

# SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

**UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES IN SECURITIES MARKET), 2003.**

**AGAINST M/S VIRAM INVESTMENT PVT. LTD., SHRI AMAL PARIKH AND SHRI UDAY SHAH, IN THE MATTER OF TRADING IN THE SHARES OF M/S INTELLIVISION SOFTWARE LTD.**

MO/79/IVD/09/04

### **BACKGROUND**

1. M/s Intellivision Software Ltd. (hereinafter referred as "ISL") was incorporated in August 1995 as "Arun Agro Products Ltd." and changed its name as above on 22.03.2000. The shares of ISL are listed on The Stock Exchange, Mumbai (hereinafter referred as "BSE") and Hyderabad Stock Exchange (hereinafter referred to as "HSE").
  2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received a complaint dated February 22, 2002 from Shri S Nair, Managing Director of ISL, alleging that there was a sudden spurt in the volumes of ISL's shares on 19.2.2002 on BSE. The said complainant also mentioned that thereafter, the price of the scrip which was Rs.103/- on that day, declined drastically to around Rs. 50/- within 3-4 days. The complainant alleged that some brokers and investors may have been involved in circular trading, leading to the sudden spurt in trading volume. Based on the above complaint, SEBI directed BSE and HSE to look into allegations of circular trading/price manipulation in the scrip of ISL and to submit a report.
  3. HSE submitted that no trades had been recorded on their exchange. BSE conducted an investigation into the trading in the scrip for the period 15.02.2002 to 10.04.2002 and submitted its report to SEBI on 28.06.2002. In its investigation report BSE made the following observations –
    - (a) The trading volume recorded during the period of 15.02.2002 to 10.04.2002 was 3,01,955 shares and the opening price on 15.02.2002 was Rs. 104/- with a trading volume of 50 shares. The highest and lowest price recorded during the said period was Rs.104/- on 15.02.2002 & 19.02.2002 and Rs.11.95 on 10.04.2002.
    - (b) The price of the scrip started declining sharply from Rs. 104/- on 19.02.2002 to Rs. 38/ on March 4, 2002 and thereafter to Rs. 11.95 on 10.04.2002.
    - (c) There were significant volumes in the scrip on only 2 days during the entire period under investigation i.e. on 19.02.2002 and on 20.03.2002, when a total of 1,50,002 and 1,45,000 shares respectively were traded.
    - (d) M/s Ohm Stock Broker Private Limited (hereinafter referred to as "OSBPL"), a member of BSE and a stock broker registered with SEBI had 96.04% concentration in gross purchases and 97.79% concentration in gross sales during the period under investigation and the member had dealt for the following clients during the period under investigation:
      - (i) Shri Amal Parikh who sold 75,000 shares
      - (ii) Shri Uday Shah who sold 75,000 shares
      - (iii) On it's own account having bought and sold 1,45,000 shares.
      - (iv) M/s Viram Investment P.A. Ltd. (hereinafter referred to as 'VIPL') who had bought 1,45,000 shares
- It was also noted that Shri Amal Parikh and Shri Uday Shah were directors of the broker OSBPL. The address of Shri Viral Parikh, director of Viram Investment P A Ltd., was same as that of Shri Amal Parikh. Thus, the clients of OSBPL were connected to the broker and its directors.
4. BSE also made the following observations based on analysis of trade and order log during this period:
    - (a) On February 19, 2002 the total quantity traded was 1,50,002 shares. There was a self deal of 1,45,000 shares in the office of OSBPL on this day. The buy and sell orders for this trade was placed within seconds of each other. An extract of the order log showing the orders of this member is as follows:

| Mem  | Trade | Buy/ | Order | Price(Rs.) | Qty.  | Disclosed | Order | CACL | Dt & Time           | Error | Order No.         | Client |
|------|-------|------|-------|------------|-------|-----------|-------|------|---------------------|-------|-------------------|--------|
| Code | Id    | Sell | Type  |            |       | Qty       | Mod   |      | Of Trade            | Code  |                   | Code   |
| 458  | 2     | S    | L     | 103        | 75000 | 75000     | A     | 30   | 2002-02-19:11:42:01 | 0     | 45800200000027558 | 4001   |

|     |   |   |   |     |        |        |   |    |                     |   |                   |       |
|-----|---|---|---|-----|--------|--------|---|----|---------------------|---|-------------------|-------|
| 458 | 8 | S | L | 103 | 75000  | 75000  | A | 30 | 2002-02-19:11:42:03 | 0 | 45800800000030773 | 6002  |
| 458 | 2 | S | L | 0   | 70000  | 70000  | D | 30 | 2002-02-19:11:42:08 | 0 | 45800200000027558 |       |
| 458 | 8 | S | L | 0   | 75000  | 75000  | D | 30 | 2002-02-19:11:42:11 | 0 | 45800800000030773 |       |
| 458 | 2 | S | L | 103 | 70000  | 70000  | A | 30 | 2002-02-19:11:45:32 | 0 | 45800200000027560 | 4001  |
| 458 | 1 | B | L | 103 | 145000 | 145000 | A | 20 | 2002-02-19:11:45:33 | 0 | 45800100000026677 | 70000 |
| 458 | 8 | S | L | 103 | 75000  | 75000  | A | 30 | 2002-02-19:11:45:33 | 0 | 45800800000030775 | 6002  |

From the above extract it was observed that OSBPL had placed two large sell orders of 75000 shares each, which were deleted seconds later and subsequently, OSBPL placed buy and sell orders within seconds of each other, which resulted in a self deal i.e OSBPL bought 1,45,000 shares from Shri Uday Shah and Shri Amal Parikh.

- (b) On 20.03.2002 total quantity traded was 1,45,000 shares @ Rs. 30.05 (8% lower than the previous close of Rs. 32.65). There were two trades on this day for 85,000 and 60,000 shares respectively and both these trades were self deals in the office of OSBPL. The time gap between the buy and sell orders of these trades was around a minute. An extract of the order log showing the valid orders placed by the member on that day is as follows:

| Mem Code | Trade Id | Buy/Sell | Order Type | Price(Rs.) | Qty.   | Disclosed Qty | Order Mod | CACL | Dt & Time Of Trade  | Error Code | Order No.         | Client Code |
|----------|----------|----------|------------|------------|--------|---------------|-----------|------|---------------------|------------|-------------------|-------------|
| 458      | 1        | B        | L          | 30.05      | 100000 | 100000        | A         | 30   | 2002-03-20:09:55:38 | 0          | 45800100000027791 | 7000        |
| 458      | 1        | B        | L          | 0          | 100000 | 100000        | D         | 30   | 2002-03-20:09:55:45 | 0          | 45800100000027791 |             |
| 458      | 2        | S        | L          | 30.05      | 85000  | 85000         | A         | 20   | 2002-03-20:09:55:54 | 0          | 45800200000028506 | 70000       |
| 458      | 8        | S        | L          | 30.05      | 60000  | 60000         | A         | 20   | 2002-03-20:09:56:34 | 0          | 45800800000033349 | 70000       |
| 58       | 1        | B        | L          | 30.05      | 145000 | 145000        | A         | 30   | 2002-03-20:09:57:16 | 0          | 45800100000027793 | 7000        |

- (c) On 26.03.2002 there was one trade in the scrip for two shares at Rs. 25.45 (8% lower than the previous closing of Rs. 27.65). On this day, total valid sell orders were for 23,115 shares. OSBPL had placed a sell order for 20,000 shares. However, this order remained unexecuted.
- (d) On 27.03.2002 there were two trades in the scrip for a total quantity of 28 shares at Rs. 23.45 (8% lower than the previous closing of Rs. 25.45). Total valid sell-orders on this day were for 12,863 shares placed by four different members. OSBPL alone had placed a sell order for 10,000 shares which remained unexecuted. Total valid buy-orders were for 28 shares placed by the members M/s Angel Broking Limited and M/s Bhavik Rajesh Khandhar Share and Stock Broker Private Limited @ Rs. 23.45.
- (e) On 01.04.2002 the scrip was traded for 25 shares @ Rs. 19.90 (8% lower than the previous closing of Rs. 21.60). Total valid sell orders on this day were for 21,670 shares and almost all sell orders were placed at the rate of Rs. 19.90. OSBPL had placed a sell order for 20,000 shares @ Rs. 19.90 which remained unexecuted. The only buy-order on this day was placed by the member M/s SSKI Investor Services Private Limited for 25 shares @ Rs. 19.90 at 10:57:09.
- (f) On 04.04.2002 the scrip opened at Rs. 16.90, reached an intra-day high of Rs. 17.10 and closed at Rs. 16.90 (8% lower than the previous closing of Rs. 18.35). Total sell orders on this day were for 22,000 shares in the price range of Rs. 16.90 to 19.30. OSBPL had placed a sell order for 20,000 shares @ Rs. 17.10, which was executed for 200 shares.
- (g) On 05.04.2002 the scrip was traded at Rs. 15.55 (8% lower than the previous close of Rs. 16.90). Total quantity traded on this day was 275 shares. Total valid sell orders on this day were for 30,850 shares placed by 4 different members and almost all sell orders were at the rate of Rs. 15.55. The member OSBPL had placed a sell order for 19,800 shares @ Rs. 15.55. However, the orders remained unexecuted.
- (h) On 08.04.2002 the scrip was traded at Rs. 14.35 (8% lower than the previous close of Rs. 15.55). Total quantity traded on this day was 200 shares. Total valid sell orders on this day were for 30,150 shares. OSBPL had placed a sell order for 19,800 shares @ Rs. 14.35.

