

WTM/KMA/IVD/127/08/2009

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 11 AND 13 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS 2003 AGAINST MR. MINOO PESTONJI IN THE MATTER OF AXEL POLYMERS LIMITED

1. On the basis of a report received from the Bombay Stock Exchange Limited (hereinafter referred to as BSE), the Securities and Exchange Board of India had conducted an investigation into the buying, selling or dealing otherwise, in the shares of Axel Polymers Limited (hereinafter referred to as the company) for the period between August 02, 2000 to August 31, 2000 (hereinafter referred to as the investigation period). The said investigations *inter alia* observed/found the following:

- a. The shares of the company were listed at BSE, Ahmedabad Stock Exchange Limited (hereinafter referred to as ASE), Vadodara Stock Exchange Limited (hereinafter referred to as VSE) and the Madras Stock Exchange Limited (hereinafter referred to as MSE).
- b. The trading in the equity shares of the company was suspended by BSE with effect from February 24, 1997 for the non-compliance with Clause 16 of Listing Agreement. The suspension was later revoked by BSE with effect from April 03, 2000. Though, the said suspension was revoked on

April 03, 2000, the shares of the company were not traded till August 01, 2000.

- c. During the investigation period, the shares of the company were not traded in any of the stock exchanges except in BSE. It was observed that a single trade for 10,000 shares of the company at the rate of Rs.1.85/- was executed only on August 02, 2000. Thereafter, trading was observed from August 16, 2000 onwards. The share price of the shares of the company touched its period high of Rs.6.10/- on August 29, 2000 and closed at Rs.5.50/- on August 31, 2000. The traded volumes increased from 10,000 shares (on August 02, 2000) to 1,96,000 shares (on August 21, 2000) and the average daily volume traded during the specified period was 87,638 shares.

2. The investigation further revealed that Mr. Minoo Pestonji (hereinafter referred to as the noticee) had dealt in the shares of the company through M/s. Manisha P Naik, an unregistered sub-broker of Pramod Kumar Jain Securities Private Limited. The noticee had purchased 1,49,300 shares and sold 2,14,900 shares of the company during the investigation period. It was alleged that the noticee had also entered into synchronized trades in the shares of the company during the investigation period. The investigation conducted by SEBI observed that the noticee had placed six large buy orders on August 22, 2000. Thus, it was alleged that the noticee had traded in the shares of the company in a fraudulent manner, thereby *prima facie* contravening the provisions of the Regulation 4 (a), (b), (c) and (d) of the 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). In view of the allegations against the noticee, a notice dated May 30, 2008 was issued to the noticee requiring him to show cause as

to why suitable directions including directions restraining him from buying, selling or dealing in securities for a specified period should not be issued. The said notice required the noticee to reply to the same within twenty one days from the date of receipt of the notice. Though the said notice was delivered, no reply was received from the noticee. Thereafter, a letter dated December 2, 2008 was also sent by SEBI to the noticee reminding him about his failure to reply and requiring him to reply to the show cause notice. Even after the delivery of the said reminder, the noticee did not submit his reply to the show cause notice. Subsequently, a notice dated June 26, 2009 was sent to the noticee informing him that a personal hearing in respect of the present case was scheduled on July 16, 2009 for hearing the noticee. The hearing was then postponed to July 17, 2009 when there was no appearance by the noticee nor was any representation made on behalf of him.

3. I note that sufficient opportunities were provided to the noticee to make his submissions. However, despite, various opportunities, the noticee failed to do so. In the absence of any reply or oral submissions, I am constrained to proceed with the matter based on the materials available on record. On consideration of the facts and circumstances of the present case, the issue to be considered would be to find whether there has been any contravention of the provisions of the PFUTP Regulations by the noticee, while dealing in the shares of the company during the investigation period.

4. I note that the trading in the shares of the company was suspended by BSE from February 24, 1997 and the said suspension was revoked on April 03, 2000. Though, the said suspension was revoked on April 03, 2000, the shares of the company were not traded till August 01, 2000. On August 02, 2000, a single trade for 10,000 shares (at the rate of Rs.1.85/- per share) was executed. There was no trading in BSE between August 03, 2000 and August 16, 2000.

