

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF JAYANT AGRO ORGANICS LTD.

In respect of M/s. Jayant Amarchand Kalidas

(SEBI Registration No. INB 010519714)

Date of hearing: October 14, 2009

Appearances

**For Noticee: Mr. Yusuf Iqbal, Advocate
Ms. Annu Mehta, Advocate
Mr. Janak Dalal, Proprietor**

**For SEBI: Mr. Deepesh M.U., Assistant General Manager
Mr. N. Murugan, Assistant Legal Adviser
Ms. Kshama P. Wagherkar, Assistant Legal Adviser**

ORDER

Under Regulation 28(2) read with Regulations 38 (2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

- 1.** SEBI conducted investigations into the buying, selling and dealing in the scrip of Jayant Agro Organics Ltd. (hereinafter referred to as 'JAOL') for the period September 18, 2000 to March 13, 2001. During the relevant period the scrip of JAOL was listed on Bombay Stock Exchange (hereinafter referred to as 'BSE') and National Stock Exchange (hereinafter referred to as 'NSE'). The price of the scrip of JAOL opened on October 18, 2000 at Rs.45 and the same increased to Rs.119.70 as on November 03, 2000, thereafter the scrip started declining and reached to Rs.53 as on March 13, 2001. The average number of shares traded during the said period was about 2,900 shares per day.
- 2.** Investigations *inter alia* revealed that the broker namely M/s. Jayant Amarchand Kalidas (hereinafter referred to as 'noticee'), registered with

SEBI as a stock broker, bearing registration no. INB 010519714 had dealt in the scrip of JAOL on behalf of various entities related to Mr. Bharatkumar Kapadia, director, JAOL namely M/s. Kapadia Corporation, Maxwell Pharmaceuticals Pvt. Ltd. and Mr. Dinesh Kapadia (uncle of Bharatkumar Kapadia). Trading of these entities had manipulated the prices and created artificial volumes in the scrip of JAOL. Further, the noticee was found to have executed number of cross deals by synchronizing the trades of its clients. Noticee was also found doing front running in the scrip of JAOL through the account of Mr. Apurva Dalal, nephew of Mr. Janak Dalal, proprietor of noticee.

3. Based on the findings of investigations, SEBI initiated Enquiry proceedings against the noticee in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalties) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of the Enquiry Regulations vide order dated November 27, 2002. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and SEBI (Stock Brokers and Sub-brokers) Regulation, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer submitted his report dated April 13, 2004, in terms of Regulation 13(1) of Enquiry Regulations recommending thereby a penalty of suspension for violating the provisions of Regulation 4 (a), (b), (c) and 6 (b) of PFUTP Regulations and Clause A (1) and (3) of the code of conduct specified under Schedule II of the Broker Regulations.
4. Subsequently, a SCN dated May 06, 2004 (hereinafter referred to as 'SCN') under Regulation 13(2) of the Enquiry Regulations was issued by SEBI to the noticee, asking it to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed. The noticee was advised to reply to the SCN, together with the documents that it may choose to rely upon in support of his reply within fifteen days of the

receipt thereof. It was also informed that in case of failure, it would be presumed that he has nothing to say and SEBI shall be free to take such action in the manner as it deems fit. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.

5. The noticee replied to the SCN vide its letter dated May 26, 2004 and requested for an opportunity of personal hearing. Accordingly an opportunity of personal hearing was granted to the noticee on June 29, 2004 before the then Whole Time Member, SEBI. Due to change in competent authority another opportunity of personal hearing was granted to the noticee before me on October 14, 2009. On the date fixed Mr. Janak Dalal, proprietor of noticee, Mr. Yusuf Iqbal, Advocate and Ms. Annu Mehta, Advocate appeared and made submissions. The noticee requested for one month time for filling the written submissions which was granted to him. Noticee vide his letter dated November 09, 2009 has filed the written submissions and the same have been taken on record.
6. I have carefully considered the SCN, reply and written submissions of noticee dated July 26, 2004, July 09, 2009, August 21, 2009 and November 09, 2009. The contention of the noticee, in brief are:
 - a. Orders were placed on the instructions of the client and transactions were settled as per the settlement mechanism.
 - b. Dealings were on behalf of M/s. Kapadia Corporation, Maxwell Pharmaceuticals Pvt. Ltd. and Mr. Dinesh Kapadia were genuine and were made in good faith.
 - c. Transactions were carried out for implementing an interim family arrangement arrived at in the Kapadia family under mistaken belief that these transactions were to be routed through broker.
 - d. Transactions were implemented in accordance with law and resulted in delivery.
 - e. Mr. Apurva Dalal is a regular investor in stock market and had invested in diverse scrips during the relevant period.

- f. Had not done any proprietary trading in the scrip during the relevant period.
 - g. After completion of personal hearing, matter cannot be reopened and heard *de-novo*.
 - h. As per Enquiry Report, order in the matter has not been passed even after passing of almost 5 years, however, this should have been done within 120 days of receipt of reply of the noticee. Hence proceedings are bad in law and needs to be closed.
7. After having examined the above details, the issues arise for my consideration are:
- a. Whether the trading by noticee had manipulated the price of the scrip of JAOL?
 - b. Whether the cross deals executed between the clients of noticee were genuine?
 - c. Whether the noticee had indulged in front running in the scrip of JAOL through his nephew?

My findings on these issues are as under:

8. **Whether the trading by noticee had manipulated the price of the scrip of JAOL?**
- a. The Enquiry Officer has found that the noticee had placed a buy order on behalf of M/s. Kapadia Corporation for 10,450 shares of JAOL at 09:55 a.m. on October 27, 2000 at Rs.88.05 i.e. 8% upper circuit level as compared to previous days closing price of Rs.81.55. Further, this trade got executed with another sell order entered by noticee for his client Mr. Dinesh Kapadia for one share at Rs.88.05 at 10:22 a.m. To this the noticee has argued that he had considered the trend of rising prices in the scrip for the preceding 6 days and entered order at upper circuit level in the opening hours of market. Further, the same was kept open throughout the day on specific instructions of Kapadia Corporation.

- b. I note that the scrip was hitting the upper circuit for the preceding 6 days out of which on 5 days there was no volume of the noticee. I further note the claim of the noticee that there was a family arrangement between his clients who put the trades in the market under a mistaken belief that these transactions were to be routed through a broker.
 - c. I have seen that both the said buy and sell orders were placed by the connected clients of noticee at the rate of Rs.88.05 which was about 8% above the last traded price in the scrip of JAOL. I note that the trade of one share was executed immediately and the remaining buy order for 10,449 shares remained unexecuted in the system, which goes to show that there were no sellers in the scrip at the relevant point of time.
 - d. I note from the findings of the Enquiry Officer that the method and manner adopted by noticee was with a view to set the price of scrip at higher level. I observe that the scrip of JAOL was illiquid scrip and the trades of the noticee for just one share had set the opening price at the upper circuit level. I note that the noticee, who placed order on behalf of both of his clients had complete knowledge about the pending order, in view of this the contention of anonymity of trades by him is not acceptable. Further, it is an admitted fact that both the clients of noticee had belonged to same group and were inter-related. Considering this, I agree with the findings of the Enquiry Officer that the above transaction was entered solely with the motive of setting the prices of the shares at higher level. However, I note that only one instance of such trading has been brought out in the Enquiry Report.
- 9. **Whether the cross deals executed between the clients of noticee were genuine?**

 - a. I note that the noticee had executed various cross deals for his clients viz., Maxwell Pharmaceuticals and Kapadia Corporation who were admittedly

connected to each other in the scrip of JAOL. The instances of such trades has been brought out below for ready reference:

TABLE - A

Date	Buy				Sell				Trade		
	Client	Order Time	Order Qty.	Order Rate	Client	Order Time	Order Qty.	Order Rate	Price	Time	Qty.
02/11/2000	BK66	15:20:29	25,000	113.00	BM95	15:20:29	25,000	113.00	113.00	15:20:29	25,000
02/11/2000	BK66	15:25:31	10,000	115.20	BM95	15:25:31	10,000	115.20	115.20	15:25:31	10,000
03/11/2000	BK66	12:40:02	10,000	111.50	BM95	12:40:03	10,000	111.50	111.50	12:40:03	10,000
03/11/2000	BK66	12:45:59	10,000	111.50	BM95	12:46:00	10,000	111.50	111.50	12:45:59	10,000
03/11/2000	BK66	12:52:01	10,000	111.50	BM95	12:52:01	10,000	111.50	111.50	12:52:01	10,000
03/11/2000	BK66	12:55:55	10,000	111.50	BM95	12:55:56	10,000	111.50	111.50	12:55:56	10,000
03/11/2000	BK66	13:00:04	10,000	111.50	BM95	13:00:04	10,000	111.50	111.50	13:00:04	10,000
03/11/2000	BK66	13:03:10	15,000	111.50	BM95	13:03:11	15,000	111.50	111.50	13:03:11	15,000
18/12/2000	BM95	14:01:19	12,000	117.00	BK66	14:01:18	12,000	117.00	117.00	14:01:20	12,000
19/12/2000	BM95	13:41:18	13,000	117.00	BK66	13:41:17	13,000	117.00	117.00	13:41:18	13,000
20/12/2000	BM95	13:12:12	13,000	114.00	BK66	13:12:11	13,000	114.00	114.00	13:12:12	13,000
21/12/2000	BM95	13:07:21	12,000	109.00	BK66	13:07:23	12,000	109.00	109.00	13:07:24	12,000
22/12/2000	BM95	14:03:26	10,000	104.00	BK66	14:03:26	10,000	104.00	104.00	14:03:27	10,000

From above, I note that 13 instances of cross deals by noticee are under scrutiny wherein the noticee had entered orders for the related clients as detailed above. Out of these 13 instances in 5 instances the buy and sell orders were placed exactly at the same time. Further, in remaining 8 instances, the orders were placed with a time difference of just few second. I also note that in the first 8 transactions executed between November 02, 2000 and November 03, 2000, Maxwell Pharmaceuticals has sold one lakh shares of JAOL to Kapadia Corporation. In the remaining 5 transactions executed between December 18, 2000 and December 22, 2000, the role of entities was reversed and Kapadia Corporation sold 60,000 shares back to Maxwell Pharmaceuticals. These details show that the transactions were in the nature of cross deals.

- b.** I note the argument of the noticee that such transactions were carried out for implementing an interim family arrangement arrived at in Kapadia family under the mistaken belief that these transactions were required to be routed through broker. Further, he stated that at the relevant point of time negotiated deals were permitted and relied upon the SEBI circular dated September 14, 1999. I have seen the relied upon circular. I note that SEBI vide Circular SMD/POLICY/CIRCULAR/3-97 dated March 31, 1997,

requires that all negotiated deals must compulsorily result in delivery of securities which indicate that delivery is a key element in such a transaction, the other being the element of negotiation. I note that such deals need to be placed in the price and order matching mechanism of the exchanges just like any other normal trade.

- c. There can be an argument to say that these cross deals which were synchronized actually resulted in reversal after more than a month. Therefore, there is no intention to manipulate the market. However such tactics are in blatant violation of established market mechanism and erode the confidence of common investors, even if they do not result in obvious price manipulation. As a SEBI registered intermediary it was noticee's duty to not let such private dealings happen through the screen based market mechanism.

10. Whether the noticee had indulged in front running in the scrip of JAL through his nephew?

- a. I note that during the relevant period Mr. Apurva Dalal was found trading in the scrip of JAOL both as buyer and seller. He is admittedly the nephew of Janak Dalal, proprietor of noticee. From the pattern of his trades, it has come to light that he purchased the shares first and subsequently sold them to various other clients of the noticee viz. Kapadia Corporation, Dinesh Kapadia and Jayant Finvest Ltd. at higher prices on the very same day. The trades of Apurva Dalal has been tabled below for reference:

TABLE - B

Period	Trades by Apurva			Trade by entities related to JAOL			Profit by Apurva in these trades
Date	Buy/Sell	Price	Qty.	Buy/Sell	Price	Qty.	
02/11/2000	Buy	106.35	1,000				
	Buy	106.35	1,000				
	Sell	114.95	2,000	Buy	114.95	2,000	17,200
03/11/2000	Buy	110.75	600				
	Sell	110.78	400	Buy	110.78	400	12
18/12/2000	Buy	115.80	1,000				

	Sell	118.67	1,000	Buy	118.67	1,000	2,870
							20,082

- b.** The noticee has argued that Apurva is his regular client and has been dealing in the securities market since 1996. Noticee has also contended that whatever Apurva had done were his personal trades and he was only acting as broker. Further, he has contended that on many occasions, Apurva had first sold the shares and later bought the shares contrary to the findings of Enquiry Report. Noticee has also submitted that when orders were placed on behalf of Apurva there were no pending orders from his clients.
- c.** For deciding the present charge it is necessary to know whether Apurva placed contra orders to the clients of noticee to which he is admittedly related and further he used the information on the orders of the clients of noticee to his personal advantage. I have seen the trading pattern of Apurva and note that his sell order has been placed earlier and subsequently after some time noticee had entered the order on behalf of his clients. I note that as the scrip was illiquid, the orders of Apurva got matched with the orders of other clients of noticee. I note that the admission of noticee that Apurva Dalal was aware about the dealing by the connected entities of JAOL through the noticee. However, it is not clear whether Apurva had information as to when exactly the orders were placed by the promoter group of JAOL. I note that Apurva had traded only for five days in the scrip out of total sixty three trading days on which noticee had placed orders on behalf of its clients.
- d.** By taking into consideration of these and the fact that there was no finding as to what gain the noticee has derived out of such trading, I am inclined to take a lenient view on this issue. However, the fact remains that noticee was having complete knowledge about the pending orders of Apurva and their price as well. Further, the noticee entered the buy trade for other clients at the order price of Apurva, which ultimately resulted in trade and profit

for Apurva. This shows that the noticee has utilized the confidential information of his client for extending benefit to Apurva, which is against the sound market practices and by doing this noticee has failed to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings.

11. I note the argument of the noticee that under the Regulation 13(4) of the Enquiry Regulations, the order in the said matter should have been passed within 120 days from the date of receipt of his reply. Further, no order has been passed, inspite of passage of almost 5 years. Therefore, the same cannot be passed now, as the time period of 120 days has already elapsed. The noticee has also argued that SEBI Regulations do not have any provision wherein, after completion of the personal hearing, the matter can be reopened and heard '*De Novo*'. The present proceedings therefore ought to be closed forthwith.

In this regard, I agree that the Regulations, which inter alia contain the procedure for conducting the Enquiry proceedings, provide a broad time frame to complete the proceedings. The regulations provide that the proceedings should be completed as expeditiously as possible and endeavor should be made to pass the order within 120 days from the receipt of the reply. Though, I agree that the time-frame should always be adhered to, but I have no doubt that the order would not get vitiated and the noticee would not get absolved from the charges solely on the ground that the order is passed after 120 days. The language used in the regulation clearly suggests the intention of legislature that the time-frame is directory but not mandatory. In the present case, I note that there was a change in competent authority due to retirement of the then competent authority and in order to meet the principles of natural justice, a fresh hearing had to be given for disposal of the case. Considering this, I find no merits in the argument of noticee.

- 12.** There are a few factors which may be considered before a view is taken on the quantum of penalty. Text book front running pattern is evident on only three days out of which on one day the trade quantity is small i.e. 400 shares and price differential a mere 3 paise. One could speculate that Apurva, even though he was a nephew of the noticee did not have unfettered information and could indulge in front running only when he was able to get hold of some information.

There are two allegations against the noticee, i.e. allowing his clients to do private deals through cross deals and synchronized trading and to allow his nephew to do front running on some days. Had either of the happenings occurred in isolation one could consider it as an occasional lapse which would have merited only a warning. However, taking both the issues together one gets an impression that the noticee is running his business in a totally unprofessional manner and a light penalty such as warning will only encourage him to continue with this manner of conducting business. However, a penalty of suspension for a period of four months as recommended by Enquiry Officer appears to be too harsh. I, consider that a penalty of suspension for period of one week will be appropriate. In the interest of justice and equity, I dispose of the present Enquiry proceedings as ordered herein below.

- 13.** 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.
- 14.** Taking into consideration, the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations,

2008, hereby suspend the certificate of registration of noticee, Jayant Amarchand Kalidas, registered with SEBI as stock broker, bearing registration no. INB 010519714 for a period of one week.

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

DATE : 29/JUNE/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA