

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
ADJUDICATION ORDER NO. EAD/BJD/BKM/ 77/2017-18**

**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:  
M/s Yes Investments  
(PAN: AINPB3663P)**

**In the matter of :  
Dealings of Mr. Vishal Kishore Bhatia**

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**BACKGROUND**

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 420 of 2014, vide order dated March 22, 2016, while setting aside the adjudication order dated August 27, 2014, remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Appellant viz. M/s Yes Investments (hereinafter referred to as the Noticee/Yes Investments) for the violations of the provisions of Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations) in the dealing of Mr. Vishal Kishore Bhatia (hereinafter referred to as Mr Bhatia). The Hon'ble SAT observed that-

“It is not in dispute that in case of Mr. Vishal Kishore Bhatia who is the sole proprietor of the appellant, the Adjudicating Officer of SEBI has passed an order on May 12, 2011 in similar circumstances to the effect that it is not a fit case for imposing penalty u/s 15 HA of SEBI Act. Admittedly, the said decision of SEBI was neither placed before the Adjudicating Officer nor considered by the Adjudicating Officer.

Apart from the above, in view of the conflicting views of the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.), and Siddharth Chaturvedi vs. SEBI (Civil Appeal No. 14730 of 2015 decided on March 14, 2016) relating to the discretionary power of Adjudicating Officer while imposing penalty under Section 15 HA of SEBI Act, counsel for the parties state that the order impugned in the appeal be quashed and set aside and the matter be restored to the file of the Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with law by leaving all contentions open.”

### **FACTS OF THE CASE IN BRIEF**

2. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’), pursuant to the NSE alerts in the matter of dealings of Yes Investments (Proprietor: Mr. Vishal Kishore Bhatia) and M/s Blue Peacock Securities Pvt. Ltd. (hereinafter referred to as BPSL/“Noticee”), in which Vishal Kishore Bhatia is one of the directors, conducted an investigation for the period of July 01, 2009 to December 31, 2010(hereinafter referred to as the ‘IP’) into the trading of Yes Investments and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the ‘SEBI Act 1992’) and various Rules and Regulations made there under.
3. During the investigation, it was observed that the Noticee trading through Religare Securities Ltd., was continuously entering and deleting orders and then taking reverse position in the cash market. Investigation further revealed that on 20 scrip days the Noticee placed huge buy orders away from market price and that majority of its sell transactions were executed during the period when its previously placed huge buy orders were pending and that it executed majority of the buy transactions after cancelling previously placed huge buy orders which were away from market price. Similarly on 5 scrip days the Noticee had placed huge sell orders away from market price and that the majority of its buy transactions were executed when it had placed above mentioned huge sell orders. Investigation further revealed during the time slot wherein majority of the selling transactions were executed by the Noticee, its

concentration to market pending orders was significant on buy side. It was further noted during the investigation that the buy orders placed by the Noticee (which were placed significantly below the market prices and subsequently deleted) were with fully disclosed quantities whereas the sell orders were placed at partially disclosed quantities.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Vide order dated June 02, 2016, Shri S.V. Krishna Mohan was appointed as Adjudicating Officer under section 15I of the SEBI Act to inquire and adjudge under section 15HA of the SEBI Act, 1992, the alleged violations of provisions of Regulation 3(a), (b), (c), (d) and 4(1) & 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "PFUTP Regulations") by the Noticee. Consequent upon superannuation of Shri S.V. Krishna Mohan, I have been appointed as Adjudicating Officer, in the present matter, vide order dated September 7, 2017.

#### **SHOW CAUSE NOTICE, REPLY AND HEARING**

5. Show Cause Notice No. EAD-5/ADJ/PG/AA/OW/5445/2013 dated March 4, 2013 (hereinafter referred to as "SCN") was issued to the Noticee under rule 4 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Rules read with section 15I of SEBI Act, 1992 and penalty be not imposed under section 15HA of SEBI Act, 1992 for the violations specified in the SCN. The copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.
6. It was alleged in the SCN that the Noticee:-
  - i. created a false impression of artificial demand in the scrips by placing buy orders with large quantities below the market price,

- ii. by selling the shares in the market at the time when its large buy orders at below the prevailing market price were pending and subsequently cancelling these buy orders prior to conducting majority of the buying activity, acted in fraudulent manner,
- iii. was involved in BAIT and SWITCH activity i.e. Noticee entered buy/sell orders lower/higher than the market price, fully disclosed the orders but actually transacted on the opposite side in the market, across various scrips and for several days, and
- iv. manipulated the order book by giving false impression in the market about the demand and supply of various scrip during the investigation period and thereby misled the investors.

