

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

Against M/s Pawankumar Parmeshwarlal Choudhary, a registered broker of BSE in respect of its dealings in the scrip of Prudential Pharmaceuticals Ltd.

DATE OF HEARING: 26.02.2007

APPEARANCES:

FOR COMPANIES/ BROKERS:

1. Shri. Pawankumar Choudhary, Proprietor
2. Shri. R.K Panday, Manager.

FOR SEBI:

1. Mrs. Barnali Mukherjee, DGM, SEBI
2. Shri. Vir Sahib Singh, Manager, SEBI
3. Shri. Mohamed Rahaz P.M., Legal Officer, SEBI

ORDER

**Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry
by Enquiry Officer and Imposing Penalty) Regulations, 2002**

1.0 BACKGROUND

- 1.1 Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the alleged price manipulation in the scrip of Prudential Pharmaceuticals Limited (here referred to as "PPL") for the period from July 09, 2001 to March 06, 2002 on the basis of the investigation report submitted by BSE. BSE in its investigation report inter alia stated that the major broker M/s Pawankumar Parmeshwarlal Choudhary (hereinafter referred to in short as "Noticee") bearing SEBI Registration No. INB010018813, had executed synchronised trades with another M/s Tropical Securities and Investments Private Limited (hereinafter referred to in short as "Tropical") It had received shares through off market transactions from the entities related to Tropical.
- 1.2 SEBI after considering the Investigation Report appointed an Enquiry Officer vide Order dated June 02, 2006 to enquire into the violations allegedly committed by the Noticee under the provisions Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations") and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 (hereinafter referred to as "PFUTP Regulations") as also Securities and Exchange Board of India Regulations, 1992.

2.0 ENQUIRY PROCEEDINGS

- 2.1 The Enquiry Officer issued notice vide letter IVD/ID8/BM/SS/PPL/71365/2006 dated July 13, 2006 communicating the violations alleged to have been committed by it, in terms of Regulation 6 (1) Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to in short as "Enquiry Regulation").

- 2.2 The Noticee replied to the show cause notice vide letter dated August 2, 2006 and submitted the following:

"I We have no role in rise or in fall in market price of scrip of PPL during the period July 9, 2001 to March 6, 2002.

II. We refute that we had entered into any structured trades in the scrip with BSE member Tropical. The sale orders were placed on the BOLT system and it was open for anyone throughout the day to punch such trade. The trades were executed at the then prevailing market price without knowing who the counterparty was.

III. We were in the business of badla finance for many years and during the period under investigation entered into spot financing transaction which was most widely practice at the relevant time in several scrips including in the scrip of PPL.

IV. The transaction in PPL done by our clients was identical in nature i.e. spot financing and the nature of transaction has already been subjected to investigation and orders passed thereon. The spot financing transaction being identical in nature in all the scrips there can not be repetitive proceedings on the same cause of action."

- 2.3 The Enquiry Officer granted an opportunity of hearing in the matter on August 23, 2006. Shri Parameshwarlal Choudhary, authorized representative of the Noticee attended the hearing before the Enquiry Officer on the said date and submitted that the allegation of execution of structured trades against them is quite unjust. The Enquiry Officer, after conducting an enquiry in accordance with the provisions of Enquiry Regulations, submitted a report dated August 31, 2006 wherein he observed that the Noticee violated the provisions of Regulation 4(b) & (c) of PFUTP and Regulation 7 read with clause A(1) to (5) of Code of Conduct as specified in Schedule II of Stock Broker Regulations. He recommended suspension of registration of the Noticee for a period of one month.

3.0 SHOW CAUSE NOTICE

- 3.1 Pursuant to the receipt of the said Enquiry Report, a Show Cause Notice dated September 08, 2006 was issued to Noticee, along with a copy of the said Enquiry Report, advising them to show cause as to why the action, as recommended by the Enquiry Officer, should not be imposed on it. The Noticee submitted its reply to the said show cause notice, vide letter dated September 25, 2006.

4.0 REPLY OF THE NOTICEE TO THE SHOW CAUSE NOTICE.

- 4.1 The Noticee submitted that their trades for only six days were considered as synchronised / matched during the investigation period of nine months. They also submitted that only 200 shares of 52.85 each were matched on July 09, 2001, whereas 9,800 shares dealt on the same day were considered as normal trade. Likewise, they submitted that 3,000 shares were allegedly matched on July 10, 2001 while on the same day total 8,000 shares were sold out of which 5,000 shares were considered as normal trades. On July 11, 2001 also, the total deal of 7,000 shares were executed of which 2,000 shares were alleged as structured deal. The Noticee submitted that out of the alleged six days of synchronised trades, minimum alleged deal was 200 shares while maximum alleged deal was of 3,910 shares worth Rs 66,079/- i.e. on October 01, 2001. They have also produced a comparative calculation statement of alleged synchronised trades alongwith their reply.

- 4.2 The Noticee submitted that 12,810 shares out of a total of 82,534 shares are just approximately 15% and that too only on 6 days in nine months and the quantities like 200 to 3,910 shares can be considered for penalizing them.

- 4.3 With regard to time gap of seven seconds on first alleged trades of just 200 shares and a gap of 48 seconds can not be considered for penalizing them on the following reasons:

- " - People sitting on the bolt very specially trained to be very very fast and are very keen to grab the trades.
- Over and above the BSE mainframe computer is also very fast, which takes care of not only a second but also fractions of seconds.
- As soon as it is broadcasted / displayed on the bolt system, anybody can grab it on very next second.

And we should not be penalized for this."

- 4.4 The Noticee has also produced statement showing several synchronised / identical deals in many other scrips like Hotel Leela, JaiPrakash Ind., Jagsonpal Pharma and Gold Stone Technology etc. and stated that they are ready to give number of Xerox of stock registers showing thousands of such trades. On the basis of the above statement containing the details of identical trades in many scrips, the Noticee submitted that their trades in PPL were not isolated deals.

- 4.5 The Noticee submitted that they do not have any motive or interest in holding or trading in the scrip of PPL. They further submitted that they had not made any default either in delivery or payment.

- 4.6 The Noticee stated that the major sellers like UTI Securities Ltd. who sold 1,96,050 shares for the institution like UTI Bank Ltd. when the index slipped to its record low of 2,600 points were the major sellers for the fall in the price of PPL.

5.0 HEARING

- 5.1 The Noticee in their above reply requested for personal hearing and accordingly they were advised to attend the personal hearing before me at SEBI's Head Office at Mumbai on February 26, 2007. The Noticee attended the hearing and reiterated the submissions they had already made in their reply to the Show Cause Notice.

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 I have carefully examined the enquiry report, show cause notice, reply of the Noticee and submissions made at the time of hearing.

- 6.2 M/s Prudential Pharmaceuticals Ltd. was originally incorporated in the name of Pharmasia Drugs and Chemicals Pvt. Ltd. on June 25, 1985. The company became a deemed Public Limited Co w.e.f. February 06, 1993 and converted into a Public Limited Company by a resolution on November 03, 1994. A fresh certificate of incorporation consequent on the conversion of the company issued on February 15, 1995. The company's name was also changed to M/s Prudential Pharmaceuticals Ltd. (PPL) w.e.f. February 22, 1995.
- 6.3 The price of the scrip during the period from July 09, 2001 to March 06, 2002 decreased from Rs. 54.20 to Rs. 8.00 and during the same period 4,41,970 shares were traded at BSE. Further observed from the details of trades executed in the scrip of PPL that whenever the broker Tropical, UTI Securities Limited and the Noticee were not trading in the scrip, price was falling. These trades have not traded in the scrip from July 18, 2001 to July 24, 2001 and during this period the price came down from Rs. 41 to Rs. 33.45 and during the period of August 01, 2001 to August 24, 2001 brokers traded for 130 shares only and the price came down from Rs. 22.15 to Rs. 16.50. Therefore, it can be observed from the above that whenever these brokers were not trading in the scrip price was falling and hence these brokers were supporting the price of the scrip.
- 6.4 I have also noted the financial performance of the company PPL for the financial years ended on March 31, 2001 and 2002 and quarters ended on December 31, 2001 and 2002. Though, the sales company increased by 28.46% from March 31, 2001 to March 31, 2002, the profit of the company decreased by 27% due to substantial increase in the expenditure of the company from Rs. 8.2 to Rs. 10.75 crore. Further, EPS of the company declined by 21% during the financial year 2001-02 and the company had declared dividend of 10% for the year ended on March 31, 2001. It can be observed that the financial performance of the company was not satisfactory.
- 6.5 I have also noted from the trading details of the scrip for the period of July 09, 2001 to March 06, 2002 that the price of the scrip fell from Rs 54.20 to Rs 8.20 and during the same period 4,41,970 shares were traded at BSE.
- 6.6 I find that the Noticee was one of the major seller in the scrip and sold 82,534 (18.67%) during the period under consideration. I also find that the Noticee executed synchronised trades in the scrip of PPL with Tropical whose major client was Pursarth Trading Company Private Limited (hereinafter referred to in short as "Pursarth"), an associate concern of Tropical. Tropical purchased 2,33,421 shares and sold 75 shares for Pursarth. Tropical has also purchased 14,629 shares and sold 25 shares in its own trading account and purchased 25 shares for its client M/s Veena M. Dalal. The Noticee sold 82,534 shares for his 5 clients viz. M/s P L Choudhary & Co. (37,100), Parmeshwarlal Pawankumar Choudhary (HUF) (26,234), Pawankumar Choudhary (HUF) (4,200), Ms. Sabitaridebi Choudhary (5,000) and Ms. Kanta Singhania (10,000). All of these clients were related to Noticee as they all are family members of Noticee.
- 6.7 I find that the Noticee had entered into synchronised / structured deals with Tropical. The synchronized trade is a kind of transactions where the seller and buyer execute the trade for almost the same quantity and price at substantially the same time. I find that synchronized deal per se is not illegal. On the other hand, the synchronized deal with fraudulent or deceptive intention to create a false appearance of trading and to manipulate the price and volume of the scrip price to tamper the price discovery mechanism of stock exchange is a serious matter.
- 6.8 Hence, the issue to be decided in this case is whether the Noticee has carried out any such trades and to take a decision as to whether the penalty recommended by the Enquiry Officer against the Noticee is warranted or not. In order to decide the said issue, I felt it necessary to analyse the details of synchronised trades executed by the Noticee. (As given on next page)

Details of synchronised trades of the Noticee with Tropical

Trade No	Buy Order No	Buy Order Time	Buy Order Price	Buy Order Quantity	Buy Member Code	Buy Client Code	Traded Quantity	Trade Price	Trade Date	Trade Time	Sell Order No	Sell Order Time	Sell Order Price	Sell Order Quantity	Sell Member Code	Sell Client Code	Difference between sell time and buy time order	Difference between price of buy and sell order	Difference between quantity of buy and sell order
99	65000100010009434	14:20:36	52.85	200	D0650	TT1	200	52.85	7/9/2001	14:20:36	55000100010005269	14:20:29	52.85	200	D0550	1108	0:00:07		0
168	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
169	65000200010012237	12:58:41	51.4	3000	D0650	TT1	200	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
170	65000200010012237	12:58:41	51.4	3000	D0650	TT1	100	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
171	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
172	65000200010012237	12:58:41	51.4	3000	D0650	TT1	100	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
173	65000200010012237	12:58:41	51.4	3000	D0650	TT1	200	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
174	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
175	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
176	65000200010012237	12:58:41	51.4	3000	D0650	TT1	200	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
177	65000200010012237	12:58:41	51.4	3000	D0650	TT1	100	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
178	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
179	65000200010012237	12:58:41	51.4	3000	D0650	TT1	100	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
180	65000200010012237	12:58:41	51.4	3000	D0650	TT1	200	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
181	65000200010012237	12:58:41	51.4	3000	D0650	TT1	300	51.40	7/10/2001	12:58:41	55000100010005287	12:58:38	51.4	3000	D0550	1003	0:00:03		0
271	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
272	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
273	65000200010012271	12:40:33	49.95	2000	D0650	TT	100	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
274	65000200010012271	12:40:33	49.95	2000	D0650	TT													
275	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
276	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
277	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
278	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
279	65000200010012271	12:40:33	49.95	2000	D0650	TT	100	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
280	65000200010012271	12:40:33	49.95	2000	D0650	TT	100	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
281	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
282	65000200010012271	12:40:33	49.95	2000	D0650	TT	200	49.95	7/11/2001	12:40:41	55000100010005300	12:40:40	49.95	2000	D0550	1003	0:00:07		0
5	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
6	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
7	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
8	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
9	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
10	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
11	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
12	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
13	65000200010013476	14:39:31	17.8	3000	D0650	TT1	300	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
14	65000200010013476	14:39:31	17.8	3000	D0650	TT1	50	17.808	28/2001	14:39:32	55000100010006035	14:39:28	17.8	2750	D0550	1104	0:00:03		0
4	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
5	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
6	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
7	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
8	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
9	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
10	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
11	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
12	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
13	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
14	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
15	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
16	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
17	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
18	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
19	65000200010014053	15:26:02	17	950	D0650	TT1	50	17.009	19/2001	15:26:03	55000100010006658	15:25:14	17	1000	D0550	1107	0:00:48		0
20	65000200010014053	15:26:02	17	950	D														

Trade No	Buy Order No	Buy Order Time	Buy Order Price	Buy Order Quantity	Buy Member Code	Buy Client Code	Traded Quantity	Trade Price	Trade Date	Trade Time	Sell Order No	Sell Order Time	Sell Order Price	Sell Order Quantity	Sell Member Code	Sell Client Code	Difference between sell time and buy time order	Difference between price of buy and sell order	Difference between quantity of buy and sell order
3	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
4	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
5	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
6	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
7	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
8	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
9	65000200010014215	15:58:38	16.9	4000	D0650	TT1	400	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0
10	65000200010014215	15:58:38	16.9	4000	D0650	TT1	310	16.90	10/1/2001	15:58:38	55000100010006896	15:58:30	16.9	3910	D0550	1107	0:00:08		0

6.9 I find that the Noticee executed 66 instances of synchronised trades with Tropical within a period of 6 days (i.e on July 9, 2001 - one trade, July 10, 2001-14 trades, July 11, 2001-12 trades, Aug 2001 - 10 trades, September 19, 2001 - 19 trades, October 01, 2001 - 10 trades). The Noticee sold 82,534 shares on behalf of its clients, out of which 33,410 shares were bought by Tropical. The Noticee observed that 12,810 shares were bought by Tropical through structured trades where Tropical placed 6 buy orders for 13,150 shares and the Noticee also placed 6 sell orders for 12,850 shares. These trades were executed within a time gap of 3 to a maximum 48 seconds. I find that synchronized/matching trades are evident from the above tables and in all cases, there is no price difference between buy and sell orders as also the quantity difference between buy and sell orders.

6.10 I find that the above trades executed by the Noticee were all synchronised and this was not disputed by them. What they submitted before me is that they executed trades on the BOLT system of the relevant time in the normal and ordinary course of business and they had no intention to hamper the stock exchange mechanism. They submitted that they have executed identical trades in other scrips and the same was not at all considered as illegal. They have also produced Xerox copy of their stock register showing their identical trades in some other scrips. In this regard, it is noted that the instant proceeding was initiated on account of their creating false market in the scrip of PPL. The execution of similar trades in some other scrips where no action had been initiated cannot be an excuse for dropping proceedings in this matter.

6.11 I have also examined the statement recorded by the Investigating Officer. I find that M/s Pawankumar Parmeshwarlal Choudhary, M/s P L Choudhary & Co, Parmeshwarlal Pawankumar Choudhary (HUF), Pawankumar Choudhary (HUF), Ms. Sabitaridebi Choudhary and Ms. Kanta Singhania were summoned by the Investigating Officer for recording their statement. Shri Pawankumar Parmeshwarlal Choudhary (Proprietor of M/s Parmeshwarlal Pawankumar Choudhary) appeared before the investigating officer on behalf of above entities. When he submitted that the above entities belonging to Noticee purchased 82,848 shares through off market from Harbinger Trading Company Private Limited (associate concern of Tropical Securities and Investments Private Limited) and sold 82,534 market. In the statement he has stated,

"All of the above entities are in the business of finance since very long and during this period they have done sell and cash type business with Harbinger Trading Company Private Limited. In this process the above entities have earned interest income."

6.12 With regard to the synchronised trades of Noticee with Tropical, he has stated that he placed the sell order at system in good faith. In continuation to his statement he furnished the reply of his who has submitted that,

- "the parties interested in sell-n-cash usually transfers "N" quantity of shares and "N" number of scrips in our demat account. As per their need, they ask us to sell all or few out of these transferred. They give instruction to us to sell the shares in the market and ask them to pay after reducing their sell-n-cash charges approximately 1.5% to 2%. When they ask us to sell market, we ask M/s Pawankumar Parmeshwarlal Choudhary to sell "N" number of quantity in the market of particular scrip." They also submitted that, "sometimes the other party is in so hurry requires money so urgently that he can not wait for a long time, as some of their pay in or margin or high value cheques might be awaiting for clearance in the bank. In these circumstances some that other party may want to continue to hold their holdings or any other such circumstances/reasons, which are better known to them only, they sometime arrange that the sell order is immediately executed."*

6.13 From the above statement, the relationship of the Noticee and its client and their intention to execute the trades in the scrip of PPL are established. I find that the entire charge against the Noticee for execution of synchronized deals with an intention to distort the market equilibrium in the scrip of PPL to derive undue gain as is evident from the statement of the Proprietor of the Noticee. Further director of Tropical, Shri. Milan Dalal has stated before the investigating officer that all the trades were executed to tide over their financial difficulties as its group entities viz. Pursarth, CFL Securities Ltd. and Harbinger Trading Private Limited were facing financial difficulties. I am of the view that if a broker intends to use the technique of synchronization of trade, it will definitely affect the discovery mechanism of the exchange irrespective of the number of instances of the synchronised trades. The relevant details of the synchronized trades had been furnished to the Noticee for enquiry stage itself. However, the Noticee failed to give an acceptable explanation for these trades either before the Enquiry Officer or before me. I am of the view that synchronized deals are possible as the trades are put in the system with prior understanding. In such cases prices and quantities have been negotiated outside the system and orders had been executed simultaneously. I find that the aforementioned 66 transactions give an impression that these were all synchronized and traded to create artificial market, otherwise there would have been no possibility of such perfect matching of quantity price etc. The said issue was already discussed by the Hon'ble Securities Appellate Tribunal (SAT) in Appeal Nos 54 to 57 of 2002 in the case of Nirmal Bang Securities (P) Ltd. vs. SEBI examining the issue of synchronized trades, the Hon'ble SAT observed as under:

"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSL. The many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading inter se, it is implicit." (emphasis not supplied)

6.14 Once the factum of manipulation is proved as discussed above, then as observed by SAT in the matter of Ketan Parekh Vs SEBI, the investors are affected by the said price difference. The relevant observation made by SAT in this regard is reproduced as below:

"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged."

6.15 Further, I observe that the standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probability suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal AIR, 1966, SC 1734 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank vs ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard.

6.16 In view of these, I find that the Noticee misused stock exchange mechanism to tide over the financial commitments and thus distorted equilibrium of the scrip of PPL. This type of artificial creation in illiquid scrips gives wrong message to the investors and induces them to trade in the shares and face imminent loss. Further, synchronization of trades with mala fide intention to tamper price discovery mechanism of stock exchange and also militates against concept of transparency. These trades abetted in creating artificial volumes and false market in the scrip of PPL and the trades executed by the Noticee are in violation of the provisions of Regulation 4 (b) and (c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Markets) Regulations and the corresponding provisions of 4(1), 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. Regulations 4 (b) and (c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 provides as follows:

4. No person shall

- Indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market.*
- Indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine transactions.*

6.17 Further by entering such trades the Noticee violated the provisions of Regulation 7 read with Clause A (1) to (5) of code of conduct specified under Schedule II of the SEBI (Stock Brokers and intermediaries) Regulations, 1992 which is extracted hereunder:

A (1): A Stock Broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

A (2): A Stock Broker shall act with due skill, care and diligence in the conduct of all his business.

A (3): A Stock Broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making profit.

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

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

6.18 Apart from the above, I also find that the Noticee had committed similar violations in the scrip of M/s Surya Roshni Ltd. by executing synchronised / structured deals with Tropical, which culminated in suspension of its registration for a period of one month vide order dated September 29, 2004 passed by the then Whole Time Member of SEBI. On a perusal of the said order I felt it necessary to mention the following paragraph:

- "I find that the said broker has been responsible in creating artificial volumes in the shares of M/s Surya Roshni Ltd., as observed above and has not taken due care and diligence to observe and compliance of the statutory requirement in conduct of its business as a stock broker. Looking into the violations committed by the said broker, I am satisfied that it is necessary to impose a penalty on the said broker. The same also becomes necessary given that the said broker has already been cautioned on two earlier occasions regarding his compliance with respect to the code of conduct and has also been advised to ensure strict compliance with the same."

6.19 Having considered all aspects of the matter, I find that the penalty of suspension of certificate of registration granted to Noticee for a period of one month recommended by the Enquiry Officer is reasonable.

7.0 ORDER

7.1 Taking into consideration all facts and circumstances of the matter and in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 with Regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of suspension of certificate of registration issued to the Noticee, M/s Pawankumar Parmeshwaelal Choudhary bearing SEBI Registration no. INB010018813 for a period of one month.

7.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai

Date: April 10, 2007

V. K. CHANDRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA