CHAPTER – 8

PROTECTION OF INVESTOR’S INTEREST FROM FRAUDULENT AND UNFAIR TRADE PRACTICES

1. Introduction
Before the enactment of SEBI Act, 1992, the securities markets were full of fraudulent trade practices. The investors and shareholders lost their faith in this market and moved to withdraw their investment, by searching other avenues. In the beginning years of SEBI, to stop fraudulent trade activities from securities market was a major task. As the nature of securities market was very technical. Due to the ignorance of legal provisions, investors were not able to know the trend of market. Some miscreants have obtained the advantage of ignorance and technicalities and make monies by making false statements, by spreading rumours in markets, concealment of material facts, connivance with other agents etc. It was necessary to stop those practices in securities market to take back the confidence of investor and to protect the rights of investors.

Therefore, in exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992, the Board makes regulation, namely the Securities and Exchange Board of India (Prohibition of Fraudulent and unfair Trade Practices relating to Securities Market) Regulations, 2003. These SEBI Regulations prohibiting the Fraudulent and Unfair Trade Practices relating to Securities Market have been divided into various heads namely Definitions, Prohibition of certain dealings in securities, suspension or cancellation of Registration etc. In this chapter, we will study how these regulations curb the menace of fraudulent and unfair trade practices. Before going to those provisions, we have to study the definitions defined under these regulations.

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2. Important Definitions under these regulations

2.1 Act- means the Securities and Exchange Board of India Act, 1992;

2.2 dealing in securities- includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.

2.3 fraud- includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not

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rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government
(b) the economic situation of the country
(c) trends in the securities market;
(d) any other matter of a like nature whether such comments are made in public or in private;

2.4 “Investigating Authority” means any officer of the Board not below the rank of Division Chief, authorized by the Board to undertake investigation under section 11C of the Act; or

2.5 “securities” means securities as defined in section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). According to section 2 of the SCRA, securities include:

(i) Shares, scrips, stocks, bonds, debentures, debentures stock or other marketable securities of like nature in or of any incorporated company or other body corporate;

(ii) Derivative;

(iii) Units or any other instruments issued by any collective investment scheme to the investors in such schemes;

(iv) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- As per clause 2 (zg) of SARFAESI Act , the security receipt means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;
3. Prohibition of certain dealings in securities\textsuperscript{277}:- Under these regulations SEBI has prescribed certain prohibition, these are as follows:

No person shall directly or indirectly—

(a) Buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) Employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) Engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices\textsuperscript{278}.

(1) No person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue

\textsuperscript{277} Regulation 3 of the of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

\textsuperscript{278} Regulation 4 of the of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
only with the intention of securing the minimum subscription to such issue;

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money’s worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(h) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;

(i) an intermediary promising a certain price in respect of buying or selling of a security to a client and waiting till a discrepancy arises in the price of such security and retaining the difference in prices as profit for himself;

(j) an intermediary providing his clients with such information relating to a security as cannot be verified by the clients before their dealing in such security;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(l) an intermediary reporting trading transactions to his clients entered into on their behalf in an inflated manner in order to increase his commission and brokerage;

(m) an intermediary not disclosing to his client transactions entered into on his behalf including taking an option position;
(n) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;
(o) encouraging the clients by an intermediary to deal in securities solely with the object of enhancing his brokerage or commission;
(p) an intermediary predating or otherwise falsifying records such as contract notes;
(q) an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract;
(r) planting false or misleading news which may induce sale or purchase of securities.

5. Power of the Board to order investigation

5.1 Where the Board, the Chairman, the member or the Executive Director (hereinafter referred to as “appointing authority”) has reasonable ground to believe that—
(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;
(b) any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations, it may, at any time by order in writing, direct any officer not below the rank of Division Chief (hereinafter referred to as the “Investigating Authority”) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the Board in the manner provided in section 11C of the Act.

It shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or

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every person associated with the securities market to preserve and to produce
to the Investigating Authority or any person authorised by it in this behalf, all
the books, registers, other documents and record of, or relating to, the
company or, as the case may be, of or relating to, the intermediary or such
person, which are in their custody or power.

The Investigating Authority may require any intermediary or any person
associated with securities market in any manner to furnish such information to,
or produce such books, or registers, or other documents, or record before it or
any person authorised by it in this behalf as it may consider necessary if the
furnishing of such information or the production of such books, or registers, or
other documents, or record is relevant or necessary for the purposes of its
investigation.

The Investigating Authority may keep in its custody any books, registers,
other documents and record produced under sub-section (2) or sub-section (3)
for six
months and thereafter shall return the same to any intermediary or any person
associated with securities market by whom or on whose behalf the books,
registers, other documents and record are produced, provided that the
Investigating Authority may call for any book, register, other document and
record if they are needed again: Provided further that if the person on whose
behalf the books, registers, other documents and record are produced requires
certified copies of the books, registers, other documents and record produced
before the Investigating Authority, it shall give certified copies of such books,
registers, other documents and record to such person or on whose behalf the
books, registers, other documents and record were produced.

Any person, directed to make an investigation may examine on oath, any
manager, managing director, officer and other employee of any intermediary
or any person associated with securities market in any manner, in relation to
the affairs of his business and may administer an oath accordingly and for that
purpose may require any of those persons to appear before it personally.

If any person fails without reasonable cause or refuses to produce to the
Investigating Authority or any person authorised by it in this behalf any book,
register, other document and record which is his duty to produce or to furnish
any information which is his duty to furnish or to appear before the
Investigating authority personally when required to answer any question which is put to him by the Investigating Authority or to sign the notes of any examination, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him. Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record. After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept to search that place or those places in the manner specified in the order and to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation. However, the Magistrate shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12 of SEBI Act, 1992) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation. The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return: Provided that the Investigating Authority may, before returning such books, registers,
other documents and record as aforesaid, place identification marks on them or any part thereof. Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973(2 of 1974), relating to searches or seizures made under that Code.

**5.2 Powers of Investigating Authority**

Without prejudice to the powers conferred under the Act, the Investigating Authority shall have the following powers for the conduct of investigation, namely:—

1. to call for information or records from any person specified in section 11(2)(i) of the Act; According to section 11(2)(i) of the SEBI Act - calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self-regulatory organisations in the securities market;

2. to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting in violation of these regulations;

3. to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;

4. to keep in his custody any books, registers, other documents and record produced under this regulation for a maximum period of one month which may be extended upto a period of six months by the Board:

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Provided that the Investigating Authority may call for any book, register, other document or record if the same is needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, he shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced;

(5) to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person:

Provided that the said notes shall be read over to, or by, and signed by, the person so examined;

(6) to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

5.3 Power of the Investigating Authority to be exercised with prior approval of Board:

The Investigating Authority may, after obtaining specific approval from the Chairman or Member also exercise all or any of the following powers, namely:

(a) to call for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;

(b) to make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of any books, registers, other

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281 Regulation 7 ibid
documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;

(c) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof;

(d) save as otherwise provided in this regulation, every search or seizure made under this regulation shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

5.4 Duty to co-operate, etc

1. It shall be the duty of every person in respect of whom an investigation has been ordered under regulation 7—

(a) to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigating Authority or the person so authorized by him may reasonably require for the purposes of the investigation;

(b) to appear before the Investigating Authority personally when required to do so by him under regulation 6 or regulation 7 to answer any question which is put to him by the Investigating Authority in pursuance of the powers under the said regulations.

Regulation 8 ibid
(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 of the Act or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Without prejudice to the generality of the provisions of sub-regulations (1) and (2), such person shall—

(a) allow the Investigating Authority to have access to the premises occupied by such person at all reasonable times for the purpose of investigation;

(b) extend to the Investigating Authority reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation;

(c) provide to such Investigating Authority any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow him to take out computer out prints thereof.

5.5 Submission of report to the Board283 - The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority: Provided that the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority.

5.6 Enforcement by the Board - The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation

283 Regulation 9 ibid
11 and regulation 12: Provided that the Board may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue directions under regulation 11. The Board may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible.

5.7 The Board may by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:

(a) suspend the trading of the security found to be or *prima facie* found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is in violation or *prima facie* in violation of these regulations;

(e) direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;

(f) require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;

(g) prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;

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(h) direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the *status quo ante*.

(2) The Board shall issue a press release in respect of any final order passed under sub-regulation (1) in at least two newspapers of which one shall have nationwide circulation and shall also put the order on the website of the Board.

In the case of Securities and Exchange Board of India Vs. Alka Synthetics Ltd. and Ors\textsuperscript{285}. The jurisdiction of SEBI to impound money difference between auction price and standard rate on ground of manipulation in market as per Sections 11 and 11B of Securities and Exchange Board of India Act, 1992 and Regulations 11 and 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulation, 1995 and Article 300A of Constitution of India. The Gujrat High Court held that SEBI is empowered to make forfeiture of such amount and it is not bound to give post decisional hearing if it impounds money as same made as an interim measure. Therefore, forfeiture of such amount does not violate Article 300A as same does not come within purview of property.

5.7 Manner of service of summons and notices issued by the Board\textsuperscript{286}. A summons or notice issued by the Board under these regulations may be served in the manner provided in regulation 22 of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992, the Board makes the Regulations to further amend the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002\textsuperscript{287}, Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, namely :-

\textsuperscript{285} AIR1999Guj221, [1999]95CompCas772(Guj), (1999)1GLR275, MANU/GJ/0047/1998
\textsuperscript{286} Regulation 22 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003
\textsuperscript{287} No. SEBI/LAD/DOP/2232/2007.
These regulations are called the Securities and Exchange Board of India (Manner of Service of Summons and Notices issued by the Board) (Amendment) Regulations, 2007. By this amendment, the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, regulation 22 shall be substituted with the following, namely:

“Service of notice- A notice issued under these regulations may be served on the concerned person in the following manner, this is to say,-

a) by delivering or tendering to that person or his duly authorised agent; or

b) by transmitting a copy thereof by registered post with acknowledgement due, addressed to that person or his duly authorised agent, or by speed post or by such courier services as may be approved by the Board or by any other means of transmission of documents including Fax message or electronic mail service, which affords a record of delivery; or

c) in case of service upon a stock broker the same may be served through the concerned stock exchange; or

d) if it cannot be served under clauses (a), (b) or (c), -

(i) by affixing the same on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carries on business or is last known to have carried on business or personally works for gain or is known to have last personally worked for gain:

Provided that written report thereof shall be witnessed by two persons; or

(ii) by posting such notice on the Board’s website.”

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288 The Gazette Of India, Extraordinary Part –iii – Section 4 Published By Authority New Delhi, April 23, 2007, Securities And Exchange Board Of India, Notification, Mumbai, The 23rd April, 2007
6. **Suspension or cancellation of registration**\(^{289}\) - The Board may, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary:

(a) issue a warning or censure

(b) suspend the registration of the intermediary; or

(c) cancel of the registration of the intermediary

Provided that no final order of suspension or cancellation of an intermediary for violation of these regulations shall be passed unless the procedure specified in the regulations applicable to such intermediary under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is complied with.

7. **Some important orders and judgments are as under:-**

7.1 Before the Adjudicating Officer, Securities And Exchange Board Of India\(^ {290}\), Against …Victory Trading Corporation (Latiyal Bhavan, Pannalal Umediram Chowk, Mumbai-400097).

The K Sera Productions Ltd. (hereinafter referred to as ‘KSERA’) was incorporated in the year 1994. The company is in the business of motion picture production, motion picture distribution, television, broadband and wireless. The shares of the company are listed on Bombay Stock Exchange Ltd. (hereinafter referred to as ‘BSE’) and National Stock Exchange of India Ltd. (hereinafter referred to as ‘NSE’). The shares of KSERA are being traded in the ‘S’ segment of BSE. A snap investigation was conducted by BSE in the trading of the scrip for the period from June 01, 2004 to October 31, 2004 wherein it was observed that certain stock brokers and their clients have entered into circular/ reversal trades amongst themselves. In view of the above, BSE vide its letter dated February 19, 2007 referred the matter to SEBI for consideration.


\(^{290}\) ADJUDICATION ORDER NO. IVD-ID6/KSERA-I-VT/AO/DRK/ASG/EAD3-/224 - 2009/128-2010
The SEBI conducted an investigation into the trading of the scrip of KSERA, during the period from June 01, 2004 to October 31, 2004 (hereinafter referred to as ‘Investigation Period’). The Investigation Report observed that a group of clients and a few stock brokers, traded significantly in the scrip during the Investigation Period. The group aggregately purchased 93,29,344 shares and sold 92,59,474 shares, which constituted almost 51.73% of the gross volume on the exchange during the period under investigation. It was alleged that the trades executed among the group were synchronized/ circular in nature. I was appointed as the Adjudicating Officer (subsequent to the transfer of Shri Biju S.) vide order dated December 10, 2008, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the ‘SEBI Act’), read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Adjudication Rules’) to inquire into and adjudge under Section 15HA of the SEBI Act, the violations of Regulation 4(1) and 4(2) (a), (b) (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the ‘PFUTP Regulations’) alleged to have been committed by Victory Trading Corporation (hereinafter referred to as ‘the noticee’).

I (the investigating officer) have taken into consideration the facts and circumstances of the case, the submissions advanced by the noticee, and the material made available on record. The allegations against the noticee in the SCN was that it had executed synchronized / circular trades and indulged in nongenuine transactions in the scrip of KSERA along with certain other clients Sunil Purohit SPJ Shares and Stock Brokers Pvt. Ltd. and stock-brokers during the Investigation Period. I have noted that there were numerous trades in the scrip with only a few counter parties on a daily basis for a period of five months. The traded quantities were also high. Thus, it is amply clear that the noticee had been an active member of the group which executed synchronized/ circular trades and indulged in non-genuine and fraudulent transactions in the scrip of KSERA. The fact that such transactions took place repeatedly over a period of time reinstates the fraudulent nature of such trades.
In this case, it becomes necessary to quote the judgment of the Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘SAT’), in *Nirmal Bang Securities Pvt. Ltd Vs SEBI*\(^{291}\), wherein it was observed that:

“Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes... There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc..... In a synchronized trading intention is implicit.”

Also the Hon’ble SAT, in *Ketan Parekh Vs. Securities and Exchange Board of India*\(^{292}\) observed as follows:

“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.”

In view of the above findings it can be concluded that the noticee has violated Regulation 4(1) and 4(2) (a), (b), (e) and (g) of the PFUTP Regulations.

\(^{291}\) (Appeal no. 54-57/2002), www.sebi.gov.in

\(^{292}\) (Appeal No. 2 of 2004, date of order July 14, 2006)
7.2 The Hon’ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund\textsuperscript{293} held that:

“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”.

The said violations attract penalty under section 15HA of the SEBI Act, which provides that:

“15HA. Penalty for fraudulent and unfair trade practices- If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ` 1,00,000/- (Rupees One Lakh only) on the noticee in terms of the provisions of Section 15HA of the Securities and Exchange Board of India Act, 1992 for its violations of the provisions of Regulations 4(1) and 4(2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

7.3 ADJUDICATION ORDER\textsuperscript{294}

Against: Shri Viral V Mewada (C 404, Gaurav Tower, Rana Park, Ahmedabad- 380001PAN No. AFFPM7065P) The Securities and Exchange Board of India initiated an investigation based on observations made on companies that have declared unaudited quarterly results for the quarter ending December 2003 showing manifold improvement in their performance. The scrip of Aditya Infosoft Ltd. (here in after referred to as ‘AIL’) was continuously hitting the upper circuit filter from December 10, 2003 to

\textsuperscript{293} [2006] 68 SCL 216(SC) (date of order: 23.05.2006)
\textsuperscript{294} NO.IVD-ID6/AIL/AO/DRK/AKS/EAD-3/227-09/130 -10, (www.sebi.gov.in)
January 2, 2004 and lower circuit filter from January 5, 2004 to January 23, 2004. In that regard Shri Viral V Mewada (here in after referred to as ‘the noticee’) was directed to appear and provide documents / information which the noticee failed to comply with.

A Show Cause Notice dated November 15, 2006 was issued to the noticee in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 by Registered Post Acknowledgment Due requiring him to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under Section 15A (a) of the SEBI Act.

In the SCN it was alleged that the noticee had failed to appear before the investigating authority and had also failed to provide certain information / documents sought from him by the investigating authority vide letters dated October 05, 2004 and March 16, 2005 and summonses dated May 06, 2005, August 23, 2005 and September 29, 2005 issued under Sections 11C (3) and 11 C (5) of the SEBI Act.

The summons also stated that if the noticee omitted to attend and give evidence or to produce the books of accounts and / or documents as required, SEBI would initiate adjudication proceedings under Section 15 A of the SEBI Act, 1992.

Considering the facts and circumstance of the case a public notice was published in English (The Hindustan Times, 10th June, 2010) and Hindi (Hindustan, 10th June, 2010) news papers informing that SCN was issued against the noticee in the matter of AIL and the same is made available on the SEBI Website i.e. www.sebi.gov.in under the heading “Unserved Summons / Notices” and noticee can also collect a copy of the SCN from the office of the Adjudicating officer.

The allegations against the noticee were that he had failed to appear before the investigating authority and had also failed to provide certain information / documents sought from him by the investigating authority vide letters dated October 05, 2004 and March 16, 2005 and three summonses dated May 06, 2005, August 23, 2005 and September 29, 2005 issued under Sections 11 C (3) and 11 C (5) of the SEBI Act.
From the records made available it is clear that neither did the noticee appear before the investigating authority as directed by the summonses, nor did he produce the documents / information sought from him by the investigating authority vide letters dated October 05, 2004 and March 16, 2005 and three summonses dated May 06, 2005, August 23, 2005 and September 29, 2005 issued under Sections 11 C (3) and 11 C (5) of the SEBI Act.

With regard to the above factors to be considered while determining the quantum of penalty, it is observed that the investigation report has not quantified the profit / loss for the nature of violations committed by the noticee. Further, in a matter of this kind it is difficult to compute the disproportionate gain or unfair advantage that the noticee obtained. However, the nature of the violations warrants an imposition of penalty on the noticee. In view of the abovementioned conclusion, I hereby impose a penalty of ` 5,00,000 /- (Rupees Five Lakhs only) on the noticee under Section 15 A(a) of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case.

7.4 The Bombay High Court in the matter of Price Waterhouse and Co. a partnership firm registered with the Institute of Chartered Accountants of India and Ms. Sharmila Karve, Partner, Price Waterhouse and Co. Vs. Securities and Exchange Board of India and Whole Time Member Mr. M.S. Sahoo\textsuperscript{295}, [Alongwith Writ Petition No. 5256 of 2010]

The Bombay High Court held that “SEBI has jurisdiction under provisions of Securities and Exchange Board of India Act and Regulations framed therein to inquire into and investigate matters in connection with manipulation and fabrication of books of accounts and balance sheets of a listed company.” “SEBI can take regulatory measures under the SEBI Act in the matter of safeguarding the interest of the investors and securities market and in order to achieve the same, it can take appropriate remedial steps which may include debarring a Chartered Accountant from auditing the books of a listed company.” A citizen is entitled to practice any profession, or to carry on any occupation, trade or business; however, such rights are always subject to reasonable restrictions.”

\textsuperscript{295} MANU/MH/ 1027/2010, 2010 (112) Bom LR 3871
The court in the matter of Ritesh Agarwal and Anr. Vs. Securities and Exchange Board of India and Ors. The appellants, for committed fraud on public as well as company board debarred from having access to capital market for a period of 10 years and directed to buy back their shares. The Appeal filed and contended that two of the appellants were minor, thus, could not be punished. Further, contended that appellants were not the promoters of the company and could not be held liable. The Supreme Court held that as it is established that two of the appellants were minor, they could not entered into contract and not held liable. However, other appellants who were made mis-representation and committed fraud would be penalised for the same. Also established that appellants were promoters of the company. Therefore “Appellants who were made mis-representation and committed fraud would be penalised for the same”.

8. Conclusion- Therefore, the SEBI has prohibited the buying, selling in securities in a fraudulent manner. It has prohibited manipulation and deceptive trade device in contravention of these provisions. It prohibit scheme to defraud, the practice of business of fraud. It has also prohibited act of false or misleading appearance etc. If there is reasonable ground to believe that the transactions are being done detrimental to the investor’s interest, the board has power to investigate the matter and punish accordingly. While imposing punishment it can suspend, restrains those persons from securities market. It can impound the records of those transactions. By using powers under these regulations, the SEBI has decided many matters and impose penalties upon fraudsters. Notwithstanding repeal of the regulations any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

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