

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER AGAINST APEX ENTERPRISES (INDIA) LTD,

**IN THE MATTER OF SRI ADHIKARI BROTHERS TELEVISION
NETWORK LTD.**

Date of hearing: January 12, 2007

Appearances

For Noticees: Shri Vinay Chauhan, Advocate

Shri Rabi Paul, Director

For SEBI : Shri. P.K.Nagpal, Executive Director

Ms. Kshama Waghrekar, Legal Officer

Order

Under Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 read with Section 11, 11B and 11(4) of SEBI Act, 1992

- 1.** Securities & Exchange Board of India (hereinafter to be referred as 'SEBI') conducted investigation into the buying, selling and dealings in the scrip of M/s Sri Adhikari Brothers Television Network Limited (hereinafter to be referred as 'SAB TV') for the period from February 23, 2000 to October 13, 2000. The shares of SAB TV are listed on The Stock Exchange, Mumbai (for short "BSE") and National Stock Exchange of India Limited (for short "NSE").
- 2.** During the course of investigation, it was found that three entities namely M/s Apex Enterprises (India) Limited (hereinafter referred as 'Apex'), M/s Vinsen Trade & Commerce Private Limited

(hereinafter referred as 'Vinsen') and M/s Sungrace Merchandise Private Limited (hereinafter referred as 'Sungrace') were connected to each other and had entered into transactions that were not genuine and were not intended to transfer beneficial ownership in order to create an artificial market for the scrip of SAB TV. The aforesaid three entities had bought and sold 800000 shares within 13 days which constituted 90.37% and 98.47% of the volume of the net traded quantity on March 14, 2000 and March 27, 2000 respectively.

- 3.** Upon completion of the investigation, a show cause notice dated June 15, 2004 was issued to Apex, Vinsen and Sungrace by SEBI asking them to show cause as to why action under Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') read with Section 11B of the SEBI Act, 1992 should not be taken against them including restraining them from dealing in securities for a specific period for the violation of Regulation 4 (b) of the then Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations, 1995').
- 4.** Vide letter dated August 20, 2004, Shri Mahek Vikamshi of Pravin P. Shah & Associates, Chartered Accountants responded to the said show cause notice and made a combined submissions on behalf of Apex, Vinsen and Sungrace (the three companies). In their combined submissions, it was inter alia submitted that:
 - A.** The main business activities of the three companies was trading and investing in shares and securities and they regularly traded in shares and securities in large volumes.
 - B.** Explaining the motive for buying the shares of SAB TV, it was submitted that SAB TV was a very strong scrip with a good market potential and also had a very strong fundamentals.

- C.** Decisions to buy and hold SAB TV was taken by the three companies after analysing the market data which showed that:
- i.** During the period from November 22, 1999, to February 24, 2000 the price of the SAB TV scrip rose from Rs. 428.65 to Rs.2,290 on the NSE and on BSE its rose from Rs. 467 to Rs. 2,350 i.e. the share price appreciated by more than 400% in both the exchanges.
 - ii.** Subsequently, the market price of the shares of SAB TV had started falling since February 24, 2000.
 - iii.** From February 24, 2000 to March 13, 2000 the share price had fallen by almost 46%. Further, during the above period, the market indices at BSE and NSE also fell by 11% and 10% respectively. Thus it seems that it was a correction phase. On March 14, 2000 the market price of SAB TV fell to a low of Rs. 1237.75. Further, when the three companies felt that the price had fallen substantially, they placed the order with Triumph International Finance India Limited (hereinafter referred to as 'TIFIL') to buy the shares.
- D.** TIFIL bought the shares of SAB TV from the normal market (in a screen based trading) at an average cost of Rs.1249.50 in the price range of Rs. 1245-1252. The three companies did not know the identity of the counter-party as the trade was executed in the normal market segment of the NSE.
- E.** If the intention of the three companies was to manipulate the price, then on March 15, 2000, the market price on the NSE should have risen, but the results were totally contrary and even after the purchase of 4,00,000 shares on March 14, 2000, the prices on the NSE and on the BSE on March 15,

2000 fell by 7.44% and 4.5% respectively from the previous day's closing price.

- F.** Explaining decision of the three companies to sell the shares of SAB TV, it was submitted that on March 27, 2000, when the prices were still falling and there was a lower circuit on both the stock exchanges, the three companies approached TIFIL and requested TIFIL to sell the bulk quantity of 4,00,000 shares of SAB TV. Towards the close of the day, TIFIL managed to sell the shares at Rs. 937.50 per shares.
- G.** The above transactions were reported to NSE. This can be substantiated by referring to the Order Nos and the Trade Nos, which appear on the contract notes. Copy of the contract notes had already been submitted to SEBI by the three companies. Therefore, it was contended by the three companies that their intention was not to indulge in any unfair trade practice or to disturb the price and order matching mechanism of market.
- H.** From March 28, 2000 to March 31, 2000 the share price had appreciated by 22.24% on the NSE and 25.97% on the BSE. Hence, even after the sale by the three companies the price did not fall on both the exchanges.
- I.** The three companies denied the allegation of synchronisation or matching of transactions and submitted that in their case, on March 14, 2000, the three companies had placed the order to purchase the shares of SAB TV with TIFIL. The three companies wanted to purchase the shares of SAB TV from the market at a best possible price. The three companies have learnt that one of the TIFIL's client wanted to sell the share of SAB TV. Hence, TIFIL entered into identical buy and sell transactions at the same time in the normal market. Thus, these were not synchronized /

matched transactions but a transaction between two counter parties through a common broker. Thus, neither the three companies knew the identity of the counter party nor the counter party knew the identity of the three companies.

J. Similarly, even at the time of sale, when the sale price had fallen substantially, the three companies wanted to sell the shares of SAB TV in the market. Therefore, the three companies had placed the order to sell the shares of SAB TV with TIFIL. The three companies learnt that one of TIFIL's client wanted to buy the shares of SAB TV. Hence, TIFIL entered into the identical buy and sell transactions at the same time on the screen. Thus, these were also not synchronized / matched transaction but transaction between two counter-parties, through a common broker. Thus, neither the three companies knew the identity of the counter party nor did the counter-party know the identity of the three companies.

K. The three companies denied that they had any motive to enter into the synchronised/matches transaction with Ketan Parekh (hereinafter referred to as 'KP') entities. It was submitted that neither the three companies had any connection with KP group companies and its associates, Classic Credit Limited (hereinafter referred to as 'CCL') and Classic Infin India Limited (hereinafter referred to as 'CIL'), nor did they have any motive to enter into the synchronized / matched transactions with them. TIFIL was the common broker who was responsible for execution of the trades for both the parties.

L. It was submitted that the three companies had traded through large number of brokers including TIFIL and there

was no connection between TIFIL and three companies other than that of a broker and client.

M. In the said transactions in question, the three companies suffered heavy losses. By selling the shares of SAB TV on March 27, 2000, the three companies actually reduced their further losses. The market price of SAB TV thereafter continuously fell.

N. In view of the above, the three companies argued that it is crystal clear that their intention was to enter into genuine transactions and not to create artificial volume in the scrip of SAB TV.

O. In light of above submissions, the three companies strongly refuted that they have violated 4(b) of Chapter II of SEBI (PFUTP) Regulations, 1995, prevalent at that time, for the following reasons:

- i. The three Companies have not indulged in any act to create a false or misleading appearance of trading in the SAB TV shares.
- ii. All the alleged transactions were genuine business transactions entered into by the three companies in the normal course of their business and were not fictitious transactions entered into with a malafide intention to create false and misleading appearance of trading in the scrip of SAB TV. Neither had they intention nor have they created artificial volumes in the scrip of SAB TV. In these transactions, they have actually made an aggregate loss of Rs.12.48 crores, due to which the net worth have been significantly eroded.
- iii. The three companies have not entered into any matched/synchronised transactions with CCL/CIL to

defeat the price and order matching mechanism of stock market.

- iv. None of the alleged transactions were manipulative, fraudulent or deceptive so as to distort the market equilibrium. Further, they have not entered into any transaction for creating a false market, which leads to interference with the fair and smooth functioning of the market.

Thus, the three companies contended that they have not violated the provisions of Regulation 4(b) of the PFUTP Regulations, 1995, read with Regulation 11 of PFUTP Regulations, 2003 and Section 11B of SEBI Act, 1992 as alleged in the Notice.

- 5.** An opportunity of personal hearing was granted to Apex, Vinsen and Sungrace on October 6, 2004 before the then Whole Time Member Shri A.K. Batra. Shri Pravin P. Shah, C.A. and Shri Mahek Vikamshi, C.A., of Pravin P. Shah & Associates appeared on behalf of the three companies. At the said hearing some additional submissions were also made by the three companies which were as follow:
 - a) The three companies did not know what and how their broker did the transactions. They had placed orders for purchase and sale with the broker and the broker carried out the trades.
 - b) The transactions in question were Cross deal and same was permitted. Thus these transactions were genuine and executed in accordance with the applicable Regulations.
 - c) It was contended by them that since the investigations were instituted in May, 2003 and at that time, the regulations in force were PFUTP Regulations, 1995. Hence, SEBI can take any action only under those regulations. It was submitted that

under those regulations, SEBI had no power to issue the proposed directions.

- d) It was further contended by the three companies that as per regulation 13(2) referred to in the show cause, for the alleged violation of Regulation 4(b) of PFUTP Regulations, 1995 only the procedure laid down in the PFUTP Regulations, 2003 are to be followed but the substantive provisions to be applied, if at all, would be those of the PFUTP Regulations, 1995. Therefore, the three companies submitted that the relevant transaction took place in the month of March, 2000. At that time, PFUTP Regulations, 2003 was not in force. The said regulations were made effective from 17.7.2003, being the date of their publication in the official gazette. Hence, no directions can be issued under these regulations.
- 6.** Thereafter, vide letter dated January 3, 2006 the three companies were directed to take the further opportunity of hearing before the then Whole time member, Shri Madhukar on January 13, 2006.
- 7.** In response to this, vide letter dated January 10, 2006 citing non-availability of counsel, SEBI was requested to adjourn the hearing to some time after 1st week of February, 2006. SEBI was also informed by Shri Rabi Paul, Director of Apex that Vinsen and Sungrace have been amalgamated with Apex vide order of the Hon'ble Calcutta High Court dated 17.08.2005 and, therefore, no separate submissions would be made for them.
- 8.** After few more correspondences, another opportunity of hearing was granted to Apex on January 12, 2007 at Kolkata. Shri Vinay Chauhan and Shri Rabi Paul appeared on behalf of M/s Apex Enterprises (India) Limited. Further written submissions were

submitted by Apex vide their letter dated January 16, 2007 which were as follow:-

- i) The sale and purchases made by the three companies March 1999, March 2000 and March 2001 were submitted by Apex to show that in these financial years the three companies had considerable investments in shares of various companies.
- ii) At the relevant time, all the three noticee companies based on their commercial wisdom had invested / traded in more than 200 scrip of various companies including the scrip of Sri Adhikari Brothers Television Network Ltd. ("SAB TV") and were trading through various brokers.
- iii) With regard to the query regarding placement of order, it was submitted that the three companies did not instruct the broker 25 times or placed the order 25 times to buy/sell 25,000 shares. The instruction to the broker was to buy/sell 400000 shares (150000 by Apex., 50,000 by Vinsen. & 200,000 by Sungrace). The mode and manner of execution was entirely of the broker.
- iv) It was pointed out by Apex that a client while placing the order on the exchange through a broker will never know, and has no means to know also, about the counter party client. In the peculiar facts of the instant case, since the broker was wearing three hats viz. buying broker (TIFIL), selling broker (TIFIL) and selling / buying client (Classic Credit & Classic Infin – related entities of TIFIL), it was very much aware about both the clients i.e. buying client as well as selling client, but the three noticee companies were not aware about the selling / buying client and had no knowledge that TIFIL had executed the orders on their behalf in the scrip in a synchronized manner so as to match with the orders of its related entity.
- v) Trades executed on just two days, (with gap of 14 days in between), during the investigation period cannot result in creation of misleading appearance of trading in the market.
- vi) The total trading of the three companies constituting around

12.2%, during the relevant period, could not have impacted the price or the volume of the scrip.

9. I have carefully considered the investigation report, Shown cause notices dated June 15, 2004, replies received from the noticees and material placed before me during the personal hearing. Having considered the facts and circumstances of the case, I am of the view that the moot question which needs to be considered in the present matter is that whether Apex, Vinsen and Sungrace have indulged in trades which were manipulative in nature?
10. From the material available on record, it can not be disputed that Apex, Vinsen and Sungrace have bought and sold 400000 shares of SAB TV in settlement no.51 and 54 respectively. The details of their trading in the scrip of SAB TV is as under:

Sr. No.	Name of the Entity	Settlement No.	Quantity Bought	Quantity Sold
1.	M/s Apex Enterprises (India) Limited	51 54	150000 0	0 150000
2.	M/s Vinsen Trade & Commerce Private Limited	51 54	50000 0	0 50000
3.	M/s Sungrace Merchandise Private Limited	51 54	200000 0	0 200000
	Total		400000	400000

A careful study of the aforesaid table shows that during the settlement no.51 Apex, Vinsen and Sungrace had bought 150000, 50000 and 200000 shares of SAB TV respectively. Subsequently, these very shares were sold by them in settlement no.54. Thus, it is clear that all the shares which were bought by the aforesaid 3 entities in settlement no.51 were later on sold by them in settlement no.54.

11. I find that Apex, Vinsen and Sungrace had bought a total of 400000 shares on NSE on March 14, 2000 in the price range of Rs.1240 to 1245 and these shares were bought by them through the same stock broker viz M/s Triumph International Finance India Limited, member of NSE. I also find that it was M/s Classic Credit Limited who was the selling client in the transactions in question and had sold 400000 shares of SAB TV to Apex, Vinsen and Sungrace. From the records available, I note that in the said transactions in question M/s Classic Credit Limited had also traded through the same broker i.e. TIFIL. Thus, it is clear that on March 14, 2000 TIFIL had acted as broker for both buying and selling client.

12. The details of trades executed by Apex, Vinsen and Sungrace on March 14, 2000 are as under:

Trade Date	Buy Order Entry Time	Sell Order Entry time	Trade Time	Buy Limit Price	Sell Limit Price	Trade Price	Buy Original Volume	Sell Original Volume	Traded Quantity
14-Mar-00	15:13:54	15:13:54	15:13:54	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:14:07	15:14:07	15:14:07	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:14:25	15:14:25	15:14:25	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:14:40	15:14:40	15:14:40	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:14:55	15:14:55	15:14:55	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:15:17	15:15:17	15:15:17	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:15:30	15:15:30	15:15:30	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-00	15:15:46	15:15:46	15:15:46	1252.00	1252.00	1252.00	25000	25000	25,000.00
14-Mar-	15:25:27	15:25:	15:25:27	1245.00	1245.00	1245.	25000	25000	25,000.

00		26				00			00
14-Mar-00	15:26:20	15:26:20	15:26:20	1246.00	1246.00	1246.00	25000	25000	25,000.00
14-Mar-00	15:26:33	15:26:33	15:26:33	1247.00	1247.00	1247.00	25000	25000	25,000.00
14-Mar-00	15:26:47	15:26:46	15:26:47	1248.00	1248.00	1248.00	25000	25000	25,000.00
14-Mar-00	15:27:00	15:27:00	15:27:00	1247.50	1247.50	1247.50	25000	25000	25,000.00
14-Mar-00	15:27:23	15:27:21	15:27:23	1248.00	1248.00	1248.00	25000	25000	24,990.00
14-Mar-00	15:27:52	15:27:52	15:27:52	1247.50	1247.50	1247.50	25000	25000	25,000.00
14-Mar-00	15:28:14	15:28:14	15:28:14	1247.00	1247.00	1247.00	25000	25000	25,000.00

A careful observation of the table above reveals that on March 14, 2000 the buy orders for Apex, Vinsin and Sungrace and sell orders for Classic Credit Limited were placed by TIFIL almost at identical times, for identical quantities and identical prices. The above table reveals that by placing buy and sell orders in such a manner TIFIL had ensured that these trades get matched and has thus indulged into synchronized transactions.

- 13.** As stated earlier, Apex, Vinsin and Sungrace had sold the aforesaid 400000 shares in settlement no.54 through the same broker viz TIFIL on March 27, 2000 in the price range of Rs.935 to Rs.945. From the investigation report I note that it was Classic Infin Limited who was the buying clients in aforesaid transactions and bought all the 400000 shares from Apex, Vinsin and Sungrace on March 27, 2000. The shares sold by Apex, Vinsin and Sungrace constituted 98.47% of the sell volume on that day. Further I find that on the said date Classic Infin Limited had traded through the same broker viz TIFIL. Thus, like 14 March, 2000 all the 400000 shares in question were bought and sold through the same broker on March 27, 2000 also.

- 14.** The Table below contains the details of trading done by Apex, Vinsen and Sungrace on March 27, 2000:

Trade Date	Buy Order Entry Time	Sell Order Time	Trade Time	Buy Limit Price	Sell Limit Price	Trade Price	Trade Quantity
27-Mar-00	15:24:41	15:24:40	15:24:41	937.5	937.5	937.5	25000
27-Mar-00	15:24:58	15:24:58	15:24:58	937.5	937.5	937.5	25000
27-Mar-00	15:25:51	15:25:48	15:25:51	937.5	937.5	937.5	25000
27-Mar-00	15:26:30	15:26:31	15:26:31	937.5	937.5	937.5	25000
27-Mar-00	15:26:45	15:26:43	15:26:45	937.5	937.5	937.5	25000
27-Mar-00	15:26:54	15:26:57	15:26:57	937.5	937.5	937.5	25000
27-Mar-00	15:27:10	15:27:10	15:27:10	937.5	937.5	937.5	25000
27-Mar-00	15:27:23	15:27:23	15:27:23	937.5	937.5	937.5	25000
27-Mar-00	15:27:37	15:27:38	15:27:38	937.5	937.5	937.5	25000
27-Mar-00	15:28:12	15:28:12	15:28:12	937.5	937.5	937.5	25000
27-Mar-00	15:28:40	15:28:40	15:28:40	937.5	937.5	937.5	25000
27-Mar-00	15:28:45	15:28:52	15:28:52	937.5	937.5	937.5	25000
27-Mar-00	15:29:01	15:29:01	15:29:01	937.5	937.5	937.5	25000
27-Mar-00	15:29:12	15:29:09	15:29:12	937.5	937.5	937.5	25000
27-Mar-00	15:29:21	15:29:21	15:29:21	937.5	937.5	937.5	25000
27-Mar-00	15:29:34	15:29:34	15:29:34	937.5	937.5	937.5	25000

The table above clearly shows that TIFIL had placed buy orders for Classic Infin Limited and sell orders for Apex, Vinsen and Sungrace almost at identical times, for identical quantities and identical prices. Thus, buy and sell orders were placed in such a manner by TIFIL that their time, quantity and price get matched and trade is executed. This strongly indicates that the above mentioned transaction were synchronised transactions.

- 15.** I note that SEBI investigations have revealed that Classic Credit Limited and Classic Infin Limited are entities associated

with/connected to Ketan Parekh. These entities along with some other entities were found to have indulged in Fraudulent and Unfair Trade Practices in the purchase and sale of other shares/scrip and have been prohibited from accessing the capital market and dealing in securities for a period of 14 years vide SEBI Order dated December 12, 2003.

- 16.** Further, for the same set of transactions in the scrip of SAB TV, the broker TIFIL was held guilty of violating 4(a), (b), (c) and (d) of PFUTP Regulations, 1995 and accordingly, SEBI vide order dated November 12, 2007 had restrained TIFIL from accessing the securities market and also prohibited it from buying, selling or otherwise dealing or associating with the securities market in any manner whatsoever, whether directly or indirectly, for a period of five years.

I also note that it was found that while Classic Credit and Classic infin were KP entities, Apex, Vinsen and Sungrace were apparently group/associates of Himachal Futuristic Communication Limited (for short 'HFCL') and shared the same address which is as follow:

Sr. no.	Name of the entity	Address
1.	M/s Apex Enterprises (India) Ltd.	16, Netaji Shubhas Road, 4 th Floor, Kolkata - 700001
2.	M/s. Sungrace Merchandise Private Limited	
3.	M/s. Vinsen Trade & commerce Private Limited	

- 17.** In light of the aforesaid, it is clear that a total of 16 cross deals in each settlement were executed by TIFIL while buying and selling the shares of SAB TV for its clients, Apex, Vinsen and Sungrace. I am of the view that the transactions in question were in fact matched /synchronised trades that were intended to defeat the price and order matching mechanism of the stock exchange which was in place to ensure anonymity of trades. These

synchronized/matched trades had distorted the equilibrium of the scrip of SAB TV.

- 18.** From the contract notes and bills issued by TIFIL to the three companies, I find that the contract notes and bills have been issued on the date of transactions itself i.e. on March 14, 2000 and March 27, 2000. These contract notes and bills issued by TIFIL clearly show the manner in which TIFIL has executed the buy and sell orders of Apex, Vinsen and Sungrace. The contract notes and bills show that the buy and sell orders of these three companies were executed by placing the orders for 25000 shares repeatedly and not by placing a bulk order. Therefore, I am of the view that when TIFIL had first issued the contract notes and bills dated March 14, 2000, it should have created a doubt /raised an alarm in the minds of these three companies in respect of the manner in which their broker TIFIL was executing their orders and while placing the sell orders on March 27, 2000, Apex, Vinsen and Sungrace should have instructed TIFIL not to execute the sell orders in the manner as was done by it on March 14, 2000. There is nothing in records to show that while placing the sell order Apex, Vinsen and Sungrace has instructed TIFIL not to execute their respective orders in the manner in which it was done on March 14, 2000.
- 19.** Moreover, the fact that contract notes were issued to the three companies on the same date when buy and sell transactions were executed, makes it clear that the three companies had the knowledge of the manner in which their order were executed by TIFIL.
- 20.** I observed that the three companies had contended that under PFUTP Regulations, 1995, SEBI had no power to issue the directions proposed in the show cause notice. It was also argued by them the relevant transaction took place in the month of March, 2000 and at that time, PFUTP Regulations, 2003 was not in force. Therefore, no directions can be issued under PFUTP Regulations,

2003. Here I would like to state that this is a very narrow and incorrect interpretation of law. To say that prior to coming into force of PFUTP Regulations, 2003, SEBI did not have power to debar any person from accessing the capital market or dealing in securities would amount to giving a very restrictive interpretation to the provisions of SEBI Act, 1992. The correct position is that SEBI was having widest possible powers under Section 11B of the Act whereby the Parliament, in its wisdom, had given discretion to SEBI to pass all sort of necessary directions needed to deal with the situations which may emerge in a very dynamic securities market. The parliament was conscious of the fact that as a regulator, SEBI would be required to deal with new situations which may not be envisaged in advance, and, therefore, it did not give an exhaustive list of the types of directions that can be passed by SEBI. The powers of SEBI under Section 11B are of widest possible amplitude and prior to the coming into force of PFUTP Regulations in 2003 also, SEBI had power to issue directions including debarring any person from accessing the capital market or dealing in securities.

Further, it is not correct to argue that as per the provisions of Regulation 13(2) of PFUTP Regulations, 2003, for violation of PFUTP Regulations, 1995, only the procedure laid down in the PFUTP Regulations, 2003 are to be followed. I note that the similar issue was decided by Hon'ble Calcutta High Court in **Raj Kumar Kishorepuria Vs. General Manager, SEBI & Ors** WP No. 1933/2004 (decided on 23.03.06) wherein the Hon'ble Court has held as under :

“I find that provisions in cls. (e) to (h) of Reg. 11(1) of the new regulations are nothing but improved versions of the old provisions of Cls. (a) to (d) (there was nothing more) of regn. 12 of the repealed regulations. The new regulations, in fact, do not enlarge the scope of power of the board as to the things mentioned in cls. (a) to (d) of its regn. 11(1). The measures indicated in cls. (a) to (d) of regulation 11(1) are, in substance,

identical with the already existing ones mentioned in cls. (a) to (d) of Section 11(4) of the Act. In the cls. some powers of the Board were enumerated specifically, without prejudice to the general power given to it by Sections 11 and 11B of the Act.....”.

Further, it was rightly observed by court that:

“...After examining the provisions of the Act and the regulations (both the repealed and the new ones), I am minded to hold that interpretation given by the counsel for the petitioner to regn. 11 of the new regulations, that it being a piece of substantive law shall not apply to the investigation started against the petitioner under the old regulations (since repealed),, is not acceptable. In my reading and understanding nothing in regn. 11 of the new regulations falls in the field of substantive law.”

The Court further held that:

“Moreover, it is apparent from the impugned post investigation show cause notice that the board contemplated actions against the petitioner under s.11B, which empowers it to issue all or any of the directions specified in regn.11 of the new regulations. I say so, because s.11B confers power on the board to issue such directions as may be appropriate in the interests of investors in securities and securities market. Therefore, to my mind, in any case, the petitioner cannot say that the measures mentioned in regn.11 cannot be taken against him, if there are good and sufficient reasons for taking any of them.”

In view of the above, it is clear that even before coming into force of PFUTP Regulations, 2003, SEBI had the power under Section 11B to pass similar directions, as mentioned under Regulation 11 of PFUTP Regulations, 2003.

- 21.** For the reasons stated above, I am of the view that Apex, Vinsen and Sungrace had intentionally entered into these transactions and had the knowledge about the manner in which these transactions were

executed by TIFIL and, therefore, have violated regulation 4(b) of PFUTP Regulations, 1995.

22. Now therefore, I in exercise of powers conferred upon me under section 19 of the SEBI Act, 1992 read with Section 11 and 11B of SEBI Act 1992 read with PFUTP Regulations, 1995/2003, hereby restrain M/s Apex Enterprises (India) Limited from dealing in securities directly and indirectly for a period of 1 month.

23. This order shall come into force with immediate effect.

DATE:12-12-2008

T.C. NAIR

PLACE: MUMBAI

WHOLE TIME MEMBER

**SECURITIES AND EXCHANGE BOARD OF
INDIA**