On August 16, 2000, 1,29,600 shares of the company were traded in 107 trades. During the investigation period, the share price touched Rs.6.10/-, which was the highest during the said period. The volumes also increased from 10,000 shares (traded on August 02, 2000) to 1966000 shares (traded on August 21, 2000).

5. From the finding of the investigation, I find that the noticee had traded in the shares of the company through the stock broker viz. M/s. Manisha P Naik (Member, VSE), who acted as an unregistered sub-broker of Pramod Kumar Jain Securities Private Limited (Member, BSE). The noticee was known to the management of the company as he was the father-in-law of Mr. A. B. Bodhanwala, promoter director of the company. I note that the noticee had enrolled as a client of M/s. Manisha P Naik on August 15, 2000 and started trading in the shares of the company from August 14, 2000, a day before he became the registered client of M/s. Manisha P Naik. Through M/s. Manisha P Naik, the noticee (Client Code: 2000) had purchased 1,49,300 shares and sold 2,14,900 shares during the investigation period. I also note that the noticee had placed 6 large buy orders on August 22, 2000 and one of his orders was for the purchase of 2,18,000 shares of the company. I also note that the noticee had placed a buy order (buy order no. 55201000000007240) for 4,00,000 shares on August 25, 2000, though trades were executed only in respect of 5000 shares. It was also noticed that there were five instances where the orders were placed at Re.0.45/- over the previous traded price, which resulted in execution of trades at a higher rate. Out of the five instances, Pramod Kumar Jain Securities Private Limited (the stock broker of the noticee) appeared in three transactions and had placed buy orders in a relatively large quantity. Out of the said transactions, the stock broker (Pramod Kumar Jain Securities Private Limited) had placed two orders on behalf of the noticee. The said trades have been tabulated herein below:

Trade Date	Time	Qty	Price	LTP	Difference in traded price to LTP	Buyer Broker Code	Buyer Client Code	Buy order qty	Buy order rate	Buy order time	Seller broker Code	seller client code	sell order qty	sell order rate	sell order time
16/08/2000	13:34:57	3000	2.3	1.85	0.45	D0552	BAVA	30000	2.3	12:04:52	D0513	A012	30000	2.3	13:34:57
21/08/2000	10:15:38	100	3.4	2.95	0.45	D0400	AH02	100	3.4	10:15:37	D0552	B99	10000	3.4	10:08:44
22/08/2000	10:05:42	500	4	3.2	0.80	D0552	2000	218000	4	10:05:42	D0634	8505	2500	4	9:55:45
28/08/2000	10:06:21	200	4.75	4.2	0.55	D0552	2000	11600	4.75	10:04:35	D0620	1050	200	4.75	10:06:21
30/08/2000	13:11:03	500	5.45	4.85	0.60	D0660	CS31	500	5.45	13:11:03	D0519	CS40	500	5.45	13:03:01

6. The noticee was a shareholder of the company. I find from the information furnished by the company vide letter dated December 28, 2004 that there was no change in the shareholding pattern of the noticee as on August 01, 2000 and August 31, 2000 and remained the same at 15,000 shares. However, M/s. Manisha P Naik through whom the noticee had traded had deposed that the noticee had sold 65,600 shares (on net basis). From the shareholding details obtained from the company, it is seen that the noticee did not have as many shares as he sold on net basis in his name as he was holding only 15,000 shares of the company during the investigation period. The investigation conducted by SEBI also found that from the 'Inward-Outward Register' submitted by M/s. Manisha P Naik, the shares delivered by the noticee were in the names of Mr. J.R. Desai/A.J. Desai, Ishwarbhai D. Patel, Ashwinbhai T. Patel, Hasmukh M. Patel, etc. who were among the top 50 shareholders of the company and well connected with the company. I find that during the investigation period, the total quantity traded on 'self trade' basis was 2,44,400 shares. It was also noticed that most of those trades (self trades) were done for the noticee, Mr. J. R. Desai (promoter director of the company with client codes - BAVA, BVA & B99) and Kuber Finstock Private Limited (with client code - K018). I also take note of the fact that the noticee and Mr. J. R.

Desai were involved in trade reversals, i.e. when the noticee was purchasing shares, the seller was Mr. J. R. Desai, and vice versa. For the majority of the trades, the noticee was a buying client. I also find that the noticee had dealt with an unregistered sub-broker, M/s. Manisha P Naik while Mr. J. R. Desai had dealt through another unregistered sub-broker, M/s Thakkar (of Pramod Kumar Jain Securities Private Limited).

7. I also find that the noticee had not furnished information/documents sought by SEBI during its course of investigation in the present matter. Though, the noticee sought time for furnishing the same, he has not provided the information till date. Also, the noticee has not taken any steps to refute the allegations against him in the show cause notice, though the same was served on him. He has also not appeared before me for the personal hearing for making his submissions on the allegations in the matter.

8. In view of the foregoing, I find that:

a. Trading resumed in the shares only on August 02, 2000, even though the trading suspension was revoked by BSE on April 03, 2000. There was a noticeable price rise in the shares of the company during the investigation period.

b. There was an increase in the traded volumes during the period under investigation. From 10,000 shares that were traded on August 02, 2000, the traded quantity went up to 1,96,000 shares, which was not supported by any fundamentals of the company.

c. The noticee had traded in the shares of the company through M/s. Manisha P Naik, an unregistered sub-broker of Pramod Kumar Jain

Securities Private Limited (member, BSE). During the investigation period, the noticee had bought 1,49,300 shares and sold 2,14,900 shares of the company, a net sale of 65,600 shares. The said data was also confirmed by the sub-broker through whom the noticee had traded.

e. The noticee had placed buy orders at a higher price than the last traded price for trades. On August 22, 2000, the noticee trading through the stock broker, Pramod Kumar Jain Securities Private Limited had placed a buy order for 218000 shares at Rs.4/- per share, when the last traded price was Rs.3.2/- per share. Likewise, on August 28, 2000, the noticee trading through the said stock broker had placed a buy order for purchase of 11600 shares at Rs.4.75/- per share when the last traded price was Rs.4.2/-. It is unlikely that a person would purchase at a higher price than the price that is available in the market as a buyer would always want to buy at a lower price and a seller always would want to sell at a higher price. The noticee has attempted to manipulate the share price of the company during the relevant period.

f. The investigation had also noticed trade reversals between the noticee and Mr. J. R. Desai, but for a majority of the trades, the noticee was a buyer.

9. The relevant provisions of the PFUTP Regulations that have been charged against the noticee have been reproduced herein below:

“Prohibition against Market Manipulation

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;

.....”

10. The noticee by placing heavy orders on August 22, 2000 and August 28, 2000 at a price higher than that of the last traded price has indulged in acts which had impacted the price in the market. In the light of the fact that on August 22, 2000, 72,000 shares were traded in 95 trades, the noticee had placed a purchase order for 2,18,000 shares, but trades were executed only in respect of 500 shares. On August 28, 2000, the noticee had placed a purchase order for 11,600 shares, which was substantial as the total trades on the stock exchange for that day was 78,100 shares (traded in 120 trades), trades were executed only in respect of 200 shares. From the trade log, I also find that the noticee was involved in reversal of trades with Mr. J.R.Desai. Thus, I conclude that the noticee by his acts had transacted in the shares of the company with an intention of raising the price of the scrip. By placing huge buy orders in illiquid scrip like the company, the noticee has indulged in acts which created false or misleading appearance of trading of the shares of the company in the market. The noticee had also indulged in transactions with an intention of not effecting change in the beneficial ownership. Therefore, from the above, I find that the noticee had contravened the provisions of Regulation 4 (a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

11. In view of the foregoing, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Section 11B thereof read with Regulations 11 and 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby restrain Mr. Minoo Pestonji (having his address at C/o Dr. Minnie A. Bodhanwala, 12, Jeevan Jyot Society, Vadodara-390004) from accessing the securities market and prohibited from buying, selling and otherwise dealing in securities market, either directly or indirectly, for a period of six months.

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

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: August 31, 2009