7. Pursuant to the order dated March 22, 2016 passed by the Hon'ble SAT remanding the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law, I was appointed as Adjudicating Officer in the present matter. After being appointed Adjudicating Officer fresh opportunity of hearing on September 21, 2017 was given to the Noticee as Vide letter dated September 15, 2017. Vide letter dated October 23, 2017 the Noticee reiterated the submission made earlier vide dated March 12, 2013. On request by Noticee for extension of date of hearing, the hearing was further posted on October 25, 2017. During the hearing on October 25, 2017 the reiterated the submission made earlier vide dated March 12, 2013. Further the Noticee was allowed to submit the following documents by October 31, 2017:

- a Scrip wise Profit / loss made out of dealings as alleged in SCN
- b Basis / Rationale of choosing the scrip for dealing and corresponding investment strategy.
- c Name of the personal placing Order and Mode of placement of such Order. Whether separate terminal was given by broker, if so details thereof may be provided.
- d The rationale of substantial deviation between overall margins available with broker and proportionate trading limits.

e The details of the margins available with the Broker during the period of dealings as alleged in SCN. The trading limits provided by broker during the said period.

f Rationale for putting fully disclosed buy / sell orders in the market and deleting them thereafter. How such a pattern does not amount to artificial / false / misleading market.

8. Noticee vide letter dated November 2, 2017 submitted the details as under:

- a. The copy of the scrip wise Profit/loss made out of dealings as alleged in SCN.
- b. With regard to rationale of choosing the scrip for dealing and corresponding investment strategy notice has submitted that as day trader, generally trade in Blue Chip scrip only, since the said scrip:
  - (i) Enjoy large market capitalisation;
  - (ii) Are from A group or are Index constituents and are therefore high beta (Beta refers to the degree to which a stock price moves with respect to the movement in the market at any given point of time. Different stocks have different beta and the relationship of a stock with the market in terms of price movement is known as beta. For instance, if the beta of a stock is 1.2, it will move 20% higher than the market. If the beta is 0.8, it will move 20% lower than the market and if the beta of a stock is 1, it will move in line with the market) and volatile;
  - (iii) Enjoy substantial institutional holding and participation in the stock, which results in large volumes and liquidity during the day, which makes exit easier and the positions can be squares off during the day or at the end of the day itself.
  - (iv) The submissions made by Noticee to erstwhile AO, vide its letter dated March 12, 2013 are as under:
    - a. *At the outset, we deny the allegations and state that all transactions done by us in the aforesaid Scripts were done with good intentions and following ethical business practices as normally followed by any market participant. We strongly deny that we have followed any fraudulent or unfair trade practices as alleged.*
    - b. *We may mention here that we are day traders for the past over 5 years and as day traders, there are some inherent rules and practises which need to be followed such as*

*(a) the scrips traded should be highly liquid, (b) trade considering volatility, (c) volume trade, (d) initiating and continuously changing trades considering the market moves, (e) small tick profit /losses and (f) initiate open trades within a range to take advantage of the price fluctuations.*

- c. *In the scrips mentioned, it is alleged that our concentration during the time slot ranged from 0.37% to 6.60% to the market gross and we were involved in BAIT and SWITCH activity across various scrips and for several days. The rationale for this can be explained that as day traders we select scrips for the day and put in the range bound orders either on the buy or sell side. This helps us to take advantage of the gap-up or gap down open trade. And later on, as the market progresses, trades are initiated based on the market movements. These trades need not follow the open trades. Then through out the day, the trades are done one after another and the pattern can be buy-sell or sell-buy depending upon the market. However, since there is volume, the trades are squared off with minor price gaps which is generally 1% or below. The unexecuted orders are subsequently removed from time to time.*
- d. *Our trades in the alleged scrips are insignificant considering the volume of trading in these scrips and all the scrips stated are companies with high market cap, high float and volumes, shares which are generally traded by Institutions, FIIs and HNIs. Infact, since these scrips have large market caps, huge volumes and Institutional trades the day traders like us trade only in such scrips since only such scrips meet the inherent requirements (as mentioned above) of day trading business.*
- e. *Sir, the volumes may be high but the profits/losses, considering the day trading risks involved are very low and insignificant and we cannot be involved in any act which is unfair or fraudulent when we square up the trade at gap of 0.25 ps ,0.50 ps and Re 1.*
- f. *We are day traders and my delivery trade is hardly 2 to 5% of our total trade. Further the scrips traded are of reputed corporate with large floats and market players. Hence our trades are insignificant. We are in no way connected to any of the companies alleged. There are no huge delivery trades nor any circular trading which can create doubts of profiting from the abnormal trade orders. There is no intention to earn big profits since the positions are squared-up with wafer thin gaps.*
- g. *We have exercised due care, skill and diligence as expected of any day trader in respect of the alleged scrips and have not done any act detrimental to the interest of the Investors or Securities Market or indulged in any act of market manipulation or malpractices in the Securities Market.*
- h. *We therefore submit that we are in no manner responsible for any alleged violations of SEBI Act, Rules and Regulations in respect of the alleged scrips and have acted in good faith according to sound business ethics, trading rules and ethics.*

....."

9. Noticee further submitted that as part of its trading strategy, it used to place both buy and sell orders in the system at an executable distance which could be either at the market price or near the market price or away from the market price. For instance, if the share is trading at say Rs 100/-, notice may place buy orders at say Rs 90/- and sell

orders at say Rs 110/- or any other price, which as per its understanding is within trading reach at that point of time based, inter alia, on the movement of the stock price during that day, previous day or the past week. It may note that given the 20% circuit filter limit, the stock in the given example can fluctuate between Rs 80/- to 120/-. Further depending on the volatility in the stock price movement, it may place more than one order at different prices on both buy and sell side depending upon the beta of the stock. Under law there is no embargo on a trader to place multiple buy orders or sell orders at different prices in the same scrip. In fact, a day-trader invariably places multiple orders on both sides of the price spectrum (i.e. high and low) in order to capitalise on the price fluctuation in the stock. Significantly, while both the buy/sell orders placed by the Noticee may be away from the prevailing market price (and the same may not be visible on the screen based platform of trading as provided by the stock exchanges wherein only best five buy orders placed by the buyers and best five sell orders, placed by sellers are revealed on the trading screen), but are very much within the applicable circuit filter limits as prescribed by SEBI/Stock Exchanges. Based on the fluctuation in the price of the scrip, the Noticee continuously keeps recalibrating its trading strategy in terms of, inter alia, placing simultaneously buy/sell orders at various price range and quantity, revising/modifying these orders as the market progresses, during the trading session, which may inter alia involve deletion of orders already placed, modification of prices (buy/sell) and quantity of orders (upward/downward). At the end of the trading session, we square-off all of our positions and we do not take delivery, even if we entails booking a loss. Only in case if the loss is huge, the notice may keep the position open but neutralise it on the next trading session. This strategy is more popularly known as BTST (Buy Today Sell Tomorrow) in the trading parlance. In BSTS, the trader continues to hold the stock (without actually taking the delivery) on the trading day (in case of buy trades) and can square-off the position on the next trading day by reversing his buy position i.e. selling the shares. It is common knowledge that trading in equities requires a very dynamic strategy as the price fluctuate all the time and any trader cannot trade on the screen with any pre decided strategy as there are several imponderables, which are impossible to predict by a human mind. However, for the sake of understanding, certain trading moves, which are quite commonly adopted by day-traders in the

markets, the notice has set out, on illustrative basis, herein how certain orders/trades placed by us may be deleted by us during the trading session:

- If the stock price is very volatile during the day, both buy and sell side orders may get triggered and we may make profits depending on the spread/margin, which may usually vary in a narrow range of say 25 paise, 50 paise or 1 etc.
  - If the stock price increases sharply after our sell order is executed, we would immediately cover our sell positions by squaring up (buying) positions during the same trading session and book losses.
  - If the stock price remains flat during the day and both the buy or sell side orders remain partially unexecuted. Being a day trader, we may square up our transactions anytime during the day when it appears that market may stay range-bound during the day.
  - If we buy certain shares and the stock price falls substantially and does not recover till the end of the day, we may not square-up our buy positions as we have to incur loss. In such a situation, we may continue to hold the stock using the BTST strategy and these shares will be sold the next trading session.
  - The various trading strategies adopted by us were bonafide and were not actuated by an illicit motives or had any nexus with any manipulation or unfair/fraudulent trade practices etc.
- c. Different Dealers as given by the broker (Religare) used to put trades for the Noticee.
- d. Financial Statement for period from April 1, 2009 to March 31, 2010 has been submitted by notice in terms of the rationale of substantial deviation between overall margins available with broker and proportionate trading limits.
- e. The copy of the details of the margins available with the Broker during the period of dealings and the copy of the trading limits provided by the broker during the relevant period also have been submitted by the notice.
- f. With regard to the rationale for putting fully disclosed buy/sell orders in the market and deleting them thereafter and how such a pattern does not amount to artificial/false/misleading market, Noticee submitted that merely because we



had executed the buy transactions after cancelling the previously placed huge buy orders which were allegedly away from the market price, no adverse inferences can be drawn against us. Since the price did not fluctuate as much, so as to sweep away the pending buy orders placed by us. We had to cancel the pending buy orders, despite the price not falling to the level at which the orders were placed. Post selling, we had to cover up our positions by buying, which could happen either if the price falls or we increase our buy order price. Since the price was not falling, we deleted the orders and placed fresh orders at higher prices. There is nothing wrong in such a trading pattern. It may be noted that stock exchanges provide the flexibility to traders of deleting the previously placed orders (provided that the orders do not culminate into trades) owing to host of factors viz. price fluctuation, change in mind of the traders etc...."

### **CONSIDERATION OF ISSUES AND FINDINGS**

10. The issues that arise for consideration in the present case are :

- a) Whether the Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1) & (2) (a) of PFUTP Regulations?
- b) Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 HA 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?

11. Before moving forward, it is pertinent to refer to the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1) & (2) (a) of PFUTP Regulations.

The said provisions state as under:

***"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.*

**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;"

12. It is an admitted position that Noticee entered buy/sell orders at lower/higher than the market price, fully disclosed the orders but actually transacted on the opposite side in the market as alleged in SCN and demonstrated in the following paras. However, Noticee submitted that it is normal for any day-traders, as part of trading strategy, to invariably place multiple orders on both sides of the price spectrum (i.e. high and low) in order to capitalise on the price fluctuation in the stock. Therefore, trading strategy of placement of orders away from the market prices cannot be faulted and considered manipulative.
13. From the material available on record, I note that on 20 scrip days, Noticee was observed to have placed huge buy orders away from market price and these variations were in the range of (-) 4.23% to (-) 14.00%. Majority of sell transactions were executed by the Noticee, while it previously placed huge buy orders were pending in the system for execution. It executed majority of the buy transactions after cancelling previously placed huge buy orders which were away from market price.
14. Similarly on 5 scrip days I note that the Noticee, on completion of major sell activity, was observed to have placed huge sell orders away from the market price and these variations were in the range of (+) 4.4% to (+) 7.75%. Majority of buy transactions were executed by the Noticee while the above mentioned huge sell orders were pending.
15. I also note that the Noticee's concentration to market pending orders was significant on buy side when major selling transactions were executed by the Noticee and this is noticed on many scrip days as shown in the table given below:

Trade Date	Scrip	Time slot	% selling during the slot	Range of Noticee's concentration to Market pending (Buy Side)
02-Jul-09	NIITLTD	10:01:49 to 12:09:24	68.97%	64-77%
02-Jul-09	NIITLTD	1:51:38 to 2:04:45	21.83%	66-72%
06-Jul-09	EDUCOMP	10:26:25 to 11:10:06	89.23%	22-80%
04-Aug-09	BHARATFORG	10:02:08 to 1:57:48	100%	61-81%
07-Aug-09	HINDOILEXP	9:59:40 to 1:42:56	97.57%	57-87 %
16-Dec-09	ORCHIDCHEM	9:55:51 to 10:13:00	57.45%	53-69%
15-Jul-09	ABAN	9:57:09 to 10:36:13	61.19%	45-65%
15-Jul-09	ABAN	10:54:03 to 1:09:51	37.00%	65-85%
20-Jul-09	ZEEL	9:57:54 to 12:07:15	100.00	77-93%

16. As can be seen from the above table, for example, in the scrip of Bharat Forge Ltd Noticee had sold 100% of its day's total sale quantity during the time slot 10:02:08 AM to 1:57:48 PM on August 04, 2009. In the said time slot, the percentage of its pending buy orders to the market pending buy orders ranged from 61% to 81%. Similarly, in the scrip of Aban Offshore Ltd. on July 15, 2009, the Noticee had sold 61.19% of its day's total sale during the time slot 9:57:09 AM to 10:36:13 AM while during the said time slot, it had placed its buy order at below the market price and the percentage of his pending buy orders to the market pending buy orders ranged from 45% to 65%. Similar observations were also made for the remaining scrip days as mentioned in the above table.

17. From the material available on record and on an overall analysis of the order placement / trading pattern of the Noticee, I note that notice was first placing large fully disclosed buy orders at prices which were substantially below the prevailing price / last traded price. Further, during the period when these orders were pending in the system, Noticee was placing sell orders, disclosing them partially and actually entire shares thereafter. Similarly, on certain occasions, Noticee had placed large sell orders which were substantially above the prevailing prices and during the period when such orders were pending in the system, it was placing buy orders and buying shares in the market.

18. Additionally, the range of concentration of Noticee's pending buy orders to market pending buy orders in respective scrip was also significantly higher at the time when Noticee was in fact involved in selling those shares. When majority of its selling activity

was over, it used to cancel previously placed huge buy orders which were away from market price and thereafter it executed majority of the buy transactions.

19. To further explain order placement / trading pattern of the Noticee, a few examples are given below:

Example I - Trading of the Noticee in the scrip of Aban Offshore Ltd. on July 15, 2009 :-

- a Between 09:55:09 AM to 10:29:25 AM, the Noticee placed 8 buy orders in the scrip of Aban Offshore Ltd. (ABAN) for 1,95,000 shares at prices which were in the range of 4.23% to 11.13% less than the prevailing market price of the scrip. I note that buy orders for a total quantity of 1,95,000 shares resulted into trades of 1,800 shares between 10:07:50 AM to 10:28:48 AM which was merely 3.98% of its day's total purchase quantity in the scrip of ABAN. While these large buy orders were still pending in the system for execution, the Noticee in fact sold 27,700 shares, which was 61.19% of its day's total sale quantity, between 09:57:09 AM to 10:36:13 AM. During this time period, the concentration of Noticee's pending buy orders to market pending buy orders was in the range of 45% to 65%. All the pending unexecuted large buy orders were cancelled between 10:39:36 to 10:39:37 AM.
- b Again between 10:52:46 AM to 12:52:59 PM, the Noticee placed 8 buy orders for 2,00,000 shares at prices which were in the range of 5.26% to 5.91% less than the prevailing market price of ABAN. I note that buy orders for a total quantity of 2,00,000 shares resulted into trades of 13,787 shares between 11:04:00 AM to 01:56:29 PM which was 30.46% of its day's total purchase in the scrip of ABAN. However, again when these large buy orders were pending in the system for execution, the Noticee in fact sold 16,750 shares which was 37.00% of its day's total sale quantity between 10:54:03 AM to 01:09:51 PM. Noticee cancelled all pending unexecuted large buy orders between 12:53:07 PM to 01:56:30 PM.
- c I note that when the Noticee had effected more than 98% of its day's total sale, it placed 2 sale orders between 02:15:02 PM to 02:27:08 PM of 30,000 shares of ABAN at prices which were in the range of 6.15% to 6.90% above the prevailing

market price. And when these sale orders were pending in the system, Noticee infact purchased 17,531 shares, which was 38.73% of its day's total purchase quantity, between 02:28:12 PM to 03:29:01 PM in the scrip of ABAN. These purchases coupled with the purchases made earlier squared off its total position of 45,269 shares.

Example II - Trading of the Noticee in the scrip of Bharat Forge Ltd. on August 04, 2009:-

- d Between 09:58:13 AM to 10:39:09 AM, the Noticee placed 8 buy orders in the scrip of Bharat Forge Ltd. (Bharat) for 3,50,000 shares at prices which were in the range of 5.52% to 6.31% less than the prevailing market price of the scrip. I note that buy orders for a total quantity of 3,50,000 shares resulted into trades of 31,460 shares between 10:03:53 AM to 02:04:49 PM which was 27.99% of its day's total purchase quantity in the scrip of Bharat. While these large buy orders were pending in the system for execution, the Noticee in fact sold 1,12,409 shares which was 100% of its day's total sale quantity between 10:02:08 AM to 01:57:48 PM and during this period the concentration of Noticee's pending buy orders to market pending buy orders was in the range of 61% to 81%.
- e I note that the Noticee made further purchases of 80,949 shares of Bharat between 02:04:53 PM to 02:47:39 PM after it cancelled all pending unexecuted large buy orders between 10:39:07 AM to 02:04:49 PM. These purchases coupled with the purchases made earlier squared off its total position of 1,12,409 shares.

20. The analysis of order placement and execution of trade, in the backdrop of creation of artificial depth in the market by the Noticee in few scrips are demonstrated in the tables below

**TABLE B – DETAILS OF THE TRADES AND CLOSE OUT DIFFERENCE**

Trade Date	Scrip	Buy Time slot	Buying quantity	Avg Buy price	% of activity	Sell Time slot	Sell Qty	Avg Sell price	% of Activity	Close out difference ^
15-Jul-09	ABAN	10:07:50 to 10:28:48	1,800	842.85	3.98	09:57:09 to 10:36:13	27,700	839.02	61.19	8,51,541
		10:44:35 to 10:44:52	100	820	0.22					
		11:04:00 to 1:56:29	13,787	819.14	30.46	10:54:03 to 1:09:51	16,750	831.01	37	
		1:56:38 to 2:04:26	12,051	813.74	26.62	2:12:04	50	818	0.11	

		2:28:12 to 3:29:01	17,531	815.20	38.73	3:13:20 to 3:13:22	769	833	1.7	
29-Oct-09	BALRAMCHIN	10:37:25 to 12:47:52	1,50,173	150.63	37.55	10:07:19 to 2:05:45	3,97,909	153.74	99.5	6,53,752
		2:59:43 to 3:23:59	2,49,736	152.98	62.45	3:24:23 to 3:24:23	2000	152.15	0.50	
30-Oct-09	BALRAMCHIN	11:49:38 to 12:37:38	1,64,312	151.83	46.81	9:55:34 TO 11:20:44	3,50,090	156.45	99.74	19,44,475
		12:37:52 to 12:40:58	57,700	151.22	16.44					
		1:32:44 to 2:00:05	90,000	149.24	25.64					
		2:33:18 to 3:06:48	39,000	150.17	11.11	3:08:30	922	146.55	0.26	
4-Aug-09	BHARATFORG	10:03:53 to 2:04:49	31,460	243.29	27.99	10:02:08 TO 1:57:48	1,12,409	246.54	100	5,62,587
		2:04:53 to 2:47:39	80,949	240.86	72.01					
4-Dec-09	BHARTISHIP	10:12:21 to 1:38:43	49,711	219.77	24.71	10:10:50 TO 1:20:33	1,99,858	224.16	99.35	8,22,256
		2:05:09 to 2:51:26	47,860	218.79	23.79					
		3:00:40 to 3:00:46	1249	221.30	0.62	2:52:49	50	225.15	0.02	
		3:03:37 TO 3:30:00	1,02,336	220.76	50.87	3:50:16 to 3:50:21	1248	221.05	0.62	

^ Close out difference is price difference between average buy and sell price multiplied with traded volumes.

**TABLE A – DETAILS OF THE ORDER PLACEMENT**

Trade Date	Scrip	Previous Close Price	Placement time	Cancellation time	Type	No Orders	Order volume	Range of variation from market price	Approx. cumulative Value of Orders
15-Jul-09	ABAN	787.05	9:55:09 to 10:29:25	10:39:36 to 10:39:37	Buy	8	1,95,000	4.23% to 11.13%	Rs 35 crores
			10:52:46 to 12:52:59	12:53:07 to 1:56:30	Buy	8	2,00,000	5.26% to 5.91%	
			2:15:02 to 2:27:08	EOD	Sell	2	30,000	6.15% to 6.90%	
29-Oct-09	BALRAMCHIN	154.75	9:55:50 to 1:03:45	2:12:26 to 2:12:50	Buy	25	15,50,000	4.35% to 5.82%	Rs 23 crores
30-Oct-09	BALRAMCHIN	152.60	9:55:19 to 9:55:20	9:55:25 to 9:55:26	Buy	5	4,00,000	10.88% to 14%	Rs 34 crores
			9:55:27 to 10:31:08	12:36:52 to 12:37:45	Buy	18	14,40,000	4.95% to 7.41 %	
			12:45:17 to 12:46:20	2:28:02 to 2:28:04	Buy	18	15,25,000	4.81% to 8.46%	
4-Aug-09	BHARATFORG	248.70	9:58:13 to 10:39:09	10:39:07 to 2:04:49	Buy	8	3,50,000	5.52% to 6.31%	Rs 9 crores
4-Dec-09	BHARTISHIP	207.85	10:04:03 to 10:47:36	2:02:39	Buy	5	2,50,000	4.46% to 5.72%	Rs 8 crores
			2:52:37 to 2:52:39	3:02:41	Buy	3	1,50,000	4.33% to 5.14%	

21. From the above table, I note that Noticee executed majority of the sell transactions, while the buy orders placed away from the market price were still pending. Thereafter, the buy Orders were cancelled and majority of the buying activity carried out to cover the open sell position.

22. I note from the submissions of Noticee that as part of trading strategy it is natural to place orders at an executable distance from market price so as to take advantage of the gap-up or gap-down open trades and aim to make square off transactions for small

margins through its buy and sell trades. I note from facts on records that Noticee had in contradiction to its own submission, consistently placed buy orders far away from the executable distance from market price which were cancelled immediately after execution of counter sell positions. I also note that the quantity of such buy orders were contributing substantially to the pending Order book which was in the range of 50% to 90%. Given that total depth of order book are displayed to investors at large, Noticee's was fully aware at the time of placement of large buy orders that its orders was constituting substantially to the total order book and was also exercising control over Order book during relevant patch. Further, such Orders were also not meant for execution as such orders were placed far away from executable distance from market price and also subsequently cancelled after execution of its counter sell orders. These facts were known only to Noticee and not investors at large and therefore I consider the conduct of Noticee to be deceptive, fraudulent and manipulative. Further, upon analysis of buy orders, I noted that cumulative value of such orders, placed away from market, were in the range of 10 to 30 crores which were much beyond the capacity of Noticee to honour such transactions, if executed. Had such order executed, the trading limits set by broker would have breached and also resulted in huge loss for the Noticee to close out such transactions. Therefore, I conclude that Noticee had deliberately chosen to disclose full quantities in respect of large buy/sale orders which were placed at prices away from the prevailing market prices only to mislead the investors by manipulating the order book and to create artificiality in the market so as to serve its own collateral purposes. Therefore, the contentions of the Noticee are not acceptable.

23. The manipulative and deceptive intent of Noticee is evident from the fact that buy orders placed away from market price were fully disclosed and not partially disclosed. In case the intention of Noticee to place large buy orders, was to execute such orders, Noticee would have partially disclosed the quantity of Order and not fully disclosure the quantity, as it would otherwise give an impression to potential investors of possible buying pressure in the scrip and resultant increase in price due to demand and supply factors. It would thus encourage gullible investors to participate in the rally by placing their buy orders which would push the price further. I note from the trading strategy the noticee that it works on small margins. I am of the view that large buy order placed

by Noticee would have impacted the price marginally during the relevant patch when contribution of Noticee's large buy Orders were more than 50% of Order book. Thus, I conclude that pattern of placement of large buy Orders were placed not for execution but only to for creation of artificial demand in the market and therefore manipulated Order book during relevant patch.

24. From the foregoing analysis, I am convinced that the large buy/sale orders placed by the Noticee at below/above prevailing prices most of which remained unexecuted and/or were subsequently deleted, acted as BAIT to other market participants and such orders were placed with the sole motive of fraudulently inducing other lay investors to deal in those scrips. While the afore-mentioned orders were still pending in the market for execution, Noticee sold/bought shares in the market (SWITCH). I find that the majority of the sell/buy transactions of the Noticee were executed during the period when its previously placed huge orders on the reverse side were pending in the system. Therefore, I hold that Noticee was involved in BAIT and SWITCH activity fraudulently across various scrips and for several days.
25. Noticee submitted that the Orders placed away from market prices may not be visible on the screen based platform of trading as provided by the stock exchanges wherein only best five buy orders placed by the buyers and best five sell orders, placed by sellers are revealed on the trading screen. There is no merit in the submission of Noticee as I note that "market picture window" on the trading terminals reveals the best five orders based on price and also displays the total depth of order book on both buy as well as sell side which are available in display for all investors. I am of the view that depth of the Order book could be one of the determining factors for investors as assess the demand and the supply for the scrip.
26. I have taken note of the submission by Noticee, vide its letter November 2, 2017 at Annexure C, submitted holdings statement during the period April 1, 2009 to March 31, 2010. I noted that Notice was holding shares of 18 scrips valued around Rs 32 lakhs during period under reference. From the ledger submitted by Noticee at Annexure B



of said letter, I note that following are the details of payments / receipt to / from broker (Religare Securities Ltd).

**Details of payments made by Noticee are as under**

Date of payments made by Noticee	Cheque no	Amount Paid	Previous date balance	Closing balance on date of payment
April 1, 2009 (opening balance)	-	-	-	Rs 95,65,878 (debit)
April 17, 2009	509802	Rs 36,00,000 / -	Rs - 35,84,498	Rs - 71,84,498 (credit)

**Details of receipt made by Noticee are as under**

Date of receipts	Cheque no	Amount transferred	Previous date balance	Closing balance on date of payment
June 1, 2009	Transferred to GA08207	Rs 40,09,902/-	Rs - 1,17,32,808 (credit)	Rs - 77,22,905 (credit)
June 26, 2009	Same as above	Rs 75,00,000 / - Rs 15,00,000 / -	Rs - 2,36,65,580 (credit)	Rs -1,46,65,580 (credit)
July 31, 2009	Same as above	Rs 1,30,00,000 / -	Rs - 1,99,53,443 (credit)	Rs -69,53,443 (credit)
August 28, 2009	Same as above	Rs 8,79,746 / -	Rs - 48,90,835 (credit)	Rs - 40,11,088 (credit)
September 1, 2009	Same as above	Rs 1,28,00,000 / -	Rs - 1,89,59,300 (credit)	Rs - 61,59,300 (credit)
September 23, 2009	<b>Transferred to GA05909</b>	Rs 1,40,00,000 / -	Rs - 2,74,24,408 (credit)	Rs - 1,34,24,408 (credit)
November 3, 2009	Same as above	Rs 50,00,000 / -	Rs - 30,03,191 (credit)	Rs 19,96,808 (debit)
November 9, 2009	Same as above	Rs 1,25,00,000 / -	Rs - 1,98,31,580 (credit)	Rs - 73,31,580 (credit)
November 28, 2009	<b>Transferred to GA08207</b>	Rs 1,25,00,000 / -	Rs - 1,91,99,595 (credit)	Rs - 66,99,595 (credit)
December 7, 2009	Same as above	Rs 34,00,000 / -	Rs - 44,16,598 (credit)	Rs - 10,16,598 (credit)
December 9, 2009	Same as above	Rs 18,00,000 / -	Rs - 33,04,459 (credit)	Rs - 15,04,459 (credit)
December 18, 2009	Same as above	Rs 65,00,000 / -	Rs - 69,20,501 (credit)	Rs - 4,29,501 (credit)
December 24, 2009	Same as above	Rs 75,00,000 / -	Rs - 1,56,39,013 (credit)	Rs - 81,39,013 (credit)
	Total	Rs 10,28,89,648 / -		

27. I note that closing balance as on December 31, 2009 was Rs 90,53,617 (credit balance) and as on March 31, 2010 ledger balance was Rs 16,06,229 (debit). Noticee made only one payment on April 17, 2009 and transferred to other accounts no GA08207 and GA05909 to the extent of Rs 7,10,89,648 and Rs 3,18,00,000 respectively. I also note that Noticee made only one payment whereas received around Rs 10 crores which includes

profits made by Noticee in its dealing alleged in the SCN, through the modus operandi mentioned in above paras.

28. Noticee has further contended that trades in the alleged scrips are insignificant considering the volume of trading in these scrips. This contention of the Noticee is again devoid of merits. It has been clearly brought out in the forgoing paragraphs that Noticee's concentration to market pending orders was significant on buy side when major selling transactions were executed by the Noticee and this in fact was noticed on many scrip days.
29. I have noted that this pattern was repeatedly followed across various scrips and for several days. It is noteworthy to mention that the buy orders were cancelled by the Noticee not because it did not result into trades but because it served its purpose which would be more evident when we look at the order placing behaviour of the Noticee during the time between the placement and cancellation of such orders. This assumes serious proportion when we take into account the fact that significant quantity of Noticee's buy/sale, on some days as high as 100%, happened during the time slot when the Noticee's large buy/sale orders were pending. The intention of creating false demand by the Noticee by its buy orders at prices away from the market price is again quite clear when we look at the substantial percentage of pending buy orders of the Noticee to the market pending buy orders during the particular time slot in the respective scrips when majority of selling was done by the Noticee as shown in table above. As found above, the order placement/trading pattern followed by the Noticee clearly establishes the fraudulent intent on its part and the same deserves to be viewed seriously.
30. I am also aware that on May 12, 2011, SEBI had passed an adjudication order no. BM/AO-66/2011 against Shri Vishal Kishore Bhatia (Proprietor of the Noticee) on similar charges. I note that order dated May 12, 2011 considered the trading of Shri Vishal Kishore Bhatia for only 1 day and gave him benefit of doubt as there were no corroborative evidences on record to prove that the trading of the Noticee was manipulative in nature. In the present case, however, the Noticee's trading pattern has

been analysed over many over many days and various scrips and as has been found above the real intention behind placing all the away from the prevailing market prices fully disclosed buy/sale orders by the Noticee was not for genuine trading but only to create artificial demand and induce lay investors into believing that there existed a large demand in the scrips so that the Noticee, taking advantage of the same, pending its unexecuted orders, could fraudulently indulge in selling/buying the shares. I have also observed that at a certain time, the Noticee would cancel all such large buy orders and only thereafter, it would start buying the shares of the particular company. I have further noted that this pattern was repeatedly followed across various scrips and for several days. I am of the view that the Noticee not only artificially enhanced the levels of demand by giving false impression in the market about demand and supply of the various scrips through manipulation of order book during the investigation period and thereby misled the investors but also acted in fraudulent manner by indulging into selling/buying of the shares in the market at the time when its large fully disclosed buy/sale orders at below/above the prevailing market prices were pending.

31. Regulation 3(a) of PFUTP Regulations prohibits person to buy, sell or otherwise deal in securities in a fraudulent manner. Regulation 3(b) of PFUTP Regulations prohibits person to 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. Regulation 3(c) of PFUTP Regulations prohibits person to 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. Regulation 3(d) of PFUTP Regulations prohibits person to 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(1) of PFUTP Regulations lays that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations, inter alia,

prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market.

32. In view of the abovementioned observations and findings, I hold that the charges levelled against the Noticee in the SCN are proved and that the allegation of violation of provisions of regulations 3 (a), (b), (c), (d) and 4(1) & 4(2)(a) of PFUTP Regulations by the Noticee stand established.

33. The aforesaid violations of Regulations 3 (a), (b), (c), (d) and 4(1) & (2)(a) of PFUTP Regulations by the Noticee make it liable for penalty under section 15HA of SEBI Act, 1992 which reads as under:

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

34. The Hon<sup>ble</sup> Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

35. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of SEBI Act which reads as under:

***"15J - Factors to be taken into account by the adjudicating officer:*** While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

***Explanation:*** For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

36. I note that the modus operandi of Noticee was primarily to create artificial volumes on both sides of the Order book with an intention to entice gullible investors to deal in the shares and thereafter take advantage in terms of selling / buying shares at higher /

lower price, while large buy / sell Order are still pending in the Order book. Therefore, it is difficult to exactly quantify the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors, pursuant to scheme of manipulation of Order book deployed by the Noticee. However, considering that the scrip in which Noticee had dealt with were liquid and blue chip companies, I am of the view that Noticee through scheme of manipulation of Order book might have benefitted in terms of better seller / buy execution rate than otherwise.

37. I have further noted that the Noticee has indulged in the fraudulent and deceptive practice as stated above on many days and hence the nature of default was also repetitive. I cannot ignore the fact that such trades do affect the fair functioning of the securities market and allow manipulators to take undue advantage at the cost of other innocent investors. Therefore, it is necessary that a justifiable penalty is imposed on the Noticee to meet the ends of justice.
38. From the facts mentioned above and submissions made by Noticee, I also note that it had repetitively manipulated the Order book on the buy side by placing buy orders away from market price and thereafter executing counter sell positions. However, magnitude of such pattern of order book manipulation was not consistently observed on the sell side of Order book wherein sell orders were seen to have been placed away from the market price while executing counter buy positions.
39. For the purpose of imposing penalty, I have considered that repetitive nature of manipulation of Order books on many scrip days, as mentioned in the table below, as a factor for imposing penalty.

Trade Date	Scrip
15-Jul-09	ABAN
29-Oct-09	BALRAMCHIN
30-Oct-09	BALRAMCHIN
04-Aug-09	BHARATFORG
04-Aug-09	BHARTISHIP
06-Jul-09	EDUCOMP
29-Jul-09	FSL

04-Sep-09	GEODESIC
01-Oct-09	GLENMARK
07-Aug-09	HINDOILEXP
06-Oct-09	JSL
11-Sep-09	MCLEODRUSS
02-Jul-09	NIITLTD
11-Nov-09	NMDC
16-Dec-09	ORCHIDCHEM
27-Oct-09	PFC
10-Aug-09	PRISMCEM
25-Sep-09	UCOBANK
20-Jul-09	ZEEL

### **ORDER**

40. In light of all the above stated facts and circumstances of the case, more particularly considering the extent of repetitive involvement of the Noticee in manipulation of Order book on buy side on various scrip days , in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs 20,00,000 /- (Rupees Twenty Lakhs only) under section 15HA of the SEBI Act on the Noticee viz. M/s Yes Investments (Sole Proprietor: Shri Vishal Kishore Bhatia) for violation of Regulations 3 (a), (b), (c), (d) and 4 (1) & (2) (a) of PFUTP Regulations. I am of the view that the said penalty is commensurate with the violations committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors the aforesaid failure committed by the Noticee.
41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380

Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

42. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA- IV, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	Penalty

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

**Date: December 14, 2017**

**Place: Mumbai**

**B J DILIP**  
**ADJUDICATING OFFICER**