WTM/PS/16/IVD/ID-10/MAY/2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF ADANI EXPORTS LIMITED

In respect of ESS ESS Intermediaries Pvt. Limited

(SEBI Registration no: INB 021135638 INS 01158230)

Date of hearing: July 12, 2011

Appearances

For Noticees: Mr. Samir P. Shah, Director, ESS ESS Intermediaries Pvt. Limited

For SEBI: Mr. Krishnanand Raghavan, Deputy General Manager
Mr. Bhagwandas Samariya, Assistant General Manager
Mr. Pradeep Kumar, Assistant Legal Advisor

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 investigation into dealings in the shares of Adani Exports Ltd. (hereinafter referred to as 'Adani') for the period from November 27, 2003 to December 23, 2003. The scrip of Adani, during the period of investigation was listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE') and the National Stock Exchange (hereinafter referred to as 'NSE').

2. During the period of investigation, the price of the scrip on BSE increased from ₹209.55 as on November 27, 2003 to ₹443.10 as on December 23, 2003 after touching a high of ₹478 as on December 19, 2003 within a span of just 19 trading days. The total volume traded in the scrip of Adani during the period of investigation at BSE was 11,32,400 shares and out of this, 3,42,780 shares, i.e., 30.27% was in the nature of synchronized/ reversal of trades involving certain clients/ brokers. At NSE, the total volume traded during the

period of investigation was 38,91,856 shares and out of this 2,96,943 shares, i.e., 7.63% was in the nature of structured trades.

3. SEBI analyzed the trading details along with the data of the volumes contributed by the persons who had traded in the scrip. Investigation *inter alia* revealed that ESS ESS Intermediaries Private Limited, (hereinafter referred to as the 'noticee'), a broker of the Ahmedabad Stock Exchange (SEBI Registration no. INB 021135638) and a sub-broker of ASE Capital Markets Limited (SEBI Registration no. INS 01158230) had traded in the scrip of Adani for its own Director, Mr. Samir P. Shah. The noticee simultaneously traded as a client on the opposite side through Naman Securities & Finance Private Limited (hereinafter referred to as 'Naman'), broker, BSE and *prima facie* indulged in fictitious synchronized reversal of trades, which in turn had created the artificial volumes and contributed to the price rise in the scrip of Adani.

4. Based on the findings of investigation, SEBI initiated enquiry proceedings against the noticee in terms of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of the Enquiry Regulations vide order dated December 14, 2005. The Enquiry Officer, enquired into the alleged violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and the Code of Conduct for the stock brokers under Schedule II of Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated December 30, 2010, in terms of Regulation 38 (2) of the SEBI (Intermediaries) Regulations, 2008, recommending a penalty of suspension of certificate of registration of the noticee for a period of two months for violating the provisions of Regulations 4(1), 4(2)(a), (b) and (g) of

the PFUTP Regulations and Clauses A(1), (3), (4) and (5) of the Code of Conduct for stock brokers under Schedule II of Regulation 7 of the Broker Regulations.

5. Subsequently, a show cause notice dated March 03, 2011 (hereinafter referred to as SCN') under Regulations 28(1) of the SEBI (Intermediaries) Regulations, 2008, was issued the noticee, asking it to show cause as to why the appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed. The noticee was advised to reply to the SCN, within twenty one days from the date of receipt thereof. It was also informed that in case of failure to reply, it would be presumed that it had no explanation to offer. A copy of the Enquiry Report was also forwarded to the noticee along with the SCN.

6. The noticee vide its letter dated March 22, 2011 sought an extension of thirty days for replying to the SCN. However, no reply was received. Before proceeding further, an opportunity of personal hearing was granted to the noticee on April 18, 2011. The noticee vide its letter dated April 11, 2011 requested for an adjournment. The request of the noticee was acceded to and the matter was adjourned. Another opportunity of personal hearing was granted to the noticee on June 17, 2011 at Ahmedabad which was later rescheduled to July 12, 2011. On the date fixed for personal hearing, Mr. Samir P. Shah, Director of the noticee appeared, made submissions and filed his reply dated June 20, 2011. The noticee during the personal hearing also submitted that it has not been provided with the complete trade-order log. The noticee was provided with the relevant details of the trades undertaken by the noticee during the investigation period on July 12, 2011 and was advised to file its written submission within ten days.

7. Thereafter, the noticee vide its letter dated September 12, 2011 submitted his written submissions which were taken on record. I have carefully considered the Enquiry Report, the SCN issued to the noticee, reply received, written

submissions filed and the material available on record. The submissions of the noticee in brief are:

- The noticee was holding the shares of Adani since long. Against this holding, the jobbing was regularly undertaken by Mr. Samir P. Shah, its whole time director. Samir P. Shah had also traded in in a similar manner in other scrips as well. The trades executed by the noticee were in the nature of jobbing backed by delivery.
- Adani was never an illiquid scrip as the average trading volume of 30,000 to 50,000 shares was taking place even during the lean period in the scrip.
- No trading has been undertaken through it on December 18, 2003, December 19, 2003 and December 22, 2003 i.e., during the period of substantial rise in price in the scrip of Adani. As per the BSE data, there was no sharp rise in the volumes during the period of November 27, 2003 to December 17, 2003 i.e., 31,810 shares to 51,592 shares.
- The trades were not self deals. Ess Ess has not traded in the scrip through Naman but merely settled the trade on behalf of Nitin Patel who is a client of Ess Ess without charging any brokerage from Nitin Patel. An affidavit of Nitin Patel in support of this claim has been filed by the noticee. Ess Ess merely settled the trades, i.e., post facto the dealing and execution of trade with Naman by Nitin Patel. SEBI has not initiated any action against Nitin Patel.
- The trades in question pertains to the year 2003 i.e. about 8 years back.
- The period of investigation is 19 days. However, it has been provided with the data for only two days. A perusal of the data provided to the noticee shows difference in quantity of order, limit price and disclosed quantity of the order. The Enquiry Officer has relied upon the facts and information which were never part of the SCN.
- It has been submitted that to establish charge of creation of artificial volume, the volume on all the stock exchanges on which trading in the scrip had taken place is required to be taken into consideration. But in the present case, while coming to the conclusion of significant contribution of alleged trade on part of the noticee, the enquiry officer has concluded the total artificial volume of the scrip on BSE in isolation of volume that was traded on NSE.

- No nexus has been brought out between Naman Securities Limited, the noticee,Nitin Patel and Samir P. Shah.
- There is nothing on record to prove that trading pattern of the noticee had impacted the price of the scrip which has been alleged to have moved from ₹209 to ₹478. There is inconsistency and incoherency in the data.
- SEBI has conducted two simultaneous proceedings against the noticee. A penalty of ₹3 Lakh has been imposed on the noticee and ₹1.50 Lakh on Samir P. Shah,while the penalty imposed against Naman was ₹1.50 Lakh. Despite such discrimination in penalty, the noticee and its director Samir P. Shah have paid penalty of ₹4.50 Lakh. This act of theirs was to co-operate with SEBI and should not be taken as accepting the violation.
- No additional documents can be added or adduced at the final and concluding stage of the matter i.e., after passing of the Enquiry Report by the Enquiry Officer. The proceedings must be conducted and concluded in circumference of only those documents which were annexed with SCN dated March 07, 2006 and the data of November 27, 2003 and December 09, 2003.

8. I note that the noticee has not denied its trading in the scrip of Adani. The noticee in its reply has made a submission that two simultaneous proceedings have been initiated against it arising out of the same set of facts. I note that SEBI is empowered to initiate proceedings under Section 11B of the SEBI Act, as well as enquiry, adjudication, prosecution etc., as may be warranted, to deal with the violations of the provisions of SEBI Act, Rules and Regulations made there under. Each of these proceedings, has different objectives i.e., adjudication proceedings under Chapter VIA of the SEBI Act is meant to penalise the accused by way of monetary penalty, pursuant to adjudication. Enquiry proceedings under the statute are contemplated against registered intermediaries, wherein pursuant to a thorough enquiry, penalties of suspension/ warning/ cancellation of registration of such registered intermediaries are ordered against them. I, therefore, do not find any infirmity about SEBI proceeding against the noticees under Enquiry Regulations and also simultaneously pursuing adjudication. The noticee has also argued that it

has not been supplied with the complete data of its trading in the scrip of Adani. I note that the noticee had taken this argument during the opportunity of personal hearing as well. Considering the request of the noticee, the complete details of the trades were provided to the noticee on the date of hearing i.e. July 12, 2011. The noticee in its written submissions has argued that additional documents cannot be adduced at the final stage of the proceedings. I note that the data provided to the noticee on July 12, 2011 was not additional or new data. The data that was provided to the noticee on July 12, 2011, i.e., during the hearing is nothing but the complete details of the trades of the noticee, which was done at the repeated submission of the noticee regarding incompleteness of the data already submitted. Having seen the same, I also agree that the said trade details could have been provided alongwith the SCN. Upon considering the submissions and seeing the available record, I note that the complete trade details were provided to the noticee in the interest of justice. Pursuant to this, the noticee was also given sufficient time for filing his objections, if any, in compliance with the principles of natural justice.

9. After having dealt with the above submissions, the issue that arises for my consideration is: Whether the noticee had indulged in synchronized reversal of trades and created artificial volumes/ prices in the scrip of Adani?

10. Whether the noticee had indulged in synchronized reversal of trades and created artificial volumes/ prices in the scrip of Adani?

a. I note that the scrip of Adani was being traded both at BSE and NSE during the period of investigation. However, as per the available records the noticee had traded only at BSE. The table below provides the details of the trading in the scrip of Adani at BSE.

Table A

	Broker	Sub-broker	Client
BSE	ASE Capital Markets Ltd.	Rajendra J. Shah	V&S Intermediaries
	ASE Capital Markets Ltd.	**Ess Ess Intermediaries Ltd.**	**Samir P. Shah**
	ASE Capital Markets Ltd.	Rajesh N. Jhaveri	Falguni Shah
	Mangal Keshav Securities	E. Stocks Inc.	Dilip C. Jain

	Vijay Bhagwandas Shah		Own/ director's account
	Sanchay Fincom Ltd.		Tejas Ghelani
	Naman Securities Ltd.		**Ess Ess Intermediaries Ltd.**

b. From the table A above, I note that the noticee had traded in the scrip of Adani for its director Samir P. Shah. It is further seen that the noticee was also trading in the scrip of Adani through broker Naman. A summary of the above synchronized trades is given below:

Table B

Date	Bought Qty.	Bought by (Broker)	Bought from (Broker)	Sold Qty.	Sold by (Broker)	Sold to (Broker)
27/11/03 to 23/12/03	74,450	ESS (ASE Capital)	ESS (Naman)	74,500	ESS (ASE Capital)	ESS (Naman)

c. Having seen the table B above, I note that the noticee was present on both sides of the trades. It is seen that the noticee was trading as sub-broker on ASE Capital Markets Limited on behalf of its director, Samir P. Shah. On the other hand, the trades were matched with the noticee itself who was the counterparty client trading through Naman. A summary of trading by the noticee has been reproduced below for ready reference:

Table C

Date	Buy Broker	Buy Client	No. of trades	Qty.	Sell Broker	Sell Client	% to day qty. traded
27/11/03	ASE Cap	Ess Ess*	30	5,000	Naman	Ess Ess	**31.44**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
28/11/03	ASE Cap	Ess Ess	50	5,000	Naman	Ess Ess	**30.01**
	Naman	Ess Ess	36	5000	ASE Cap	Ess Ess	
1/12/03	ASE Cap	Ess Ess	20	4,500	Naman	Ess Ess	**26.07**
	Naman	Ess Ess	26	4,500	ASE Cap	Ess Ess	
2/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**32.54**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
3/12/03	ASE Cap	Ess Ess	38	5,000	Naman	Ess Ess	**24.75**
	Naman	Ess Ess	20	5000	ASE Cap	Ess Ess	
4/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**25.71**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
5/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**23.2**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
8/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**37.87**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
9/12/03	ASE Cap	Ess Ess	30	4,000	Naman	Ess Ess	**18.13**
	Naman	Ess Ess	30	5,000	ASE Cap	Ess Ess	
10/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**22.67**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
11/12/03	ASE Cap	Ess Ess	30	5,000	Naman	Ess Ess	**26.92**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
12/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**23.13**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	

15/12/03	ASE Cap	Ess Ess	20	2,450	Naman	Ess Ess	**15.87**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
16/12/03	ASE Cap	Ess Ess	20	5,000	Naman	Ess Ess	**19.38**
	Naman	Ess Ess	20	5,000	ASE Cap	Ess Ess	
17/12/03	ASE Cap	Ess Ess	10	2,500	Naman	Ess Ess	**5.77**
	Naman	Ess Ess	10	2,500	ASE Cap	Ess Ess	
23/12/03	ASE Cap	Ess Ess	10	2,500	Naman	Ess Ess	**7.50**
	Naman	Ess Ess	10	2,500	ASE Cap	Ess Ess	
Total			**710**	**1,45,450**			**20.62**

**Samir P. Shah had traded as a client of Ess Ess sub-broker to ASE Capital Markets Limited*

From the above, I note that there have been almost exact reversal of similar quantity of shares of Adani, on a continuous basis. Further, almost all the trades done by the noticee were squared off on the same day. It appears that the trades were so well planned, thus ensuring that the same number of shares went back to the original seller at the end of the day on most of the occasions. This pattern of trading was continued by the noticee on seventeen days during the period of investigation. The sample of trades as on November 27, 2003 also relied upon by the Enquiry Officer has been reproduced below for ready reference:

Table D

Trade			Buy					Sell					Time Diff.
Time	Qty	Price	Broker	Client	Time	Qty.	Rate	Broker	Client	Time	Qty.	Rate	
11:57:30	200	206.80	ASE	218S001*	11:57:30	2,000	206.80	Naman	A51642**	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
11:57:30	200	206.80	ASE	218S001	11:57:30	2,000	206.80	Naman	A51642	11:57:28	2,000	206.80	0:00:02
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01
12:24:06	250	207.00	Naman	A51642	12:24:06	2,500	207	ASE	218S001	12:24:05	2,500	207	0:00:01

13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:36	200	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:36	2,000	207.10	0:00:05
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
13:08:44	100	207.10	ASE	218S001	13:08:31	3,000	207.10	Naman	A51642	13:08:43	1,000	207.10	0:00:12
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02
14:28:34	250	207.25	Naman	A51642	14:28:32	2,500	207.30	ASE	218S001	14:28:34	2,500	207.30	0:00:02

**Client code 218S001 – Ess Ess as sub-broker of client Samir P. Shah, Proprietor*
*** Client code A51642 – Ess Ess as client*

The table D above shows that the trades were matched continuously between two set of clients with startling proximity in the timing, price and quantity, even as these were executed on the screen of the exchange. These details clearly indicate synchronization in the placing of the orders, as these appears to have been punched with preconceived motive and prior arrangement that the orders would be picked up by a particular entity on the other side, who in the present case is the noticee itself.

d. I note the argument of the noticee that it was not a client of Naman. It was one Nitin Patel (a client of Ess Ess) who had traded in the scrip of Adani

through Naman and the trades were settled by the noticee on behalf of Nitin Patel without charging any brokerage from him. The noticee has submitted a copy of an affidavit of Nitin Patel, in support of this. The affidavit states that Nitin Patel had given orders to Naman and the bill/ contract notes were issued in the name of Ess Ess. Later on, the noticee issued contract notes and bills to Nitin Patel and had never charged brokerage for such trades of Nitin Patel.

The story narrated by the noticee is not convincing, as the bills and contract notes were issued in the name of the noticee by Naman Securities, which fact was admitted by Samir P. Shah while replying to the SCN issued under Section 11B of the SEBI Act in his personal capacity. I note that the practices as narrated by the noticee and Samir P. Shah are irregular. Even if, for the sake of argument, one relies on the story narrated by the noticee, then also the facts and circumstances such as Nitin Patel being a client of Ess Ess, absence of payment details and no explanation as to why brokerage was not charged from Nitin Patel, point to the fact that the noticee had a definite role in the trading of Adani through Naman, wherein it was trading on behalf of its director, Samir P. Shah.

e. The submission of the noticee that its whole time director, Samir P. Shah was only doing jobbing transactions cannot be accepted as the trade details shows that several transactions got matched with the same counterparty. Further, almost all the shares purchased/ sold by Samir P. Shah on a particular day, was being reversed on the very same day. Considering the facts and circumstances described in previous paragraphs, the matching of the trades cannot be termed as accidental/ co-incidence; rather, it shows concerted efforts to get the orders matched with each other. All these make it clear that the transactions were preplanned and were not a natural outcome of the exchange trade matching system.

f. At this stage, I note that the brokers namely ASE Capital Markets Limited and Naman together generated a total volume of 1,50,294 shares in the scrip of

Adani. Out of this, 1,48,950 shares were on behalf of the noticee which accounted for 13.15% of the market volume in the scrip of Adani. I also note the following facts from the Enquiry Report:

- A total of 710 synchronized/ reversal of trades were executed by the noticee in the scrip of Adani for a total volume of 1,48,950 shares accounted for 13.15% of the market volume while trading on both the sides of the trade.
- On 9 trading days, the contribution of the noticee on account of synchronized reversal of trades to the quantity traded on each day was more than 25% and on 6 days it was more than 20%. The contribution of noticee towards creation of artificial volume was 43.45% of the total artificial volume in the scrip of Adani on BSE.
- Out of a total of 154 orders placed by the noticee, 34 orders were placed with a time difference of zero seconds, 54 orders were placed with a time difference of one second, 26 orders were placed with a time difference of two seconds, further 26 orders were placed with the time difference of three seconds and 14 orders were placed with the time difference of more than three seconds. Also, almost on each day, the delivery position of the noticee was nil.

g. I note that while continuously trading in the scrip of Adani, the noticee had placed many orders at progressively higher prices. At this stage, I note that the price of the scrip of Adani increased from ₹204.90 as on November 27, 2003) to ₹441.90 as on December 23, 2003 within a span of 19 trading days.

h. The continuous matching of trades without much time difference shows that the trades entered by the noticee were structured and also in the nature of reversal. I observe that the noticee had indulged in the trading pattern as discussed above with regularity, which also projected volumes in the scrip in a way that was not market determined, rather with a hidden motive to induce innocent investors to enter the market. Such transactions are clearly not genuine and are seen to as those entered by the noticee for creating misleading appearance of trading in the scrip. Such pattern also creates an

impression of active trading in the scrip. Further, this shows that the entity was trading for the purpose of generating artificial volumes and influencing the price of the scrip.

11. The above discussed role of the noticee shows that it played a vital role in the game plan of the manipulation of the trading in the scrip of Adani. The noticee by carrying out synchronized reversal transactions created artificial liquidity in the scrip of Adani and rigged the price upwards. Thus, from the aforesaid acts of the noticee, I am of the view that the charge of the violation of the provisions of Regulation 4(1), 4(2)(a), (b), (e) and (g) of the PFUTP Regulation stands established as against it.

12. From the above discussion and considering the nature of the trades, I note that noticee indulged in certain pattern of trades which were not genuine, but manipulative as discussed above. Thus, I find that the noticee has failed to perform its statutory duties, which are expected from a prudent stock broker who has a duty not only towards its client but also towards maintaining the integrity of the securities market. A registered intermediary is expected to maintain absolute compliance of the rules/ regulations and the directives issued by SEBI. In view of the foregoing, I find the noticee, guilty of the violation of the provisions of Clauses A(1), (3), (4) and (5) of the Code of Conduct prescribed for stock brokers in Schedule II under Regulation 7 of the Broker Regulations.

13. As regards the submission of the noticee regarding delay in the proceedings, I note that neither a time line is fixed for such cases nor can the delay justify exoneration.

14. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry

Regulations, shall be deemed to have been commenced under the corresponding provisions of the SEBI (Intermediaries) Regulations, 2008.

15. Therefore, taking into consideration the facts and circumstances of the case, I in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of ESS ESS Intermediaries Private Limited (SEBI Registration no. INB 021135638 and INS 01158230) (PAN: AAACE 7722Q) for a period of two months.

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

DATE : MAY 3, 2012
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA