the Noticee and Pilot Credit Capital Ltd.

14. The Noticee has denied the aforesaid charges by making the following submissions which are summarized as under:

- The Noticee was not aware of the trades carried out by (1) Mr. Mansukhlal Upadhyay, (2) Ajmera Associates Pvt. Ltd., (3) Parivar Finance & Investments Ltd., (4) Pilot Credit Capital Ltd., (5) Shripal Jain, and (6) Shailesh M. Nissar. Further, it did not have any link / relation / nexus / connection / relation with any of these brokers / sub-brokers or any of their clients. All the transactions carried out by the Noticee were on behalf of client Shri Chirag Pujara, as per his instructions, in normal course of business and in accordance with the rules / regulations framed by SEBI / Stock Exchange. At the relevant time when the Noticee was trading for the client it was not aware that the client Chirag Pujara was related or connected to promoters of ALL as the same was not provided in the KYC form at the time of entering into agreement with him.
- Out of the total number of the alleged circular / reversal trades executed in the scrip as provided in the Annexure to the Show Cause Notice the buy orders placed by the Noticee constituted merely 2.83% of the total alleged circular / reversed buy orders, while the sell orders placed by it constituted merely 2.93% of the total alleged circular / reversed sell orders. Further, the total alleged circular / reversed trades executed through the Noticee constituted 2.89% of the total shares traded in circular / reversed manner.
- The gross purchases and gross sales on behalf of the Noticee's clients was merely 13.20% & 13.16% of the gross purchases and gross sales carried out in the market during the relevant period.
- The total trading carried out by the Noticee in the scrip of ALL on behalf of its clients was merely 13.18% of the total market

volume. It is wrong to allege that there were no major market participants in the scrip since the show cause notice itself suggest that there were 6 other brokers who had traded in the scrip in substantial quantity. No nexus/ relation/ common link between the counter party brokers and it has been shown in the entire show cause notice and therefore the allegation of having counter party concentration is illogical.

- At the relevant time the Noticee was not aware that Chirag Pujara was acting in concert with the promoters of ALL and entities related to and / or connected with the promoters of ALL. Trading was done in the scrip of ALL on behalf of its client Chirag in normal course of business, in good faith and as per the instructions given by him. At the relevant time neither Chirag nor any of the promoters of the company had made the Noticee aware, nor there anything for it to excite suspicion that Chirag was acting in concert with the promoters of ALL and entities related to and / or connected with the promoters of ALL.
- In the entire show cause notice SEBI has not shown as to how Chirag was acting in concert with the promoters of ALL and entities related to and / or connected with the promoters of ALL and that whether the Noticee was aware of the same. No adverse conclusions can be drawn against it simply because its client Chirag was acting in concert with the promoters of ALL and entities related to and / or connected with the promoters of ALL without the knowledge of the Noticee.
- The Noticee had no role in the alleged manipulation carried out in the scrip. It had merely carried out the instructions of the client in normal course of business, in good faith. There is no material

brought out in the Notice to demonstrate that at the relevant time the Noticee was aware about the oblique motives of the client or that it was acting in concert with it or that it had any common understanding with it. In the absence of same the Noticee cannot be alleged to have indulged in manipulation, by executing trades on behalf of the client.

- The alleged total quantity i.e. 11,45,933 shares as per show cause notice as a percentage of total market volume constitute merely 1.89%, which makes it amply clear that the Noticee was not a part of the alleged manipulation carried out in the scrip. It may be pointed out that if it was a part of the alleged manipulation its role should have been larger. The Noticee's role as a broker is to execute non-suspicious transactions on behalf of the client. At the time of trading on behalf of the client it did not have even an iota of suspicion about the alleged manipulation being carried out in the scrip.
- Shareholding Pattern of ALL as disclosed on the website of the Bombay Stock Exchange does not show Mr. Chirag Pujara as a part of the promoter group, hence it had no reason to suspect that he was a part of the promoter group of ALL as alleged. At the relevant time the Noticee was not aware that Mr. Chirag Pujara was trading through M/s. Pilot Credit Capital in the same scrip. Further, in details submitted by the client in its KYC, he had not mentioned that he was trading through M/s. Pilot Credit Capital and therefore, there was no reason for the Noticee to believe that the client was trading through M/s. Pilot Credit Capital in the same scrip. All the trades on behalf of the client were carried out on the screen based trading mechanism derived by the exchange, wherein the identity of the counterparty broker / client

is not revealed, without which there were no means to identify the trading done by others in the scrip.

- At the relevant time the Noticee was not aware that:
 - promoters of ALL and the entities related to and / or connected with the promoters of ALL were trading in the scrip of ALL.
 - promoters of ALL and the entities related to and / or connected with the promoters of ALL were creating artificial volumes in the scrip which led to price manipulation in the scrip of ALL.
 - our client was executing trades in the nature of synchronized trades through us.
 - other brokers / sub-brokers / clients were dealing in the scrip of ALL.
 - that the orders placed by us on behalf of our client in normal course of business were being matched by placing counter orders through other brokers.
 - counter party client was associated / related entities of our clients.
 - the client along with a group of brokers / clients had arranged for synchronized / circular trades by placing simultaneous orders with the counter party brokers.

- With regard to alleged synchronized / circular / reversed trades, following may be noted:
 - Out of the total quantum of trading done by Chirag in the scrip of ALL on a particular day, very insignificant part of it is allegedly synchronized. The quantum of alleged synchronized trades executed by Chirag is miniscule.

- The quantum of alleged synchronized trades executed by Chirag compared to the total trading done by the Noticee in the scrip of ALL is miniscule.
 - Out of the total quantum of trading done by us in all the scrips in the investigation period, very insignificant part of it is allegedly synchronized i.e. 0.33%
 - During the investigation period Chirag had traded in more than 300 scrips.
 - No material has been brought on record that we had any connection with the client/ promoters of ALL and the entities related to and / or connected with the promoters of ALL or the counterparty brokers/clients and that we were acting in concert with them.
- It may be appreciated that a Broker has a very limited role in the stock market as it has to execute the order in consonance with the instructions of the client as to time, quantity & price. It is the prerogative of the client to place the order and the broker has no locus in the decisions of the client, to trade or not to trade in scrip, except to execute the orders as per the instructions of the client. At the relevant time, the Noticee was dealing on behalf of 2000 clients in approximately 325 scrips. ALL was one such scrip in which it had dealt, apart from various other scrips. Further, at the relevant time its average daily turnover was around approximately Rs. 9.5 crores. That, in the absence of anything suspicious in the trading behavior of the Chirag it was not possible for the Noticee to suspect the motives of the Chirag in terms of indulging in manipulation.
 - In regard to the Code of Conduct prescribed in the Brokers Regulations, the Noticee denied all the allegations.

- Various case laws have been cited in support of its submissions.
15. I have carefully perused the SCN, written and oral submissions of the Noticee, the case laws cited by the Noticee and the documents available on record. I find that a group of seven brokers viz. Mansukhlal Upadhyay, the Noticee, Ajmera Associates Pvt. Ltd, Parivar Finance and Investments Ltd., Pilot Credit Capital Ltd, Shripal Jain and Shailesh M Nissar entered into trades with one another for 3,13,59,519 shares which accounted for around 50% of the quantity traded during the investigation period. I also find that the top five members, viz., M. M. Upadhyay, Shailesh M. Nissar, Southern Shares and Stocks Ltd. Shripal Jain and Ajmera Associates Pvt. Ltd. placed valid buy orders for 4,58,86,143 shares and valid sell orders for 5,99,92,109 shares which account for around 67% and 77% respectively of the total valid buy orders and total valid sell orders placed during the investigation period.
16. I find that the gross purchase and gross sales of the Noticee on behalf of all its clients during the investigation period was 13.20% and 13.16% respectively of the gross purchase and gross sales in the market during the investigation period. I have noted the contention of the Noticee, in this regard, that if there would have been any manipulative intent on the part of the Noticee, its market share would have been much more. I find that this submission seems to be reasonable.
17. I find that Chirag Pujara was not the only client of the Noticee who had traded in the scrip of ALL during the investigation period. There were other entities too who had traded through the Noticee in the scrip of ALL during the investigation period. Moreover, Chirag Pujara

had also traded in the scrip of ALL through another broker, viz., Pilot Credit Capital Limited (PCCL) and PCCL has not been alleged to have violated provisions of any regulations.

18. I have noted the contention of the Noticee that without any substantial evidence, there was no reason for the Noticee to suspect the intention and oblique motives of Chirag Pujara while he was trading in the shares of ALL. The Hon'ble SAT in the matter of *Kasat Securities Pvt. Ltd vs. SEBI* - Appeal No 27/2006 – order dated June 20, 2006 - held, inter-alia, that even if synchronization of trades is established and even if it is proved that such trades are circular or fictitious as the buying client and the selling client are the same party, the same is not sufficient to hold that the broker is in violation of any regulations or liable to any penalty unless there is material on record to establish that he was aware of the same. Hon'ble Tribunal further held that SEBI cannot infer or assume that the broker is aware of the same and cannot jump to the conclusion that merely because the broker has acted as a broker on behalf of such a client, it ought to have known the nature of these transactions. I, therefore, find the contention of the Noticee acceptable.

19. I find from the investigation report that one of the promotes of ALL, viz., Vivek Jain had transferred 6,00,000 shares of ALL on October 10, 2003 to Amit Pandya through off-market. Out of the said shares, Amit Pandya had subsequently transferred 2,52,000 shares to Chirag Pujara on November 19, 2003 and November 26, 2003, again through off-market. I find that Chirag Pujara had purchased 80,13,902 shares and sold 79,88,531 shares through the Noticee, which means the net purchase of Chirag Pujara was to the extent of 25,371 shares. This indicates that Chirag Pujara had taken delivery of 25,371 shares and not off-loaded any of the aforesaid 2,52,000

shares alleged to have been received by him from Amit Pandya, through the Noticee.

20. I find that the investigation has not established any nexus between,
- (a) the client - Chirag Pujara and the promoter group of ALL, except transfer of some shares referred to at para 19 above. I am of the view that this transfer of shares alone cannot be a sufficient ground to allege any nexus between the said entities.
 - (b) Chirag Pujara and the Noticee.
 - (c) Chirag Pujara, the Noticee and the promoter group of ALL.
 - (d) Noticee and the counterparty/other brokers who have traded in the scrip of ALL.
21. In the screen based trading mechanism prevailing in the stock markets in India, a trade between a buyer and seller has to match on the screen before it can be executed. Merely because a trade has matched both in regard to the price and quantity at the same time, it cannot lead to the conclusion that the Noticee had knowledge of any game plan of the clients. There is no material on record to allege that, in the first instant, the client, Chirag Pujara was a part of the promoter group of ALL and there was collusion amongst Chirag Pujara and the promoter group of ALL and in the second instant, the Noticee knew about any such game plan of its client and colluded with the client in the manipulation. I also find that the investigation has not brought out any corroborative material in support of the allegation that Chirag Pujara had colluded with the clients of other brokers who had bought or sold shares of ALL during the investigation period.

22. Taking into consideration the above and the submissions of the Noticee, I find that there is no apparent connection and/or nexus between the client and the Noticee. Further, the investigation has not brought out any relationship whatsoever between the client and the Noticee, other than the normal business relationship that of a “client and broker”. There is no material on record to establish the alleged manipulative role played by the Noticee. Making an allegation of manipulation against an entity merely on the ground of having executed transactions for the clients is rather far fetched. Therefore, as the allegations of manipulation and failure to abide by the Code of Conduct have been arrived at based on wrong presumptions by the investigation, the conclusion is bound to be wrong.
23. The aforesaid findings are in line with the observations/findings of the Hon’ble SAT in the matter of *M/s. Jagruti Securities Ltd. Vs. SEBI - Appeal No. 102 of 2006 - order dated October 27, 2008.*

ORDER

24. In view of the foregoing, the alleged violation of the provisions of PFUTP and Brokers Regulations by the Noticee, as specified in the SCN dated January 25, 2008, does not stand established and the matter is, accordingly, disposed of.
25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **November 05, 2008**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER