

SECURITIES AND EXCHANGE BOARD OF INDIA

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. J. R. DESAI 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 otherwise dealing in the shares of Axel Polymers Limited (hereinafter referred to as the company) for the period between August 2, 2000 to August 31, 2000 (hereinafter referred to as the investigation period). Though, the shares of the company were listed at Ahmedabad Stock Exchange Limited, Vadodara Stock Exchange Limited, Madras Stock Exchange Limited and BSE, the same were traded only in BSE. The trading in the shares of the company was suspended in BSE with effect from February 24, 1997 for non-compliance with Clause 16 of the Listing Agreement. The suspension was later revoked with effect from April 3, 2000. Though, the said suspension was revoked on April 3, 2000, the shares of the company were not traded till August 1, 2000. It was observed that a trade for 10,000 shares of the company at the rate of Rs.1.85/- was executed on August 2, 2000. Thereafter, the trading in the shares was observed from August 16, 2000 onwards. The share price of the company touched its period (investigation) high of Rs.6.10/- on August 29, 2000. The share price was Rs.5.50/- on August 31, 2000. The traded volumes increased from 10,000 shares (on August 2, 2000) to 1,96,000 shares (on August 21, 2000) and the average daily volume was 87,638 shares. The investigation *inter alia* found that Mr. J. R. Desai (hereinafter referred to as the noticee) was the promoter-

director of the company and had dealt in the shares of the company during the investigation period through Thakkar Securities Private Limited, who was an unregistered sub-broker of Pramod Kumar Jain Securities Private Limited (Member, BSE). It was also found that multiple client codes were used for placing orders for the noticee. The noticee was found to be involved in the reversal of trades with others.

2. The findings of the investigation *prima facie* suggested that the noticee had contravened Regulations 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) while dealing in the shares of the company. Accordingly, 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. The said notice returned undelivered with the remark “*left*”. Thereafter, another show cause notice dated September 23, 2008 was issued at the address of the noticee obtained from the Central Depository Services (India) Limited. The said notice was also returned undelivered with the remark “*incomplete address*”. Subsequently, a notice dated June 26, 2009 enclosing a copy of the show cause notice was sent to the last known address which also returned undelivered. Thereafter, the notice for hearing and the show cause notice dated September 23, 2008 were uploaded on the SEBI website. Besides, a newspaper advertisement was published in the regional newspaper (‘Sandesh’) of Vadodara region on August 9, 2009 and in ‘Hindustan Times’ on August 13, 2009 intimating that the show cause notice/personal hearing notices could not be delivered to the noticee at the last known address. It was also informed that the said notices have been made available in the SEBI website (www.sebi.gov.in). It was further informed that, if the noticee wished to avail personal hearing or to make any

submissions in the matter, he may write to SEBI within fifteen days from the date of the publication, failing which the matter would be decided ex-parte.

3. Thereafter, the noticee through his advocate, Mr. Sunil L. Mehta, vide letter dated August 26, 2009, *inter alia* requested for a further period of three months to reply to the show cause notice. It was further stated that the noticee had resigned from the company and that a reply would be filed after collecting the details. He further requested SEBI to inform him of the next date of hearing. The learned counsel also sent a telegram (received by SEBI on August 28, 2009) wherein he had requested time to file detailed reply in the matter. In response to the same, SEBI, vide letter dated September 1, 2009 informed the noticee (at the address given in the letter dated August 26, 2009) of the hearing fixed on September 17, 2009. The said letter was acknowledged by the noticee. As the said hearing was rescheduled to October 14, 2009, the noticee was intimated of the same, vide letter dated September 3, 2009. Subsequently, Mr. Sunil L. Mehta, advocate, vide letter dated October 5, 2009 while acknowledging the letters dated September 1, 2009 and September 3, 2009, stated that he had received copy of all documents which was annexed with the letter dated September 1, 2009. He further stated, *"...To submit detailed representation before you, I would like to request you to please supply the copy of the deposition and other relevant document of the other directors who are also involved in the aforesaid caption matter. Against whom the caption matters proceeding are over. So that I can properly made a representation before you. And I also try to convey my client to avail the consent process, for that also I need some time so that I can take proper instruction in the matter."* In response to the said letter, SEBI vide letter dated October 20, 2009 had informed the noticee and his advocate that all material documents which have been relied upon had been provided earlier as annexures to the show cause notice dated September 23, 2008. In view of the same, another opportunity of personal hearing was granted to the noticee on November 18, 2009. Pursuant to the same, SEBI had received a letter dated October 28, 2009 from Mr. Sunil L. Mehta, wherein he had reiterated his request for *"supply the copy of the deposition and other relevant*

document of the other directors who are also involved in the aforesaid caption matter.” Thereafter, SEBI vide letter dated November 12, 2009 informed that all relevant material documents which have been relied upon had been provided to the noticee, vide letter dated September 1, 2009. It was also informed that as regards other information documents, the same have not been provided to him as they were not relied upon in the matter. In view of the same, a final opportunity of personal hearing was granted to the noticee on December 3, 2009. In the said letter, it was also informed that no further adjournment would be granted in the matter and that on his failure to appear, the matter would be decided based on the documents available on record. Instead of filing any reply, the advocate for the noticee, vide letter dated November 13, 2009 reiterated his request made in his previous letters. Subsequently, the advocate vide letter dated November 13, 2009 had again made the same request. I note that the *prima facie* violations committed by the noticee were explained in detail in the show cause notice itself and all documents which were relied upon by SEBI in respect of the said allegations have been already furnished to the noticee. The noticee was also specifically informed that, SEBI had not furnished the other documents/information as the same were not relied upon in the case against the noticee. I further note that sufficient opportunities were afforded to the noticee to make his submissions in respect of the allegations made against him. However, he did not make any effort to controvert such allegations. On the other hand, he tried to delay the proceedings by making repeated requests for information/documents pertaining to other people which were not at all relevant in the proceedings against him. Despite various opportunities, the noticee neither made any submission in respect of the allegation nor appeared for personal hearings. In the facts and circumstances, I do not consider it necessary to provide any more opportunity to the noticee and the present proceedings is being considered on the basis of the available material on record. In the show cause notice, it has been specifically mentioned that the failure on the part of the noticee to submit reply to the show cause notice would draw a presumption that the noticee does not have any explanation to offer and SEBI would proceed ex-parte in the matter. In the absence of any reply/submissions

from the noticee, I am constrained to proceed with the case on the basis of the material provided in the show cause notice.

4. The noticee had sought for other documents/information which are irrelevant to the case as they are not relied upon. The crucial issue for consideration is whether the noticee by his acts of dealing in the shares of the company had contravened the provisions of the PFUTP Regulations and the same can be sustained solely on the basis of the documents/information provided in the show cause notice and annexures to it. As mentioned above in this order, the shares of the company were not traded till August 1, 2000 subsequent to its revocation of suspension of trading by BSE. A trade for 10,000 shares (at the rate of Rs.1.85/- per share) was executed on August 2, 2000. From the 'stock prices' data available on the website of BSE, I find that on August 16, 2000, the total shares that were traded on the BSE were 1,29,600 shares. During the investigation period, the share price touched a high of Rs.6.10/-. The volumes also increased from 10,000 shares (on August 2, 2000) to 19,66,000 shares (on August 21, 2000). It was found that major buying and selling activity was carried out through the BSE On-line Trading System (BOLT) terminals provided by Pramod Kumar Jain Securities Private Limited (Member, BSE) to its unregistered sub brokers namely, Thakkar Securities Private Limited and M/s. Manisha P Naik. The investigation had revealed that the noticee had traded in the shares of the company in large quantities through Thakkar Securities Private Limited. As per the show cause notice, the noticee had purchased 2,04,800 shares of the company and had sold 2,58,600 shares, a net sale of 53,800 shares during the investigation period. It was found from the share transfer register furnished by the company that the noticee had sold 1,62,200 shares of the company. It was also found that on August 28, 2000, the noticee had transferred 80,600 shares of the company held in his name and 19,400 shares which were held in the name of his wife, Mrs. A. J. Desai to Mr. Chandresh P. Lotia, Director, Kuber Finstock Private Limited. From the aforesaid facts, it appeared that the noticee had sold the remaining shares either through some other stock broker/sub-broker or off market.

5. The investigation revealed that the total quantity traded as 'self trades' in the market during the investigation period was for 2,44,400 shares and out of which 2,42,200 (99%) shares were traded by Pramod Kumar Jain Securities Private Limited. Further, majority of such trades were in the nature of cross deals executed for the noticee, Mr. Minoo Pestonji and Kuber Finstock Private Limited. As already mentioned above, Thakkar Securities Private Limited was an unregistered sub-broker affiliated to Pramod Kumar Jain Securities Private Limited, who provided the trading terminals (BOLT) to Thakkar Securities Private Limited. I also note from the record that the noticee while trading through Thakkar Securities Private Limited, had placed orders using multiple client codes (BAVA, BVA and B99). In his statement to SEBI on December 15, 2004, Mr. Jayesh Thakkar, director of Thakkar Securities Private Limited had admitted that the codes—BAVA, BVA and B99 were used for placing orders for the noticee. According to him, the noticee was introduced by Mr.A.B Bodhanwala, another director of the company. The said representative also stated that most of the shares delivered by the noticee were in the name of the noticee's wife. The said statement was enclosed to the show cause notice issued to the noticee. The show cause notice along with the annexures were admittedly received by the noticee. However, he did not take any effort to refute the same.

6. It was also found that the noticee was involved in trade reversals with Mr. Minoo Pestonji. When the noticee was buying, Mr. Minoo Pestonji (client code—2000) through M/s. Manisha P Naik (who acted as another unregistered sub broker of Pramod Kumar Jain Securities Private Limited) was selling and vice versa. Details of such transactions were mentioned in Annexure II to the show cause notice which has not been disputed and therefore, I do not consider it necessary to reiterate the transaction details in this order. Besides, the noticee and Mr. Minoo Pestonji had executed substantial trades in the shares of the company during the investigation period wherein the former was the seller and the latter was the buyer. Mr. Minoo Pestonji is the father-in-law of Mr. A.B. Bodhanwala, one of the promoter-directors of the company. In this regard, I note

that Thakkar Securities Private Limited had stated that the noticee was introduced to it by Mr.A.B Bodhanwala.

7. Further, it is also noted that the noticee was involved in trade reversals with the client (Amrut Securites Limited) of Galaxy Broking Limited (member, BSE). The details of the said transactions are as below:

Date	Buyer Member code	Buyer Client code	Seller member code	Seller client code	Qty	Traded at Avg rate (Rs)
16.8.2000	Galaxy Broking Limited (513)	A012	Pramod Kumar Jain Securities Private Limited (552)	BAVA BVA	82900 7700	1.85
	Pramod Kumar Jain Securities Private Limited (552)	BAVA	Galaxy Broking Limited (513)	A012	39000	2.3
17.8.2000	Pramod Kumar Jain Securities Private Limited (552)	B99	Galaxy Broking Limited (513)	A012	44500	2.75

From the above table, it is seen that on August 16, 2000, the noticee had sold 90,600 shares (82,900 shares using client code – BAVA and 7,700 shares using client code – BVA) to Amrut Securities Private Limited (client code – A012) trading through Galaxy Broking Limited. Later, on the same day, the noticee had purchased 39,000 shares from Amrut Securities Private Limited. On the very next day, the noticee had again bought 44,500 shares from Amrut Securities Private Limited. Thus, the noticee had indulged in reversal of trades by selling 90,600 shares to Amrut Securities Private Limited and later purchasing 83,500 shares from it. The reversal of trades between the noticee and Amrut Securities Private Limited was to the extent of 92.16% of the shares that were sold by the noticee to Amrut Securities Private Limited. These trades accounted for around 73% of the total quantity traded on August 16, 2000 and August 17, 2000. It is pertinent to note that there were no traders on August 16, 2000 other than the noticee and his counter party i.e Amrut Securities Private Limited. The sale of 90,600 shares by the noticee on August 16, 2000 was very substantial. The act of the noticee seems to be malafide and suspicious as he had immediately purchased back 83,500

shares at Rs.2.3/- and Rs.2.75/-, as mentioned in the table at paragraph 7 above, thereby making losses. It is without any rational as to why the noticee purchased back the shares at a higher price, thereby incurring losses. Therefore, by indulging in such acts, the noticee had created a false and misleading appearance of trading in the shares of the company. Such trades were non-genuine transactions as there was no transfer of beneficial ownership of the shares. The trades had impacted the price of the shares of the company in the market. I further note that the Hon'ble Securities Appellate Tribunal (in the matter of V.G. Capital Market Private Limited- Appeal No. 135 of 2009 decided on December 1, 2009) had observed that reverse trades are a clear instance of manipulative trading and that reverse trades are not possible unless the trades are manipulated. What makes it more serious is that the noticee being the promoter-director of the company had involved in reversal of trades and thus indulged in manipulation in the shares of the company, as mentioned above in this order. He should not have indulged in market manipulation of the company's shares. In this regard, I note the following observation of the Hon'ble Securities Appellate Tribunal, in the matter of Gaurav Shah Vs. Whole Time Member, Securities and Exchange Board of India (Appeal No. 78 of 2008)

“When the promoters of a company through their own front entities start manipulating their own scrip, the charge is more serious and those who act in concert with them are equally responsible.”

8. I note that SEBI had initiated proceedings against Amrut Securities Limited and Mr. Minoo Pestonji. In the adjudication proceedings against Amrut Securities Limited, the Adjudicating Officer, vide Order dated April 22, 2009 had imposed a penalty of Rs.3,00,000/- on it. The said Order was upheld by the Hon'ble Securities Appellate Tribunal vide order dated September 17, 2009. I also note that Mr. Minoo Pestonji (who had indulged in trade reversals with the noticee herein) has been found guilty of having contravened the provisions of Regulation 4(a), (b), (c) & (d) of the PFUTP Regulations while dealing in the shares of the

company during the relevant period and SEBI, vide Order dated August 31, 2009, restrained him from accessing the securities market and was prohibited from buying, selling and otherwise dealing in the securities market, either directly or indirectly for a period of six months. In view of the foregoing, I find that -

- i. the noticee was the promoter director of the company during the investigation period ;
- ii. during the investigation period, the noticee had traded in the shares of the company in huge volume as mentioned above, through Thakkar Securities Private Limited, an unregistered sub-broker of Pramod Kumar Jain Securities Private Limited
- iii. The authorized representative of Thakkar Securities Private Limited through whom the noticee had traded had stated that multiple client codes (BAVA, BVA, B99) were used for placing orders on behalf of the noticee.
- iv. the self trades by Pramod Kumar Jain Securities Private Limited were cross deals involving its clients including the noticee and Mr. Minoo Pestonji.
- v. the noticee was found to have reversed trades with Mr. Minoo Pestonji. For the majority of the trades, the noticee was a selling client and Mr. Minoo was a buying client. There were reversal of trades involving substantial shares between the noticee and Amrut Securities Limited. The said trades were not genuine and there was no transfer of beneficial ownership. The same also impacted the share price.
- vi. Huge orders have been placed by the noticee, whereas the traded quantity was very less (the orders were limit orders). The same can be seen in Annexure II & III (details of self trades/cross deals) and extracts of order log for large buy orders, annexed to the show cause notice issued to the noticee). Placing of huge orders created false and misleading appearance of trading in the shares of the company.
- vii. The noticee has not refuted the allegations or controverted the findings against it mentioned in the show cause notice.

9. Thus, it is concluded that the noticee had indulged in trades which aim to create a false and misleading appearance of trading in the securities market in the shares of the company without any change in the beneficial ownership. The same have also impacted the price of the shares of the company in the market. I also take note of the fact that multiple client codes were used for orders placed on behalf of the noticee. Therefore, from the foregoing, I conclude that the noticee had contravened 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.

10. 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. J. R. Desai [having his present address at C/o Shrimati Desai, 403, Veer Avenue, Opposite Hanuman Temple, Manjalpur, Baroda, Gujarat (old address at Survey No. 309, Sakarda Savli Road, Village Mokshi, Taluka Savli, District Vadodara, Pin- 391780)] from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, for a period of one year.

11. 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: December 15, 2009