5. Based on the report of BSE, Chairman, SEBI, vide order dated 8.4.2003, directed that further investigations be conducted in the matter. The following were the findings of the investigation:

- (a) ISL had forfeited 31,00,000 shares vide Board resolution dated 5.4.2000 for non-payment of call monies. Of these, 29,02,400 shares were reissued at par by the company on 4.7.2000 to 227 allottees. 1,50,000 shares were allotted to VIPL on 4.5.2000
- (b) During the period 15.2.2002 to 10.4.2002, the price of the shares of ISL decreased from Rs.104 to Rs.11.95
- (c) The scrip was thinly traded on BSE during the period 15.2.2002 to 10.4.2002; the total number of shares traded during the period was 3,01,955.
- (d) OSBPL, trading in the shares on behalf of VIPL, Shri Uday Shah and Shri Amal Parikh was the major trader in the shares during the said period, accounting for more than 96% of the total trades
- (e) VIPL sold 75,000 shares each to Amal Parikh and Uday Shah on 9.8.2001
- (f) On 19.2.2002, Amal Parikh and Uday Shah sold a total of 1,45,000 shares to OSBPL through matched trades and subsequently, on 20.3.2002, OSBPL sold 1,45,000 shares to VIPL through matched trades.
- (g) OSBPL placed large sell orders on 26.3.2002, 27.3.2002, 1.4.2002, 4.4.2002, 5.4.2002 and 8.4.2002, but these orders remained unexecuted. However, the price of the share of ISL decreased in the course of these days.

#### **SHOW CAUSE NOTICE AND HEARING**

6. In the light of the findings of investigation, a show cause notice dated 12.11.2003 was issued to VIPL, Shri Uday Shah and Shri Amal Parikh vide letters dated 22.12.2003, advising them to show cause as to why appropriate directions under section 11 read with section 11B of the SEBI Act should not be passed against them. VIPL submitted their reply to the show cause notice vide letter dated 22.12.2003. Shri Amal Parikh and Shri Uday Parikh, vide letters dated 22.12.2003 also replied to the said show cause notice.
  - (a) VIPL submitted that the show cause notice was issued based on a complaint / letter dated 22.02.2002 addressed by Mr. S. Nair, MD of ISL to cSEBI alleging circular trading / mal-intention by some investor or broker allegedly resulting in price of the scrip of ISL going down drastically after 19.02.2002. It was further stated that SEBI assumed that the prices of the shares of ISL prior to and as on 19.02.2002 were genuine prices reflective of the true worth of the shares of ISL.
  - (b) VIPL submitted that the statement of S. Nair established the price of the scrip of ISL prevailing upto and on 19.02.2002 was itself manipulated price and that this had been corroborated by BSE in its observations in the Investigation Report. It is not the case of SEBI that they were in any way concerned with the unnaturally high price of the ISL shares on BSE prior to 19.02.2002. The general public including them were led to believe that the price of ISL shares as quoted on BSE, was genuine price at that time. It is only after reading the statement of Shri S. Nair that it becomes apparent that the price of scrip of ISL as prevailing prior to 19.02.2002 was never a genuine price but a price manipulated by interested parties for ulterior motives.
  - (c) VIPL stated that though the price of the scrip of ISL on HSE was quoting at only Rs.6/- it was at the same time quoting substantially high on BSE even at the time when ISL was making the reissue at par which BSE was fully aware of and had informed SEBI of the same. VIPL stated that had SEBI conducted an enquiry prior to 19.02.2002 as the cause for the price prevailing of ISL scrip on BSE at a figure substantially high than that quoted on HSE, inspite of significant trading of the scrip on BSE, it would have come to light that the price of ISL scrip on BSE was rigged and manipulated.
  - (d) VIPL stated that they, on behalf of Amal Parikh and Uday Shah, applied for 1,50,000 shares of ISL and made payment to ISL in or about May 2000 and the shares were allotted to them in or about September 2000. They further stated that they obtained credit of those shares in their demat account only in May 2001. Therefore, they contended that the movement in the price of the scrip of ISL upto May 2001 cannot be attributed to them. VIPL pointed out that the price of ISL scrip was quoted on BSE at Rs.100/- on 07.09.2000, which was an unnaturally high price, for which they were not responsible and that it was not alleged so in the show cause notice. Between May 2001 (being the date on which 1,50,000 shares of ISL were received by them) and February 2002, they had no dealings in that scrip and consequently the high price of ISL shares during that period or the purchase of ISL shares at by Ohm Stockbroker Pvt. Ltd. on 19.02.2002 at the then prevailing quoted price on BSE cannot become a ground to allege that they acted in a manner to distort the equilibrium of trading in the said scrip and to depress the prevailing market price. If there was any intention on part of anyone to depress the market of ISL scrip then regular sale would have been made at periodic intervals over a period of time to hammer down the price of the ISL scrip, but such was not the case.
  - (e) VIPL contended that as per the statement of S. Nair, ISL knew at the time it made the issue of the forfeited shares that the real value of its shares were nowhere near the then quoted price of ISL scrip at BSE of around Rs.68/- .

ISL issued the shares at par value of Rs.10/- knowing fully well that the shares had no intrinsic value. They then quoted the statement of Shri S. Nair , *"the shares were allotted at par because, at that relevant point of time with the volume of business that we were in the price of the shares could not be more than Rs.10/-"*.

- (f) VIPL stated that ISL was aware that the quoted price of the scrip on BSE was unnaturally high and this unnaturally high price continued to spiral upwards till 19.02.2002. VIPL contended that it is significant to note that at no time during this period Shri Nair thought it necessary to lodge a complaint with SEBI about the unnaturally high price at which the ISL scrip was quoted on BSE.
- (g) VIPL contended that the investigating officer also found contradictions in the letters written by ISL. VIPL submitted that in its letter dated 26.07.2000 to BSE, ISL mentioned that 'by no stretch of imagination the share price of ISL could be higher than its par value of Rs.10/- per share and the last price quoted at HSE was only Rs.6'; whereas in its letter dated 22.02.02 addressed to SEBI, ISL stated that 'until recently the shares of their company were very thinly traded and on 19.02.2002 surprisingly the volume of 1,50,000 shares were traded at Rs.103/- and thereafter till date the share price have been going down drastically and as on date the price is approximately Rs.50/- .
- (h) VIPL stated that the sale of ISL shares was done by Amal Parikh and Uday Shah who had the beneficial interest therein, at the then prevailing market price, through the BSE BOLT system. VIPL contended that this singular transaction of a genuine sale had nothing to do with the subsequent continuous fall in the price of the ISL scrip between 20.02.2002 to 19.03.2002 and that there is nothing in the show cause notice or in the inspection report to attribute fall in the price of ISL scrip during that period to the sale of ISL shares by Shri Amal Parikh and Shri Uday Shah on 19.02.2002.
- (i) VIPL stated that the said statement of S. Nair established that the price of Rs.104/- and Rs.103/- at which the ISL scrip was quoted on 15.02.2002 and 19.02.2002 was itself rigged and manipulative and not reflective of the true worth of ISL.
- (j) VIPL stated that OSBPL sold the shares on 20.03.2002 to Viram as an independent purchase commercial transaction done by Viram on its own account.
- (k) VIPL stated that the transactions of sale of shares on 19.02.2002 and purchase of shares on 20.03.2002 were genuine legitimate business transactions done at the then prevailing market prices and cannot be alleged to have been done with any intention to depress the prevailing market prices.
- (l) VIPL stated that the sales affected at those prevailing prices cannot now become a ground to allege violation against them of the FUTP Regulations and accordingly based on the above preliminary submissions that the show cause notice should not be proceeded with further.

7. With regard to Investigation Report of BSE, VIPL submitted as under:

- (a) The sale transaction of 1,50,000 ISL shares was done by Amal Parikh and Uday Shah on their own account as 75000 ISL shares were credited to their respective individual demat account on allotment being made. The sale transaction was not done by VIPL. The purchase transaction of 1,45,000 ISL shares was done by Viram on its own account and not on behalf of Amal Parikh and Uday Shah. They further stated that the transactions in the shares of ISL during the following periods were entirely unconnected with them and were not germane to the investigation period as mentioned in the show cause notice, viz.
  - (i) Transactions in the shares of ISL prior to 19.02.2002;
  - (ii) Transactions in the shares of ISL during the period 20.02.2002 to 19.03.2002
  - (iii) Transactions in the shares of ISL during 21.03.2002 to 10.04.2002.i.e. They were concerned with only the trades done by them on 19.02.02 and on 20.03.02.
- (b) They further submitted that no sale transaction of ISL shares were done by Viram during 21.03.2002 to 10.04.2002. The first time any part of the 1,45,000 shares purchased by it 19.02.02 were sold by them, was on 12.04.2002, which was outside the period of investigation. They further submit that merely because there was a fall in the price of the shares of ISL during the period under investigation viz. 15.02.2002 to 10.04.2002, the same cannot become a ground to allege that they acted in a concerted manner with others to distort the equilibrium of trading in the scrip of ISL and to depress the market price of the shares of ISL.
- (c) They contended that the basic and fundamental aspect of Investigation Report of BSE, which was being ignored by SEBI, was:
  - (i) ISL was a loss making company and the shares price of ISL was not worth above par;

- (ii) The Directors of ISL were trying to mislead the investigation agencies by stating that the price fall was due to an intention to depress the price;
  - (iii) There was not much trading in the scrip between the sharp price rise and the sharp price fall;
  - (iv) The sales of the ISL scrip were mainly due to the fact that most of the shareholders had acquired the shares at Rs.10/- and wanted to liquidate their holdings as company was making losses;
  - (v) The Directors of the company had themselves admitted that the share price of the company was not worth above par;
  - (vi) There was no concrete evidence to establish deliberate hammering of the price of the scrip except certain instances wherein certain members had placed sell orders at the lower circuit rate on consecutive days.
- (d) They further submitted that the above observations in the investigation report establish that the price of ISL shares prevailing as on 15.02.2002 and 19.02.2002 were itself unnatural prices, not reflective of the state of affairs of ISL. It was perfectly natural for the shareholders of ISL who had acquired the shares at par, to sell their shares at the then prevailing high price, particularly, since ISL did not have any profits to justify such high price and accordingly the sale effected by Amal Parikh and Uday Shah on 19.02.2002 cannot be assailed as being violative of Regulation 4 of the FUTP Regulations. The purchase of shares by VIPL on 20.03.2002 was a business decision done at the then prevailing market price and could not be assailed as being violative of Regulation 4 of FUTP Regulations, particularly in absence of any particulars.
- (e) VIPL denied that the transaction of sale of shares of ISL by Amal Parikh and Uday Shah on 19.02.2002 and the transaction of purchase of shares of ISL by VIPL on 20.03.2002 were done with view to distort the equilibrium of trading in the scrip and to depress the prevailing market price, as alleged. They stated that there was no evidence or document in the investigation report or in the show cause notice to substantiate the allegation that the fall in the price of ISL shares on 20.02.2002 and thereafter was in any way connected or arose as a result of sale of 1,50,000 ISL shares on 19.02.2002. The decision to sell 1,50,000 shares was a business decision of Amal Parikh and Uday Shah since ISL scrip was quoting at an attractive price, given that the allotment of shares had been done at par and the sale was done transparently through the BSE BOLT system.
- (f) VIPL further submitted that the act of OSBPL having purchased 1,45,000 shares on 19.02.2002 was no basis to conclude and allege that the transaction was done with a view to depress the market price of the ISL scrip or that the said transaction resulted in subsequent fall of the ISL scrip over the next 30 days, when it was an admitted position that neither VIPL nor Amal Parikh nor Uday Shah had any dealings in the scrip from 20.02.2002 to 19.03.2002.
- (g) VIPL contended that the decision to sell the 1,50,000 shares was taken by Amal Parikh and Uday Shah prior to 15.02.2002 and these shares were transferred to the Pool a/c of their broker OSBPL on 09.02.2002 itself, with the intention of selling shares in the market at BSE. The shares were transferred to the Pool a/c of OSBPL earlier than the actual date of sale since the ISL shares were illiquid and by such transfer, Amal Parikh and Uday Shah would have saved on payment of heavy margin to the broker. There was no irregularity involved or violation of any law in transferring the said 1,50,000 shares of ISL to the Pool a/c of OSBPL. Thereafter, the sale of the said shares was effected on 19.02.2002, at the prevailing market price, through the BOLT system on BSE.
- (h) They further submitted that the price of the scrip of ISL consistently started falling from 20.01.2002 not because of the sale of 1,50,000 shares effected on 19.02.2002 but because the market perception of the ISL scrip had changed and that the free fall of the ISL scrip must be directly attributable to the realization in the market that the high price of ISL scrip was not reflective of its true worth.
- (i) They submitted that the transaction of sale of ISL shares by Amal Parikh and Uday Shah on 19.02.2002 and the transaction of purchase of ISL shares by VIPL on 20.02.2002 were delivery based against the receipt and payment of valuable consideration and no taint of illegality can be attached to a bona fide transaction done in a transparent manner through the BOLT system of BSE.
- (j) With regard to not holding of shares in their individual demat account even for a minimum period of one year, they were not eligible for tax benefit they submitted that it cannot become a ground to allege violation of Regulation 4 of SEBI (FUTP) Regulations. There is no requirement that shares to be held for a minimum period of one year, it is entirely at the discretion of an assessee as to when he would sell his holding in a particular company.
- (k) VIPL submitted that transaction in ISL shares done after 20.03.2002 were not relevant at all because the substantial fall in the price of the ISL scrip had already taken place between 20.02.2002 and 20.03.2002. VIPL stated that the logical conclusion must be that the price of ISL scrip came down to realistic levels due to structural and underlying effect as ISL had yet to breakeven and was making losses. They therefore denied that they acted

in concert with Amal Parikh and Uday Shah to distort the equilibrium of trading in the ISL scrip, with a view to depress the prevailing market price.

(l) VIPL further submitted that they did not enter into any sale transaction during the period from 20.02.2002 to 19.03.2002.

(m) With regard to alleged violation of SEBI (FUTP) Regulations, in the show cause notice, VIPL submitted as under:

(1) The transaction of sale and purchase of ISL scrip were genuine transactions driven by bona fide commercial considerations; done in transparent manner through the BOLT system of BSE; done at a prevailing market price against receipt and payment of valuable consideration and were delivery based.

(2) It was further stated that in order to attract SEBI (FUTP) Regulations the intention of the person was relevant and that the element of mens rea was involved. It is submitted that the ingredient of deceit would be an essential factor in order to sustain an allegation of fraud or market manipulation and genuine transaction by itself cannot attract the provisions of Regulation 4, though such a transaction may have resulted in market price variation. There was no intention on their part to depress the price of ISL scrip and such intention, if any, cannot be assumed by SEBI but must be established by cogent evidence.

(3) They further submitted that the transaction of sale was genuine, fair and transparent transaction and it cannot be alleged that it was "calculated to create" a false or misleading appearance of trading on securities market. It was also stated that there was no evidence that the transaction of sale done by Amal Parikh and Uday Shah was with any dishonest intention or ulterior motive or that the purchase transaction done by VIPL with any dishonest intention or ulterior motive, they were not aware of the fact that subsequent to the sale, the price of ISL scrip would begin falling. Therefore, they had not violated the provisions of clause (b) of Regulation 4 of SEBI (FUTP) Regulations.

(4) They further submitted that there was nothing to support the allegation that the transaction of sale by Amal Parikh and Uday Shah or purchase of ISL by VIPL amounted to indulging in an act which resulted in reflection of price of securities based on transactions that are not genuine trade transactions. They submit that both the transactions of sale and purchase of shares of ISL were genuine trades, done on the floor of BSE through BOLT system and therefore the transaction being genuine, any reflection of price of ISL thereafter cannot be regarded as reflection of prices based on non genuine trade transaction, therefore they have not violated the Clause (c) of Regulation 4 of SEBI (FUTP) Regulation.

(5) VIPL submitted that there was nothing in the show cause notice to support the allegation that the transaction of sale and purchase of ISL scrip were not intended to effect transfer of beneficial ownership but intended to operate only as a device to depress market price of scrip of ISL. Both the transactions of sale and purchase of ISL scrip were done on BSE BOLT system and were genuine commercial transactions. Therefore, they submitted that in both the transactions of purchase and sale it was always intended to transfer beneficial ownership to the purchaser viz. Ohm and Viram, as the case may be and the beneficial interest in fact was duly transferred. Hence they submitted that they had not violated Clause (d) of Regulation 4 of the SEBI (FUTP) Regulations.

8. An opportunity for personal hearing was given to VIPL, Amal Parikh and Uday Shah on 29.01.04. They appeared through their counsel and made submissions. They also forwarded written submissions on 9.2.2004. Their submissions were as under:

(1) They denied the transactions entered into by them were fictitious transactions which resulted in misleading appearance of trading and also denied that they simultaneously indulged in any act which resulted in reflection of prices of securities based on transactions that were not 'genuine' trade transactions.

(2) They further submitted the transactions were genuine transactions and not 'fictitious transactions', as alleged.

(3) They further submitted that the sale of shares by Amal Parikh and Uday Shah on 19.02.2002 and the purchase of shares by Viram on 20.03.2002 were for valuable consideration and resulted in the transfer of beneficial ownership in the said shares. Both the said transactions were done through the BOLT system of BSE. They contended that the allegation that the transactions are fictitious or not genuine had no basis and was unfounded.

(4) They further submitted that the said transactions were independent transactions carried out by separate legal entities acting in furtherance to their independent interests and that there was no material produced to indicate linkage between these transactions. They further contended that mere existence of a connection among the noticees and OSBPL was not sufficient to allege that the transactions are fictitious transactions or not genuine trade transactions, since there is transfer of beneficial ownership and payment of valuable consideration. They stated that there was no motive / intended to depress the market price. Moreover sale in one tranche of entire shareholding

did not suggest any intention to depress the market price. The shares were at all times within the control of parties alleged to be connected. A fall in the share prices would have been detrimental to their common interests.

- (5) There was no material on record to establish that the transactions of 19.02.2002 and 20.03.2002 resulted in the decline in the price of ISL shares. They submit that aforesaid allegations against them were totally baseless, misconceived and unfounded since the price of the shares of ISL prevailing prior to 19.02.2002 was itself an unrealistic and probably manipulated price. The subject transactions had no connection with this artificial price.
- (6) They further submit that the fall in price of the shares of ISL after 19.02.2002 cannot be attributed to the sale of 1,50,000 shares of ISL by Amal Parikh and Uday Shah. They submitted that the sale of shares by Amal Parikh and Uday Shah was done by them in view of the high price of the shares then prevailing.
- (7) They further submitted that the transaction of sale and purchase of 1,45,000 shares between Viram and OSBPL on 20.03.2002 was a transaction at the prevailing market price of the shares as on that date and the fall in the share price could not in any way be attributed to that transaction, since there had been a continuous fall in the share price of ISL prior to 20.03.2002.
- (8) The noticees submit that the complaint of the Managing Director dated 22.02.2002 is itself vitiated on account of his contradictory statements and on account of his own admission that the share price of ISL was an artificial price and not related to the true value of the scrip. They submitted that if at all there was any manipulation in the share scrip, the enquiry should be directed at the management of ISL and not against the notice who are investors in ISL.
- (9) Based on the aforesaid, the noticees submitted that they had not violated the SEBI (FUTP) Regulations.
- (10) With respect to clause (b) of the SEBI (FUTP) Regulations they submitted that the transactions were genuine trade transactions done on the floor of BSE through the BOLT system of BSE. They further submitted that there was nothing in the show cause notice to support the allegation that by selling or purchasing the shares of ISL any of the noticees indulged in any act which was calculated to create a false or misleading appearance of trading in the shares of ISL since the said transactions took place by delivery and payment. Therefore, the provisions of Clause (b) of Regulation 4 would not apply.
- (11) It is submitted that any change in prices of shares of ISL cannot convert a genuine transaction of sale and purchase of shares by noticee to a non genuine trade transaction. Therefore the provisions of clause (c) of Regulation 4 would not apply.
- (12) They submitted that the element of intention and mens rea were absent in the present case. The noticee had neither intention to cause any fall in the share price of ISL nor any fore knowledge of the fact that such fall would result. It was submitted that in order for there to be a violation of Regulations it was essential that there necessarily be an element of mens rea or atleast some willful intent. There would also have been ingredient of deceit and intent on part of those charged with an allegation under the Regulation. It was submitted that the documentary evidence or otherwise did not prove either mens rea or the requisite intent or willful conduct in case of any or all the noticees.

#### **CONSIDERATION OF ISSUES**

9. I have considered the reply to the show cause notice and subsequent submissions made by Shri Amal Parikh, Shri Uday Shah and VIPL and other material on record. I find that the following issues arise for consideration:

- A. *Whether Shri Amal Parikh, Shri Uday Shah and VIPL indulged in creation of an artificial market for the shares of ISL and manipulated the price of the scrip during the period 15.2.2002 to 10.4.2002 and***
- B. *If so, whether they have violated the FUTP Regulations, 1995.***

10. I note that during the period 15.2.2002 to 10.4.2002, the price of the scrip of ISL on BSE moved as under:

| Date              | Open       | High       | Low        | Close      | Volume        |
|-------------------|------------|------------|------------|------------|---------------|
| 15/02/2002        | 104        | 104        | 104        | 104        | 50            |
| <b>19/02/2002</b> | <b>103</b> | <b>104</b> | <b>103</b> | <b>103</b> | <b>150002</b> |
| 20/02/2002        | 82.45      | 82.45      | 82.45      | 82.45      | 50            |
| 21/02/2002        | 66         | 66         | 66         | 66         | 250           |
| 22/02/2002        | 52.85      | 52.85      | 52.85      | 52.85      | 400           |
| 26/02/2002        | 48.65      | 48.65      | 48.65      | 48.65      | 25            |
| 27/02/2002        | 44.8       | 44.8       | 44.8       | 44.8       | 502           |
| 28/02/2002        | 41.25      | 41.25      | 41.25      | 41.25      | 50            |
| 04/03/2002        | 38         | 38         | 38         | 38         | 100           |

|                   |              |              |              |              |               |
|-------------------|--------------|--------------|--------------|--------------|---------------|
| 05/03/2002        | 35           | 39           | 35           | 39           | 50            |
| 06/03/2002        | 35.9         | 41.8         | 35.9         | 41.8         | 20            |
| 07/03/2002        | 38.5         | 43.9         | 38.5         | 38.5         | 61            |
| 11/03/2002        | 35.45        | 35.45        | 35.45        | 35.45        | 55            |
| 19/03/2002        | 32.65        | 32.65        | 32.65        | 32.65        | 10            |
| <b>20/03/2002</b> | <b>30.05</b> | <b>30.05</b> | <b>30.05</b> | <b>30.05</b> | <b>145000</b> |
| 21/03/2002        | 27.65        | 27.65        | 27.65        | 27.65        | 235           |
| 26/03/2002        | 25.45        | 25.45        | 25.45        | 25.45        | 2             |
| 27/03/2002        | 23.45        | 23.45        | 23.45        | 23.45        | 28            |
| 28/03/2002        | 21.6         | 21.6         | 21.6         | 21.6         | 185           |
| 01/04/2002        | 19.9         | 19.9         | 19.9         | 19.9         | 25            |
| 02/04/2002        | 18.35        | 18.35        | 18.35        | 18.35        | 5             |
| 04/04/2002        | 16.9         | 17.1         | 16.9         | 16.9         | 500           |
| 05/04/2002        | 15.55        | 15.55        | 15.55        | 15.55        | 275           |
| 08/04/2002        | 14.35        | 14.35        | 14.35        | 14.35        | 200           |
| 09/04/2002        | 15.45        | 15.45        | 13.25        | 13.25        | 100           |
| 10/04/2002        | 11.95        | 11.95        | 11.95        | 11.95        | 3775          |

\* The portion in bold indicates the trades by the noticees.

From the above, it is apparent that there was a steady decline in the price of the scrip from 15.2.2002 to 10.4.2002; the price declined from Rs.104.00 on 15.2.2002 to Rs.11.95 on 10.4.2002 i.e. a decline of 88.51%.

11. I also note that the scrip of ISL was not a liquid one and was infrequently traded during the said period. However, on 19.2.2002 and 20.3.2002 the volume of trading was abnormally large. I note that on the said days, OSBPL had traded in the shares of ISL on behalf of VIPL, Shri Amal Parikh and Shri Uday Shah. Details of the transactions have been given in paras 4 (a) on page 3 and para 4(b) on page 4 supra.
12. From the said details, I observe that on 19.2.2002 OSBPL had placed two large sell orders, only to delete them seconds later and also executed a self order by placing a buy and sell order within seconds of each other so that the same were matched. I further observe that on 20.3.2002 also, two self deals of the nature mentioned above were executed, with a time gap of hardly a minute between the buy and sell orders.
13. I also note that the trades on both these days were carried out between 4 entities namely Shri Amal Parikh, Shri Uday Shah, VIPL and OSBPL. I also note that in their statements before the Investigating Authority on 17.7.2003, Shri Amal Parikh and Shri Uday Shah stated that:
  - (a) on 19.2.2002, they had sold 75,000 shares each @ Rs.103.00 and OSBPL has purchased 1,45,000 shares through the BOLT (trading system on BSE)
  - (b) on 20.3.2002, OSBPL sold 1,45,000 shares @ Rs.30.05 and VIPL purchased the same through the BOLT.
14. It is pertinent to note that Shri Amal Parikh and Shri Uday Shah were the directors of OSBPL and they both were also equal shareholders of VIPL. Thus, I note that the said persons/entities had traded amongst themselves, through their broking firm, with intention to create an artificial market for the shares of ISL.
15. I further note that Shri Amal Parikh, Shri Uday Shah and VIPL had placed large sale orders on the following dates:

| Date      | Size of Sell Order placed by OSBPL | Total valid Sell Orders placed | Opening Price (Rs.) | Closing Price (Rs.) |
|-----------|------------------------------------|--------------------------------|---------------------|---------------------|
| 26.3.2002 | 20,000                             | 23,115                         | 25.45               | 25.45               |
| 27.3.2002 | 10,000                             | 12,863                         | 23.45               | 23.45               |
| 1.4.2002  | 20,000                             | 21,670                         | 19.9                | 19.9                |
| 4.4.2002  | 20,000                             | 22,000                         | 16.9                | 16.9                |
| 5.4.2002  | 19,800                             | 30,850                         | 15.55               | 15.55               |
| 8.4.2002  | 19,800                             | 30,150                         | 14.35               | 14.35               |

The above sell orders were placed by OSBPL on behalf of Shri Amal Parikh, Shri Uday Shah and VIPL. However, most of these sell orders remained unexecuted.

16. VIPL, in their reply, had stated that the price of the share of ISL prior to 19.2.2002 was never a genuine price, but a manipulated one. In this regard they had drawn attention to the fact that the prevailing price of the scrip on HSE was Rs.6/-. I note that the allegation in the show cause notice was not regarding whether the price of the scrip of ISL prior to

19.2.2002 was a genuine one or not, rather it was whether M/s. Uday Shah, Amal Parikh and VIPL had indulged in practices that were prohibited vide Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995.

17. I have noted that none of the entities mentioned above have denied that they were responsible for trades amounting to 97% during the relevant period, other than stating that sale against payment did not amount to creating a false or misleading appearance of trading on the securities market. I have also noted that the concerned entities have not touched upon the fact that they were all interconnected with each other and they the above trades were all done among themselves. I note that OSBPL had, vide letter dated 29.03.03, stated that these trade were done for their tax planning purposes. However, this submission also does not seem to merit any consideration as the holding period of these shares was only 6 months i.e. less than the minimum period of one year required for availing of tax benefits with respect to the capital loss sustained by them. In any case, the stock market is not a forum for entering into artificial trades meant solely for the purpose of tax planning.
18. The fact is that the trades of these 4 entities, in the shares of ISL, accounted for a significant percentage of the total volume at BSE, during the period under investigation. I also observe that these trades were all in the nature of self deals, with the broker, the buyers and the sellers all being connected to each other, as described at para 14 above.
19. Taken cumulatively, the above facts lead one to believe that the trades under consideration were non-genuine and were meant to serve purposes other than that of ordinary trading in the market.
20. I note that Regulation 4 of the FUTP Regulations, 1995 provides that:

**Prohibition against Market Manipulation**

*4. No person shall -*

*(a) .....*

*(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;*

*(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;*

*(d) .....*

*(e) .....*

21. In the above case, in view of the findings regarding pattern of trading, gross volumes traded in the scrip of SPML, the fact that the broker and counter party being associates etc, leads me to conclude that VIPL, Shri Amal Parikh and Shri Uday Shah have acted in violation of the provisions of Regulation 4 (b) and (c) of the FUTP Regulations, 1995.
22. I note that VIPL, Amal Parikh and Uday Shah have acted in such a manner that has placed the interest of investors at risk and also jeopardized the trust of investors in the safety and integrity of the securities market. I find that it is necessary in the interest of investors in the securities market to restrain entities/persons such as VIPL, Amal Parikh and Uday Shah from being associated with the securities market.

**ORDER**

23. Therefore, I, in exercise of powers conferred on me vide Sections 11(4) and 11B read with Section 19 of the SEBI Act and Regulation 11 of the SEBI (FUTP) Regulations, 2003, do hereby direct Viram Investments Private Limited, Shri Amal Parikh and Shri Uday Shah to disassociate themselves from the securities market and not to deal in securities for a period of six months.
24. This order shall come into force immediately.

**PLACE : MUMBAI**

**DATE : SEPTEMBER 8, 2004**

**A.K.BATRA**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**