

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

**IN THE MATTER OF M/S. PORECHA GLOBAL SECURITIES PVT. LTD.
(SEBI REGISTRATION NO. INB010984434) AND SHRI ARUN PORECHA
(SEBI REGISTRATION NO. INB010001213)**

IN THE MATTER OF MOBILE TELECOMMUNICATIONS LIMITED

Date of hearing: 18.08.2009

Appearances:

For Noticees: Shri J. J. Bhatt, Advocate,

Ms. Prachi Panda, Advocate,

Shri Samir Porecha, and

Shri Sudhir Porecha.

For SEBI: Shri G Ramar, Deputy General Manager,

Shri Lamber Singh, Manager,

Shri Amitesh Kumar, Legal Officer, and

Ms. Akanksha Golay, Legal Officer.

ORDER

**Under Regulation 28 (2) of the Securities and Exchange Board of India
(Intermediaries) Regulations, 2008**

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into the dealing in the shares of M/s. Mobile Telecommunication Ltd. (hereinafter referred to as MTL), a company listed on the Bombay Stock Exchange Ltd. and Ahmedabad Stock Exchange (hereinafter referred to as BSE and ASE respectively). This investigation was initiated due to unusual price rise in the scrip of MTL during

August–November, 2000 at BSE. The investigation covered the transactions conducted during August 28, 2000 to November 11, 2000 (hereinafter referred to as investigation period).

2. The investigation revealed that certain individuals who were connected with each other and the company MTL, had actively traded in its scrip among themselves and thus created high volumes during the investigation period. It was also observed that M/s. Porecha Global Securities Private Limited, Member, BSE (hereinafter PGSPL) and Arun Porecha, Member, BSE (hereinafter AP) have traded substantially in the said scrip during the investigation period for their clients and also entered into structured/cross deals.
3. It was therefore alleged that the brokers PGSPL and AP had violated Regulation 4 (a), (b) & (c) of the SEBI (Prohibition of Fraudulent Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and Regulation 7 read with Clauses A (1), (2), (3), (4) & (5) of the Code of Conduct for Stock Brokers, specified in Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Brokers Regulations').
4. Thereafter, vide order dated June 29, 2004 and subsequent order dated November 23, 2007, SEBI appointed Enquiry Officer, to enquire into the alleged violations by PGSPL and AP under Regulation 5 (1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed). The SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 was repealed with the notification of SEBI (Intermediaries) regulations, 2008. The enquiry, therefore, continued under the Intermediaries Regulations. The Designated Authority (hereinafter referred to as 'enquiry officer') vide separate enquiry reports dated November 21, 2008 recommended the suspension of the certificate of registration of the brokers for a period of two months.
5. Subsequently, SEBI issued show cause notices (SCN) dated January 07, 2009 to both the brokers enclosing therewith copy of the enquiry reports to show cause as to why the appropriate penalty including the penalty as recommended by the enquiry officer should not be imposed upon them. Both the brokers replied to the said show cause notice vide

their respective letters dated January 30, 2009. An opportunity of personal hearing was granted to them on August 18, 2009 before me during which they appeared and made oral submissions. Vide separate letters dated August 24, 2009, they also made written submissions. They have *inter alia* submitted as under:

- (i) The proceedings suffer from great delay which is not even explained.
- (ii) The transactions of their clients were normal and delivery based nature in the said scrip and the clients always honoured their obligations and commitments. Further, delivery based traded if synchronized and done at ruling market price cannot be termed as artificial volume as the trades in MTL scrip resulted into change in beneficial ownership.
- (iii) Further, at the relevant time there were two trading segments on BSE: Scrip Code: 532127- T+3 Rolling Settlement and Scrip Code: 32127-Weekly settlement. Trading in rolling settlement would result into actual delivery of shares, if at the end of the day some position in a scrip remained outstanding. Hence, trading in this segment was not much favoured by retail investors. Trading in Scrip Code 32127 was for weekly settlement. In case some position remained outstanding at the end of the day, then, that position can be squared-off on the next day or during next 4 – 5 days. In other words, 5 days were available for speculative activities. At the end of period of 5 days, net position only would result into giving / taking of delivery of shares. It was therefore, necessary to understand that the trading in Scrip Code 532127 would be undertaken by those who wanted to do delivery based transactions. (Sellers had ready stock to deliver and buyers had money to lift deliveries). The trading by them in the said scrip took place in T+3 rolling settlement, in which settlement speculative activities are ruled out as mentioned above.
- (iv) They denied that they were involved in any way in structured trades in MTL scrip. They submitted that they executed clients' transactions in the said scrip as an agent and were not aware, if their clients had any intention to do structured trades. The clients' style / pattern was of delivery based nature which could not raise any suspicion. They further argued that assuming that the clients' trades were of structured deals, there is no law or regulation that prohibits the entry into

synchronized trades per se. If the seller wants to transfer his holding to a buyer of his choice at or near market price through market mechanism, there is nothing wrong and their client being UTI, there was some additional comfort level.

- (v) They argued that they are professionally managed company having not done proprietary trading of a single share of this company. Had they intended to create artificial volume as alleged, they would have indulged into proprietary trading, off-market dealing, third party trades etc.
- (vi) They also denied that a large number of synchronized trades were arranged by them or that they were a party in their client's orders that got matched with counter orders of Jayant Amerchand Kalidas (Clg. no. 301, hereinafter referred to as 'JAK'). Further there was nothing wrong if two clients – one seller and another buyer – want to execute their orders for transfer of their beneficial ownership through market mechanism at pre-decided rates based on prevailing market rates.
- (vii) That the trades were genuine is established from the fact that deliveries of shares were tendered by the sellers and buyers paid consideration and took the deliveries of MTL shares. They, as a broker could not doubt anything as UTI is a knowledgeable and enlightened institution and their investment in the said shares was not as per their recommendation.
- (viii) The sellers being closely related to the company by itself is no material to suggest wrong doing on their part especially when they were not even aware of the said relationship and their awareness is not even established in the investigation report.
- (ix) They clarified that they had carried out orders of selling constituents and buying constituents separately on the trading system and not matched them in-house. Had they matched orders of one client against orders of another client within their brokerage office, then perhaps possibility of some involvement could be said to have existed.
- (x) They did not create false market either singly or in concert with others. They argued that they did not indulge in any act detrimental to the investors' interest or which led to interference with the fair and smooth functioning of the market.
- (xi) They further mentioned some mitigating factors in support of their innocence.

6. I have considered the enquiry reports, the SCNs, their respective replies, oral as well as written submissions and other materials on record.
7. I note that though the matter ought to have been disposed of expeditiously, the proceedings as such do not suffer from great delay as contended by the noticees. I note that the transactions were carried out in October-November 2000. The investigation was conducted thereafter by SEBI and completed on June 25, 2004. An enquiry officer was appointed vide SEBI order dated June 29, 2004. The matter was then transferred to another enquiry officer vide SEBI order dated December 28, 2004. The matter was again transferred to another enquiry officer vide SEBI order dated December 20, 2005. However, due to administrative exigencies, another enquiry officer was again appointed vide SEBI order dated November 23, 2007 who after conducting enquiry in terms of the Brokers/Intermediaries Regulations submitted separate enquiry reports on November 21, 2008. It is noted that the proceedings have been conducted in adherence with the principles of natural justice and after affording the brokers a fair opportunity of hearing at all the stages before various enquiry officers during which they have duly participated and actively defended themselves.
8. I note that price of the scrip of MTL at BSE increased from Rs.99.60 on August 28, 2000 to Rs.165.05 on September 11, 2000 and closed at Rs.127.35 on September 15, 2000. The volume traded on BSE during this period was 29,21,855 shares. PGSPPL sold 12, 11, 000 shares for its client Credit Link Finvest Ltd., 3,00,000 shares for its client Cardioid Sec. Pvt. Ltd and bought 1,00,000 shares for its client Unit Trust of India (UTI) and AP bought 3,00,000 shares for its client UTI during the investigation period.
9. Further, for all the trades done by PGSPPL in the scrip of MTL, the difference between the selling order and the buying order with the counter party broker JAK who was trading on behalf of its client UTI was only 1 to 2 seconds. These trades are in nature of structured deals. The details of the orders placed by PGSPPL (Clg no.567) during October 23, 2000 to November 10, 2000, wherein all its orders got matched with that of JAK (Clg no.301) within a time difference of only 1 to 2 seconds are given below:

Member code	Buy/Sell	Rate	Qty	Av. qty	Date	Order Time
567	S	96	100000	100000	25/10/2000	13:21:30
301	B	96	100000	100000	25/10/2000	13:21:31
567	S	100	200000	200000	27/10/2000	11:57:59
301	B	100	200000	200000	27/10/2000	11:58:01
301	B	100	100000	100000	30/10/2000	12:12:24
567	S	100	100200	100000	30/10/2000	12:12:24
567	S	100	100000	100000	31/10/2000	13:30:31
301	B	100	100000	100000	31/10/2000	13:30:33
301	B	98.85	100000	100000	01/11/2000	15:18:10
567	S	98.85	100000	100000	01/11/2000	15:18:12
567	S	100	100000	100000	02/11/2000	12:22:30
301	B	100	100000	100000	02/11/2000	12:22:31
301	B	105	100000	100000	03/11/2000	14:30:55
567	S	105	102500	100000	03/11/2000	14:30:57
301	B	115	100000	100000	08/11/2000	14:36:41
567	S	115	100000	100000	08/11/2000	14:36:41
301	B	114.95	100000	100000	09/11/2000	12:34:41
567	S	114.95	100000	100000	09/11/2000	12:34:42
567	S	111	100000	100000	10/11/2000	12:49:32
301	B	114.9	100000	100000	10/11/2000	12:49:34

567	S	114.9	99900	99900	10/11/2000	12:52:39
301	B	114.9	99900	99900	10/11/2000	12:52:40
567	B	111	99900	99900	10/11/2000	12:53:46
301	S	111	99900	99900	10/11/2000	12:53:47

10. It is further observed that on October 23, 2000, PGSPL has entered into a cross deal at 14:03:33 hrs wherein its selling client was Credit Link Finvest Pvt. Ltd. and buying client was UTI. PFSP also entered into structured deals on October 24, 2000, November 6, 2000 and November 07, 2000 for its client Credit Link Finvest Pvt. Ltd. with the counter party broker AP wherein its client was UTI. The dealing room of AP as well as PGSPL is admittedly the same and since both of them were aware of the buying as well as the selling orders, the trades got matched. The relevant extract from the order log showing the trades executed between PGSPL (Clg no.567) and AP (Clg no.4) is as follows:

Member Code	Buy/Sell	Rate	Qty.	Avqty	Date	Order time
4	B	96	100000	100000	24/10/2000	12:40:47
567	S	96	100500	100000	24/10/2000	12:40:47
4	B	107	100500	100500	06/11/2000	11:28:10
567	S	107	100500	100500	06/11/2000	11:28:11
4	B	115	100000	100000	07/11/2000	11:27:20
567	S	115	100000	100000	07/11/2000	11:27:20

11. It is further noted that there was a deal between PGSPL and JAK on offer basis at Rs.114.90 in reversal of the transaction which was earlier reported at Rs.111. During the proceedings, when PGSPL was asked for reason for entering into the above mentioned deal on trades executed on November 10, 2000 in the scrip of MTL, PGSPL stated that the trade at 12:49:32 hrs done by it for 1,00,000 shares for Rs.111 was a genuine mistake

by a new BOLT operator since its client had requested it to keep a limit of around 115 for selling 1,00,000 shares. The BOLT operator had also forgotten to mark the transaction as SD (sale for delivery) where it was not required to pay the margin to the exchange in case it delivers the shares to the exchange earlier. To correct this mistake, PGSPL stated that they assumed that since the counter party broker for earlier trades was M/s. JAK, they called and requested M/s. JAK to reverse the trades. Further, M/s. JAK in their statement said that due to a punching error the trades got executed at Rs.111 and that the counter party broker PGSPL requested for reversal of trades. Thus, it is noted that PGSPL was aware as to who the counter party broker was for all its trades though earlier it has stated that it does not know who its counter party was for all the aforesaid structured deals. It is further corroborated from the fact that all these happened in just few minutes. Thus, it is quite clear that while entering into the trades with counter party broker, PGSPL had full knowledge about the same. The following is the relevant extract from the order log:

Member Code	Buy/Sell	Rate	Qty	Avqty	Date	Order Time
567	S	111	100000	100000	10/11/2000	12:49:32
301	B	114.9	100000	100000	10/11/2000	12:49:34
567	S	114.9	99900	99900	10/11/2000	12:52:39
301	B	114.9	99900	99900	10/11/2000	12:52:40
567	B	111	99900	99900	10/11/2000	12:53:46
301	S	111	99900	99900	10/11/2000	12:53:47

12. It is also noted that there were large synchronized trades observed between the members AP (Clg no.4) & PGSPL (Clg no.567) and JAK (Clg no.301) & PGSPL, the details of which are given below:

Member Code	Buy/Sell	Rate	Qty	Avqty	Date	Order Time
567	S	96	100000	100000	23/10/2000	14:03:33
567	B	96	100000	100000	23/10/2000	14:03:33

4	B	96	100000	100000	24/10/2000	12:40:47
567	S	96	100500	100000	24/10/2000	12:40:47
567	S	96	100000	100000	25/10/2000	13:21:30
301	B	96	100000	100000	25/10/2000	13:21:31
567	S	100	200000	200000	27/10/2000	11:57:59
301	B	100	200000	200000	27/10/2000	11:58:01
301	B	100	100000	100000	30/10/2000	12:12:24
567	S	100	100200	100000	30/10/2000	12:12:24
567	S	100	100000	100000	31/10/2000	13:30:31
301	B	100	100000	100000	31/10/2000	13:30:33
301	B	98.85	100000	100000	01/11/2000	15:18:10
567	S	98.85	100000	100000	01/11/2000	15:18:12
567	S	100	100000	100000	02/11/2000	12:22:30
301	B	100	100000	100000	02/11/2000	12:22:31
301	B	105	100000	100000	03/11/2000	14:30:55
567	S	105	102500	100000	03/11/2000	14:30:57
4	B	107	100500	100500	06/11/2000	11:28:10
567	S	107	100500	100500	06/11/2000	11:28:11
4	B	115	100000	100000	07/11/2000	11:27:20
567	S	115	100000	100000	07/11/2000	11:27:20
301	B	115	100000	100000	08/11/2000	14:36:41
567	S	115	100000	100000	08/11/2000	14:36:41

301	B	114.95	100000	100000	09/11/2000	12:34:41
567	S	114.95	100000	100000	09/11/2000	12:34:42
567	S	111	100000	100000	10/11/2000	12:49:32
301	B	114.9	100000	100000	10/11/2000	12:49:34
567	S	111	100000	100000	10/11/2000	12:49:32
301	B	114.9	100000	100000	10/11/2000	12:49:34
567	S	114.9	99900	99900	10/11/2000	12:52:39
301	B	114.9	99900	99900	10/11/2000	12:52:40
567	B	111	99900	99900	10/11/2000	12:53:46
301	S	111	99900	99900	10/11/2000	12:53:47
567	S	114.9	99900	99900	10/11/2000	12:52:39
301	B	114.9	99900	99900	10/11/2000	12:52:40
567	B	111	99900	99900	10/11/2000	12:53:46
301	S	111	99900	99900	10/11/2000	12:53:47

13. Further, analysis of the trade and order log reveals that the transactions undertaken by both PGSPL and AP for their client UTI appear to be synchronized in nature and constitute almost 100% of the total traded quantity during the day as can be noticed as under.

Date	Total traded quantity	UTI trades (synchronised)	Buying member	Selling member	% to total quantity
24/10/2000	139935	100000	Arun Porecha	PGSPL	71.46
25/10/2000	132340	100000	Jayant Kalidas	PGSPL	75.56
27/10/2000	224880	200000	Jayant Kalidas	PGSPL	88.94
30/10/2000	129140	100000	Jayant Kalidas	PGSPL	77.43
31/10/2000	120675	100000	Jayant Kalidas	PGSPL	82.87
01/11/2000	106250	100000	Jayant Kalidas	PGSPL	94.12

02/11/2000	116990	100000	Jayant Kalidas	PGSPL	85.48
03/11/2000	118210	100000	Jayant Kalidas	PGSPL	84.59
06/11/2000	100500	100200	Arur Porecha	PGSPL	99.70
07/11/2000	100100	99990	Jayant Kalidas	PGSPL	99.89
08/11/2000	100200	100000	Jayant Kalidas	PGSPL	99.81
09/11/2000	101200	100000	Jayant Kalidas	PGSPL	98.84

14. Thus, it is not a case of stray transaction as contended by the brokers. PGSPL has entered into structured deals on so many instances that no prudent person would come to the conclusion that these were genuine transactions. PGSPL has executed trades for UTI by entering into structured/matched deals with JAK and further by entering into structured deals with AP, it has enabled its clients viz., Credit Link Finvest Pvt. Ltd. and Cardioid Securities Pvt. Ltd., who were observed to be in close nexus with the company MTL, to offload their shares to UTI. A close reading of all the said deals evidences the fact that there was a matching of the buy and the sell quantity, as well as price. The buy and the sell orders were also placed at almost the same time or with just a difference of about 1-2 seconds.

15. There does not arise the issue of change in beneficial ownership in the preset matter as contended by the brokers since the charges have been alleged to have violated Regulation 4(a), (b) & (c) of PFUTP Regulations, 1995 which nowhere mentions the element of change in beneficial ownership in any of these provisions at all. Therefore, even assuming that the trades resulted into change in beneficial ownership, it would not make any difference to the charges alleged herein. For the sake of brevity, Regulations are quoted below:

“Regulation 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;"

16. Upon considering the submissions of the brokers, I am of the considered opinion that, had the trades executed by them been genuine, the possibility of such perfect matching would not have been possible. This is too much of a coincidence. One or two deals on the exchange may be synchronized but trades to such an extent as pointed out in the tables above are definitely done with some inbuilt component of 'intent' involved. Greater the number of synchronized trades, the larger are their chances of not being genuine in nature. Accordingly, it is bound to adversely affect the market equilibrium.
17. The basis of holding these trades as synchronized trades is in conformity with the principles as given by the Securities Appellate Tribunal (SAT) in the case of **Nirmal Bang Securities (P) Ltd. Vs SEBI** in which SAT has enumerated the basis for establishing the charge of matched trades viz., complete matching of order time, order quantity and order rate over a period of time. Further, SAT in the matter of **Ketan Parekh Vs SEBI** on which the brokers have placed reliance in their defense has itself observed that a synchronized trade will be illegal if done with a view to manipulate the market. The relevant extract of the order reads as under:

"A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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. This list of factors,

in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”

18. In the process of perpetuating these structured trades, PGSPL and AP have also failed to exercise proper skill, care and diligence, required of that of a broker. As registered brokers of SEBI and members of BSE, they were fully aware of the Rules and Regulations of SEBI. By indulging in the aforesaid acts, the brokers did not maintain the standards of integrity, promptitude and fairness required from a stock broker.
19. 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”.***
20. The provisions contained in Clauses A (1), (2), (3), (4) & (5) of Schedule II *inter alia* provide that a stock broker shall fulfill its obligations in a prompt, ethical, and professional manner and at all times shall exercise due diligence, ensure proper care and exercise independent professional judgment. These provisions in the Code of Conduct are quite clear in their import and stipulate certain norms to which the behaviour of the brokers must conform while transacting their business.
21. Persons who operate in the market as SEBI registered intermediaries are expected and 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.
22. From the facts detailed above on cumulative basis, it is established that PGSPL and AP have indulged in creating a false or misleading appearance of trading on the securities market and have entered into trade transactions which are not genuine and therefore are guilty of violating the provisions of Regulation 4 (a), (b) & (c) of the SEBI (Prohibition of Fraudulent Trade Practices Relating to Securities Market) Regulations, 1995. By not carrying out their business operations in accordance with the provisions of law, they are also guilty of violating the provisions of Regulation 7 read with Clauses A (1), (2), (3), (4)

& (5) of the Code of Conduct for stock brokers, as specified in Schedule II of the Broker Regulations.

23. Coming to the quantum of penalty, I note that the brokers have submitted some mitigating factors like there was no proprietary trading in the scrip of MTL. Then, compared to their daily volume of trading, their clients' volume of trading was very insignificant both in terms of quantum of shares and value. On perusal of these mitigating factors and the facts and circumstances of the case, the penalty of suspension of the certificates of both the brokers for a period of two months as recommended by the enquiry officer appears to be too harsh. In my view, ends of justice would be met if the quantum of penalty is reduced from two months to one month in the instant case.

24. I note that pursuant to the notification of the Intermediaries Regulations, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of Intermediaries Regulations. Therefore, this order is being passed under SEBI (Intermediaries) Regulations, 2008.

25. I, therefore, in exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992, read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby suspend the certificates of registration of the stock brokers namely, M/s. Porecha Global Securities Pvt. Ltd., Member, BSE, having SEBI Registration No. INB010984434, (PAN- AAACP6228N) and Shri Arun Porecha, Member, BSE, having SEBI Registration No. INB010001213, (PAN- AABPP6223D) for a period of one month.

26. This order shall come into force immediately on expiry of twenty one days from the date of this order.

Date: September 9, 2009
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA