

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : Dr. T.C.NAIR, WHOLE TIME MEMBER

**IN THE MATTER OF M/S. PRERAK CAPITAL SERVICES PVT. LTD.
IN THE SCRIP OF ADANI EXPORTS LTD.**

DATES OF HEARING: 28.03.07, 13.09.07 and 22.10.07

APPEARANCES:

FOR NOTICEE: None

FOR SEBI: Shri P K Bindlish, Chief General Manager
Shri Ansuman Dev Pradhan, Manager
Ms. Kshama Chavan, Legal Officer

ORDER

**UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY
ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.**

1. M/s Prerak Capital Services Pvt. Ltd. (for short PCSL) is a member of the Ahmedabad Stock Exchange registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as a stock broker having SEBI registration No. INB02130730.
2. SEBI initiated investigation into the alleged market manipulation and irregularities in the trading of the shares of Adani Exports Limited [(for short AEL) (presently known as Adani Enterprises Ltd.)] for the period from January 1, 1999 to March 31, 1999 (hereinafter referred to as the relevant period) more particularly for the possible violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations (hereinafter referred to as PFUTP Regulations), SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as Stock Broker Regulations) and SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 (hereinafter referred to as Stock Broker Rules) by PCSL. AEL was listed on National Stock Exchange of India Ltd. (NSE), Bombay Stock Exchange Ltd. (BSE) and Ahmedabad Stock Exchange (ASE) during the relevant period.

3. From the findings of the investigation, it was noted that PCSL was one of the entities who had extensively traded in the scrip of AEL on NSE and BSE as a client through various brokers and had facilitated the market manipulation in the scrip of AEL. Accordingly, it was alleged that PCSL had contravened the provisions of the PFUTP Regulations, the Stock Broker Rules and Stock Broker Regulations. From the trading pattern, it was found that the trading was primarily concentrated amongst 3 brokers – JBS Securities Private Limited (for short JBS), Madhuvan Securities Private Limited (for short Madhuvan) and Money Care Securities & Financial Services Limited (for short Moneycare) and 3 clients; PCSL, M/s Abhinav Investment (for short Abhinav), M/s Anand Investment (for short Anand) who had dealt only through the aforesaid three brokers. The trades done by these clients constituted about 68% of the combined trades in NSE and BSE during the relevant period. The details of trading done by them at NSE and BSE are given in the tables below :

	Total traded volume on the Exchange during the period January 1, 1999 to March 31, 1999 (A)	Combined trades of PCSL, Abhinav and Anand (B)	Percentage (%) contribution of (B) to (A)
NSE	266900	164600	61.7
BSE	214400	165100	77.0
Total	481300	329700	68.5

4. Pursuant to investigation, SEBI appointed an Enquiry officer (for short EO) vide order dated October 20, 2004 under regulation 5(1) of Securities and Exchange Board of India (Procedure For Holding Enquiry By Enquiry Officer And Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the alleged manipulative transactions by PCSL in the scrip of AEL. A show cause notice dated November 24, 2004 was issued to PCSL under Regulation 6(1) of Enquiry Regulations to show cause, as to why enquiry proceedings should not be initiated against it for the alleged violations of Regulation 4 (a), (b),(c) and (d) of PFUTP Regulations 1995 and sub clause (1), (2), (3), (4) and (5) of clause A of Schedule II read with Regulation 7 of the Stock Broker

Regulations and Rule 4 (b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992. Opportunities of hearing were granted to the Broker on various dates but the matter was finally heard on May 12, 2005 whereupon Shri Deepak Shah appeared on behalf of PCSL before the EO and placed on record their submissions vide letter dated May 27, 2005. The EO submitted Enquiry report on August 23, 2005 indicating that PCSL had violated PFUTP Regulations and Stock Broker Rules (as applicable as on date) and Stock Broker Regulations. The EO therefore recommended a minor penalty of suspension of certificate of registration granted to the PCSL for a period of 5 working days only.

5. Pursuant to the submission of the Enquiry Report, a notice dated August 31, 2005 was issued to PCSL along with a copy of the Enquiry Report advising them to show cause as to why the action, as recommended by the EO and action under Regulation 3(2) of SEBI (Criteria For Fit and Proper Person) Regulations, 2004 should not be taken against PCSL. Since the show cause notice was returned undelivered, the ASE was requested to deliver the SCN to member (PCSL). PCSL replied to the SCN vide letter dated September 22, 2005 and reiterated all its previous submissions which it had submitted before EO and also requested for a personal hearing. An opportunity of personal hearing was granted to PCSL on March 28, 2007. However, on the request of the noticee the date for personal hearing was postponed to September 13, 2007. Due to administrative reasons the date for personal hearing was again postponed and October 22, 2007 was fixed as fresh date for hearing. However, the noticee neither appeared for the said hearing nor sought any adjournment. Therefore, I have decided to proceed with the matter ex-parte on the basis of available records.

6. I have carefully perused the Enquiry Report, show cause notice issued to PCSL, the written submissions filed on behalf of PCSL and other relevant material available on record. The summary of trading of PCSL on BSE and NSE during the period January 1, 1999 to March 31, 1999 is provided as below.

Trading of Prerak	Trading during January to March, 1999	
	Buy	Sell
BSE	67600	61800
NSE	29100	28400
Total	96700	90200

As mentioned above, PCSL along with Abhinav and Anand dealt only through three brokers Moneycare, Madhuvar and JBS. Details of trading of PCSL and the other two clients (Abhinav and Anand) on NSE and BSE are as provided below:

(i) Trading on NSE

Settlement wise percentage contribution of the trades of the aforesaid three clients on NSE is mentioned below:

Settle- ment No. (NSE)	Total traded quantity (No. of Shares)	Total trading of three Members (MoneyCare, Madhuvar, JBS) on behalf of PCSL, Abhinav & Anand.			
		Gross Buy	% of Total	Gross Sell	% of Total
9905	29700	27000	90.91%	25700	86.53%
9906	28100	25200	89.68%	21300	75.80%
9907	31200	26300	84.29%	23700	75.96%
9908	35300	32200	91.22%	23900	67.71%
9909	33600	11300	33.63%	8900	26.49%
9910	27100	13300	49.08%	6800	25.09%
9911	21800	8500	38.99%	6900	31.65%

The table mentioned below highlights the complete reversal in positions *inter alia* by PCSL, in the settlements mentioned in the table while trading with the aforesaid three brokers in NSE. In Settlement no. 1999005 (3/2/99 – 9/2/99), PCSL and Abhinav transacted between themselves by purchasing as well as selling shares of AEL between themselves on both the BSE and NSE. In all, in this settlement, PCSL bought 2500 shares and also sold 2500 shares through Moneycare. When PCSL bought 2500 shares, Abhinav was the counterparty which sold the shares in two lots i.e., 500 shares through JBS and 2000 shares through Madhuvar. Similarly, when PCSL sold 2500 through Moneycare, a total of 2200 shares were purchased by Abhinav (700 shares bought through JBS and 1500 shares bought through Madhuvar). This shows the nature of circular dealing between PCSL and Abhinav.

Particulars			JBS		Madhuvan		Moneycare	
Settlement No. (NSE)	Buy Client	Sell Client	Buy	Sell	Buy	Sell	Buy	Sell
1999005	Abhinav	Abhinav	10000	-	-	10000	-	-
3/2/1999 – 9/2/1999	Abhinav	Abhinav	-	10500	10500	-	-	-
	Abhinav	PCSL	700	-	-	-	-	700
	Abhinav	PCSL	-	-	1500	-	-	1500
	PCSL	Abhinav	-	-	-	2000	2000	-
	PCSL	Abhinav	-	500	-	-	500	-
1999006	Abhinav	PCSL	1900	-	-	-	-	1900
10/2- 16/2	Abhinav	Abhinav	7300	-	-	7300	-	-
	Abhinav	Abhinav	-	9400	9400	-	-	-
	PCSL	Abhinav	-	-	-	2000	2000	-
1999007	Abhinav	Abhinav	7500	-	-	7500	-	-
17/2-23/2	Abhinav	PCSL	2500	-	-	-	-	2500
	Abhinav	Abhinav	-	9000	9000	-	-	-
	Abhinav	PCSL	-	-	1000	-	-	1000
	PCSL	Abhinav	-	-	-	2500	2500	-
1999008	PCSL	Abhinav	-	1800	-	-	1800	-
24/2- 1/3	Abhinav	Abhinav	-	7300	7300	-	-	-
	Abhinav	PCSL	-	-	2000	-	-	2000
	Abhinav	PCSL	1500	-	-	-	-	1500
	Abhinav	Abhinav	6300	-	-	6300	-	-

1999009	Abhinav	Abhinav	700	-	-	700	-	-
3/3 -9/3	Abhinav	PCSL	400	-	-	-	-	400
	Abhinav	Abhinav	-	2200	2200	-	-	-
	Abhinav	PCSL	-	400	-	-	400	-

Similar pattern is found in settlement No.1999006, wherein Abhinav bought 1900 shares through JBS while PCSL sold 1900 shares through Moneycare. Similarly, when PCSL bought 2000 shares through Moneycare, it was Abhinav who sold same number of shares through Madhuvan. In Settlement No. 199007 there was squaring off /reversal of transactions between PCSL and Abhinav to the extent of 7000 shares in this settlement. In Settlement No. 1999008 there were squaring off /reversal of transactions between PCSL and Abhinav to the extent of 5300 shares in this settlement. In Settlement No. 1999009 there were squaring off /reversal of transactions between PCSL and Abhinav to the extent of 800 shares in this settlement. These above significant number of transactions resulted in the creation of artificial market and volumes during the settlements. Summary of the trading between PCSL and Abhinav in the aforesaid settlements are as given below:

Sett No.	Total traded volume in the Settlement. (A)	Volumes traded between Abhinav and PCSL (B)	% contribution of 'B' to 'A'
1999005	29700	4700	16
1999006	28100	3900	14
1999007	31200	6000	20
1999008	35300	5300	15
1999009	33600	800	2.40

Settlement wise trading of PCSL on NSE is as provided below:

Settlement No.	Total Traded Quantity on NSE (A)	PCSL trading through the broker "Madhuvan" during the settlement		PCSL trading through "Moneycare" during the settlement		Total trading of PCSL (B)	% cont. of B to A
		B	S	B	S		
9905	29700	0	0	2500	2500	2500	8.42
9906	28100	0	0	2000	2000	2000	7.12
9907	31200	0	0	3500	3500	3500	11.22
9908	35300	0	0	3600	3600	3600	10.20
9909	33600	3200	3200	400	400	3600	10.71
9910	27100	2000	2000			2000	7.38

The creation of artificial market and volumes by the trades entered by Abhinav and PCSL was a result of matched deals i.e. their orders were inputted around the same time. This proximity in the inputting orders at the same price and for the same quantity resulted in synchronized trades, which have been detailed below:

Sett No. 1999005, February 03, 1999 : February 09, 1999 – Transactions when PCSL is buying and Abhinav is selling

Date	Time	Rate	Qty	Buyin g Brok er	C li e n t	Sell bro ker	Sell clie nt	Buy time	Buy Rate	Buy Qty	Sell Time	Sell Rate	Sell Qty	Time Diff
03-Feb-99	11:13:03	293.00	500	MC	P	MD	A	11:13:03	293.00	500	11:12:07	293.00	500	0:00:56
03-Feb-99	11:13:34	293.50	500	MC	P	MD	A	11:13:34	293.50	500	11:12:17	293.50	500	0:01:17
03-Feb-99	11:13:53	294.00	500	MC	P	MD	A	11:13:53	294.00	500	11:12:24	294.00	500	0:01:29
09-Feb-99	14:35:45	287.00	500	MC	P	MD	A	14:35:45	287.00	500	14:34:53	287.00	500	0:00:52

Note: MC : Moneycare Sec. P : PCSL, A : Abhinav, MD : Madhuvan Sec

- **Sett No. 1999007, February 17, 1999 : February 23, 1999 – Transactions when Abhinav is buying and PCSL is selling**

Date	Time	Rate	Qty	Buying Broker	Client	Sell broker	Sell client	Buy time	Buy Qty	Buy Rate	Sell Time	Sell Qty	Sell Rate	Time Diff
17-Feb-99	11:04:02	295.00	500	JBS	A	MC	P	11:04:02	500	295.00	11:03:13	500	295.00	0:00:49
17-Feb-99	11:04:11	296.00	500	JBS	A	MC	P	11:04:11	500	296.00	11:03:23	500	296.00	0:00:48
18-Feb-99	13:25:08	280.00	500	JBS	A	MC	P	13:25:08	500	280.00	13:24:40	500	280.00	0:00:28
18-Feb-99	13:25:22	281.00	500	JBS	A	MC	P	13:25:22	500	281.00	13:24:18	500	281.00	0:01:04
19-Feb-99	15:08:05	282.50	500	JBS	A	MC	P	15:08:05	500	282.50	15:07:27	500	282.50	0:00:38

- **Sett N. 1999008, February 27, 1999 – Transactions when Abhinav is buying and PCSL is selling**

Date	Time	Rate	Qty	Buying Broker	Cli	Sell bro	Sell clt	Buy time	Buy Qty	Buy Rate	Sell Time	Sell Qty	Sell Rate	Time Diff
27-Feb-99	13:37:28	330.50	500	MD	A	MC	P	13:37:28	500	330.50	13:36:04	500	330.50	0:01:24
27-Feb-99	13:37:46	331.00	500	MD	A	MC	P	13:37:46	500	331.00	13:36:15	500	331.00	0:01:31
27-Feb-99	13:38:17	331.50	500	MD	A	MC	P	13:38:17	500	331.50	13:36:27	500	331.50	0:01:50
27-Feb-99	13:38:33	332.00	500	MD	A	MC	P	13:38:33	500	332.00	13:36:36	500	332.00	0:01:57

I note from the aforesaid tables that there was almost perfect matching in all the trades, with respect to all the three parameters i.e. price, quantity and most importantly, the time, required to match a trade. In majority of the trades, the brokers viz Madhuvan, Moneycare and JBS trading on behalf of PCSL and Abhinav placed the buy and sell orders with little difference of minute or so, which resulted in getting the trades matched. The phenomenal regularity with which these brokers were counter-parties in such trades reveals that these transactions were structured and synchronized as evidenced by the proximity of timing of putting-in the buy and sell orders, exact matching of price and quantity of shares, resulting in the matching of trades almost on every occasion, between themselves. It reveals that the buy and sell orders of PCSL and Abhinav were matched at the same price and almost at the same time, purely for the purpose of

projection of the volumes of the shares of AEL in a way, that was not market determined volumes, but to induce other persons to invest in the said scrip.

(ii) Trading on BSE

I note that the scrip of AEL was also very actively traded during the relevant period. As mentioned above, trading of the three clients PCSL, Abhinav and Anand accounted for 77% of the total traded volume on BSE during relevant period.

▪ **Trading from Abhinav to PCSL on the BSE.**

Date	Abhinav To PCSL	BSE Volume	(2) as % Of (3)	Date	Abhinav To PCSL	BSE Volume	(2) as % of (3)
(1)	(2)	(3)		(1)	(2)	(3)	
27-01-99	2500	4100	60.98%	22-02-99	4000	5200	76.92%
28-01-99	1500	4400	34.09%	24-02-99	3500	6200	56.45%
29-01-99	2100	6200	33.87%	25-02-99	4000	6100	65.57%
02-02-99	1500	3900	38.46%	26-02-99	2000	4900	40.82%
03-02-99	1500	5000	30.00%	27-02-99	4900	11100	44.14%
04-02-99	1500	3200	46.88%	01-03-99	1500	5200	28.85%
05-02-99	1300	5300	24.53%	03-03-99	700	3200	21.88%
08-02-99	2000	4100	48.78%	04-03-99	1700	3800	44.74%
09-02-99	2500	5100	49.02%	05-03-99	1600	4500	35.56%
10-02-99	3000	5500	54.55%	08-03-99	400	3200	12.50%
11-02-99	5000	8000	62.50%	09-03-99	500	4700	10.64%
12-02-99	3500	4500	77.78%	11-03-99	1200	5200	23.08%
15-02-99	3000	4100	73.17%	12-03-99	500	3800	13.16%
16-02-99	500	5100	9.80%	15-03-99	900	5000	18.00%
17-02-99	2000	5100	39.22%	17-03-99	800	3900	20.51%
18-02-99	1000	2700	37.04%	19-03-99	400	2000	20.00%
19-02-99	1500	3800	39.47%	30-03-99	400	3300	12.12%

▪ **Trading from PCSL to Abhinav on the BSE.**

Date	Qty	BSE Vol	%
27-01-99	1000	4100	24.39
28-01-99	1000	4400	22.73
2/2/1999	500	3900	12.82
11/2/1999	2500	8000	31.25
12/2/1999	1500	4500	33.33
22-02-99	1000	5200	19.23
24-02-99	1000	6200	16.13

25-02-99	2000	6100	32.79
27-02-99	1900	11100	17.12
3/3/1999	200	3200	6.25
4/3/1999	1100	3800	28.95
5/3/1999	500	4500	11.11
8/3/1999	200	3200	6.25
9/3/1999	500	4700	10.64
11/3/1999	500	5200	9.62
17-03-99	400	3900	10.26
19-03-99	400	2000	20.00

From the instances cited above, it is noticed that the quantum of the reversal of transactions of Abhinav and PCSL comprised a substantial portion of the trading on those days and this pattern continued throughout the period on BSE.

7. I note PCSL submitted that their trades were genuine and there was no manipulative intent on their part and they were unaware of the identity of the counterparty, since the aforesaid deals were executed on the system, at the then prevailing market price and that the settlements were completed from time to time. It is observed from the trade logs that there was a certain degree of inconsistency/ abnormality in the execution of such trades, where only two clients and three brokers were involved. The buy and sell prices of PCSL were close to the buy/sell rates of Abhinav in almost all the settlements, such that the trades of these entities were consistently getting matched. Matching of trades were observed in numerous instances of such transactions wherein there was almost perfect matching of the time, order and price. This perfect matching reveals that the trades were not genuine and manipulative in nature. In the light of the above, I am of the view that it is possible to execute synchronized trades on the screen based trading system as has happened in the present case where the trades were executed with prior understanding between the clients and the brokers. Regarding the identity of the counterparty, I believe that the trades, synchronized to such an extent, are actually maneuvered as per specific needs and requirements, due to certain level of tacit understanding between the parties and all these trades were executed only in one scrip during the relevant period.

The Hon'ble Securities Appellate Tribunal while examining the issue of synchronized trades, in **Appeal Nos 54 to 57 of 2002 in the case of Nirmal Bang Securities (P) Ltd. vs SEBI** 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 FGSB. There are 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 false 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 in the 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 broker 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 rightly 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 shares 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 PFUTP Regulations. The facts on record categorically establishes that BEB had indulged in synchronized trading in violation of regulation 47 of the PFUTP Regulations. In a synchronized trading intention is implicit”.

8. Another contention of PCSL is that there was no tangible evidence to show the element of prior understanding between the buyers and sellers. I am of the view that prior understanding between entities is evident from the series / pattern of transactions entered into between the same set of entities. This reversed transactions, without the element of transfer of beneficial ownership and synchronized trades to such a great extent are revelatory of a prior understanding. The three parameters viz. quantity, price and the most importantly the time, as mentioned in the trade log, is the evidence which shows prior understanding between the parties. All the trades were done through the same group of brokers namely, JBS, Madhuvan and to a lesser extent Moneycare, with the same set of clients in the same scrip. This gives rise, not merely to an assumption of

their acting in concert but a definite finding that there was an element of intent and tactical understanding while executing the said deals.

Hon'ble SAT in the matter of **Ketan Parekh V/s SEBI in appeal no. 2/2004** has observed:

“Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties”.

9. PCSL contented that beneficial ownerships have changed on delivery of the shares and the pay - in and pay –out obligations were met by different parties therefore the allegations that the transactions were done with an intent not to effect transfer of beneficial ownership is incorrect. I note that the trades between PCSL and Abhinav were in the nature of synchronized trades and they were continuously reversing their positions over two months, which has led to the same shares being churned over a period of time. The concept of transfer of beneficial ownership does not merely involve the transfer of shares from one account to another accompanied by delivery of shares, but identity of the ultimate beneficiary in the said trades also needs to be looked into.
10. Transactions in the nature of cross deals were stated to have taken place between PCSL & Abhinav. Here I agree with the EO that there are no details of such transactions alleged to have been done through the same broker. Specifically, no details of the broker entities have been furnished on record to substantiate the charge of having entered into the cross deals by PCSL & Abhinav. In view of the same, it would be difficult to arrive at any finding on this count.

11. I however, do not fully agree with the contention of PCSL that the rise in price of the scrip of AEL from 242/- to Rs.498/- i.e. a rise of around Rs.250/- was due to the fact that the markets were in the bull phase and prices of shares were on a fast rising trend and they cannot be held responsible for the price rise. I note that the rise in price/volumes were due to concerted trading activity amongst a select few entities, which created a false market and thereby induced a certain amount of trading activity in the scrip of AEL. It is apparent that there was a significant rise in volumes specifically during the relevant period of price manipulation, as compared to period before the price manipulation. The same is revealed in the table mentioned below :

NSE		
Date	Price(Rs.)	Volume (No. of Shares)
1999	High-Low	
1/1-15/1	231-245	8600
18/1-29/1	247-284	28800
1/2-5/2	285-295	59600
16/2-27/2	280-335	67000
1/3-15/3	361-427	60500
16/3-31/3	428-498	42400

12. PCSL contended that it is natural for the levels of volume to increase when there is an increase in price, such increase in volume in the scrip cannot be attributed only to their trades but would be on account of increased market interest generated with an increase in price of the scrip. I note that in the instant case, the volumes were created artificially inter alia by PCSL by disturbing the market equilibrium. The volumes of the scrip had increased from 4-9 trades per day to 40-60 trades resulting in the rise from 400 shares per day to 13,300 shares per day and the total volume of shares traded from January 1 to January 15, 1999 was only 8600 shares, that too in a span of 15 days. From January 18 to 29, 1999 the total volume was around 28,800 shares. In fact, the said rise in volumes is almost 3 ½ times. In the instant case the rise in the price and corresponding volumes in the scrip of AEL was due to the concerted action between a select set of entities. PCSL was one among these entities and party to the concerted act.
13. I also do not agree with the contention of the PCSL that delivery of shares in the range of 5-20% of the traded quantity was quite normal. It is observed from settlement No.s 1999005 to 1999009, that trading between PCSL and Abhinav were basically square up transactions. Hence trading exclusively in a particular scrip between themselves both on

NSE and BSE accompanied by reversal of their positions, without any other material on record to suggest that they had actively traded during this period in any other scrip, reveals commonality in their “intention” and “actions”.

14. Further, I also do not agree with the contention of PCSL that they maintained high standards of integrity, promptitude and fairness in the conduct of all their business. From the analysis of the trade log, it is clear that PCSL did not act with integrity. The churning of the same scrip over a period of time between the same set of entities gives rise to illusory volumes and liquidity in that particular scrip which is an important criterion, apart from price, capable of misleading investors while making their investment decision. In fact, liquidity/volumes in particular scrip raise the issue of ‘demand’ in the securities market. The greater the liquidity, the higher is the investors’ attraction towards investing in that scrip. It would not be wrong to assume that any one could be carried away by the unusual fluctuations in the volumes and be induced into investing in the said scrip.

Artificial increase in the volumes of scrip has the adverse effect on the innocent investors of the market who get induced to buy the shares. **SAT in Appeal No. 2 of 2004 the matter of Ketan Parekh vs. SEBI** has observed:

“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 widespread 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.”

15. PCSL also cited the case of **Sterlite Industries Limited V/s SEBI, (2001) 34 SCL** and argued that it would be impermissible to reach to a conclusion on the basis of preponderance of probability or on the basis of surmise, conjuncture or suspicion. I find an unusual occurrence for the trades of PCSL and Abhinav to take place only between themselves, both at the NSE and BSE especially considering that the trades at the NSE were synchronized in nature, while in the BSE the trades were in the nature of reversal of trades. In such circumstances, it would be incorrect to say that the case is based on surmises and conjectures and all the as such aforesaid findings have been arrived at after a long drawn deliberation, based on an analysis of the facts, figures and other evidence on record.
16. PCSL has questioned the applicability of Broker Regulations in their case, on the ground that they have executed their trades as an investor. In this regard, I would like to highlight Clauses A (1-5) of the Code of Conduct as specified in Schedule II of the Regulation 7 of the Broker Regulations, which read as under:

Regulation 7 of the Broker Regulations reads as under:

“The stock broker holding a certificate shall at all times abide by the code of conduct as specified in Schedule II”.

A. GENERAL

- (1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.
- (2) Exercise Of Due Skill And Care: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.
- (3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.
- (4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

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

Thus, it is apparent from a cumulative reading of the provisions quoted above that one of the conditions of the grant of certificate of registration to a broker in terms of Section 12(1) of the SEBI Act, 1992 read with Broker Rules and Regulations is that the broker is required to abide by the Code of Conduct as specified under Schedule II of the Regulation 7 of the Broker Regulations. Clauses A(3) and A(4) read with the aforesaid PFUTP Regulations as stated above clearly list out the activities that a broker should not undertake at all. It clearly states that a stock broker shall not create a false market or enter into manipulative, fraudulent or deceptive transactions, either singly or in concert with others which would be detrimental to investors' interest or interfere with the smooth functioning of the market. Therefore, while conducting their business dealings irrespective of their actions either as a broker or as an investor, a stock broker as an intermediary is required to abide by certain rules, regulations prescribed by SEBI from time to time. If an intermediary operating in the capital market, itself starts functioning in a manner, which affects the normal functioning of the market and distorts the market equilibrium, the same warrants action under the Rules/Regulations governing such an entity.

17. The relevant provisions of SEBI (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulation, 1995 read as under:

(4) No person shall :

- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
- (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) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

I however, note that in the SCN dated November 24, 2004 due to typographical error, 4(2) (a) (b), (c) (d) was mentioned inadvertently whereas in fact there was no clause (2) in Regulation 4 of PFUTP Regulation, 1995.

18. I find that in the process of perpetuating these artificial trades, PCSL not only had violated the relevant provisions of PFUTP regulations, as reproduced in the proceeding para, but also failed to exercise due skill, care and diligence, required of a broker. As a registered intermediary of SEBI and a member of ASE, PCSL were fully aware of the Rules and Regulations of SEBI.

19. All persons who operate in the market are required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. People, who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. From the facts detailed above, it is established that PCSL have not carried out their business operations in accordance with the provisions of law.

20. I find that the PCSL facilitated the manipulation of the scrip of AEL while acting in concert with other entities by trading extensively with another client in the same scrip and entering into large scale synchronized trades, due to a tacit understanding with another client Abhinav in the same scrip (AEL). PCSL also executed trades which led to a reversal of positions at the end of the settlement, resulting in no transfer of beneficial ownership.

21. In view of the aforesaid and in the facts and circumstances of the matter, I find that the Broker has violated:

- (i) Regulation 4(a), (b), (c) and (d) of PFUTP Regulations, 1995 read with the corresponding provisions of Regulations 4 (2) (a) and (b) of PFUTP Regulations, 2003 and
- (ii) Clauses A (1) to A(5) of the Code of Conduct as specified in Schedule II of the Regulation 7 of the Broker Regulations and Rule 4 (b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992.

22. In view of the foregoing and in exercise of the powers conferred vide 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 the certificate of registration of PCSL having SEBI Registration No. INB 021030730 and holder of PAN No. AAACP93530 for a period of five working days only.

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

Date: September 25, 2008

Place: Mumbai

Dr. T.C. Nair

Whole Time Member

Securities and Exchange Board of India