

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN RESPECT OF

1. ADITYA KUMAR SHARMA

2. ABHILASH SHARMA

IN THE MATTER OF TRADING ACTIVITIES OF ADITYA KUMAR SHARMA AND ABHILASH SHARMA.

1. SEBI had conducted an investigation into the trading activity of Aditya Kumar Sharma (here in after referred to as Aditya), Abhilash Sharma (here in after referred to as Abhilash) and three investment companies viz. Amar Investments Ltd (here in after referred to as Amar Investments), Rishra Investments Ltd (here in after referred to as Rishra Investments), Shibir India Ltd (here in after referred to as Shibir India) (collectively referred to as “Investment companies”) and Shakuntala D. Wadhava (here in after referred to as Shakuntala) in the shares of various companies in Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) during the period from January 01, 2008 to May 31, 2008.
2. During the period of investigation, Aditya, Abhilash, Shakuntala (related to promoters of the investment companies) and 3 investment companies were found to have traded in several scrips wherein buy/sell orders of the above referred three investment companies and Shakuntala had matched with the orders of Aditya and Abhilash on a continuous basis in several scrips. Aditya and Abhilash and the three Investment companies are based in Kolkata. While Aditya was the employee of Shibir India, the other two companies Amar Investments and Rishra Investments also used to take the services of Aditya for stock market activities, even though Aditya was not directly employed by them. Abhilash was found to have been connected with Aditya as she was sharing the same residential address as that of Aditya.
3. **Details of Investment Companies, Shankuntala, Aditya and Abhilash**
 - 3.1 **Details of Investment Companies:** - Amar Investments, Rishra Investments and Shibir India are three Investment companies registered with RBI as NBFCs. They are connected entities as they have common promoters, common office address and common telephone numbers. As

per the Annual Report 2007-08 of the respective companies, Nirmal Pujara was director in all the three investment companies. The investment companies vide letter dated October 23, 2008 submitted that Jayant Pujara was the Authorised Signatory on behalf of all three investment companies. Full details of these investment companies are mentioned in the table below:

Particulars	Amar Investments	Shibir India	Rishra Investments
Directors as per Annual Report 2007-2008	1. Nirmal Pujara 2. Dr. G. Goswami 3. G. J Wadhwa	1. Nirmal Pujara 2. Dr. G. Goswami 3. N. Das 4. S M Palia	1. Nirmal Pujara 2. Dr. G. Goswami 3. Mrinal Kanti Roy
Authorised Signatory as per letter dated 23-10-2010 of the respective company	Jayant Pujara	Jayant Pujara	Jayant Pujara
Names of persons who were involved in the decision making for dealing in the shares/securities and communication of orders to brokers.	1. Nirmal Pujara, Director 2. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Nirmal Pujara and also confirmed vide letter dated 14-01-2010)	1. Nirmal Pujara, Director 2. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Nirmal Pujara and also confirmed vide letter dated 14-01-2010)	1. Nirmal Pujara, Director 2. Mrinal Kanti Roy, Director 3. Jayant Pujara, Authorised Signatory (As per reply dated 23-10-2008 signed by Mrinal Kanti Roy and also confirmed vide letter dated 14-01-2010)
PAN	AACCA1004D	AAHCS5421K	AABCR2630P
Address	All 3 shared common address “25, Princep Street, Kolkata – 700072.		
Telephone	All 3 shared common phone 033-22377880 to 85 & 40054010		
Main Promoters	1. Damodardas J. Wadhwa 2. Gordhandas J. Wadhwa 3. Shakuntala D. Wadhwa, Having shareholding of 75% (approx.) in the above mentioned investment companies.		
Nature of entity	All 3 investment companies are Public Limited companies listed on Calcutta Stock exchange and registered with RBI as NBFC		
Main Business	Investment/trading/buying, selling of shares, stock, debenture, bonds etc. and investment in properties.		

3.2 **Details of Shakuntala:** She is a preference shareholder of Rishra Investments and equity shareholder of Amar Investments and Shibir India. From her correspondence address shown in her bank accounts with Indusland Bank, ABN Amro Bank, ING Vysya Bank, HDFC Bank, ICICI Bank and in her share trading account with broker- Karvy Stock Broking Ltd, it was seen that it was the common address of the three investment companies named above.

3.3 **Details of Aditya and Abhilash:** During the period of investigation, Aditya was an employee of Shibir India. He was appointed by Shibir India in July 2003 vide letter dated July 2, 2003 and was designated as “Market Trader” for handling work related to stock markets and

maintenance of accounts thereof and allied works. Amar Investments and Rishra Investments also used to take the services of Aditya for stock market activities, even though Aditya was not directly employed by the said companies. Abhilash was sharing the same address as that of Aditya i.e. at 2nd Floor, 73, Canal Street, Shreebhumi, Kolkata – 700048 and was therefore a connected entity as far as the transactions are concerned. Both Aditya and Abhilash had executed trades in shares through a common broker SMC Global Securities Ltd (hereinafter referred to as “SMC”). They were introduced to SMC by Bhagwati Prasad Lohiya who is the sub-broker of SMC. As per their KYC with broker SMC, the annual income range of Aditya and Abhilash were shown as Rs. 5 to 10 lakhs and Rs. 1 to 5 lakhs, respectively.

4. Investigation conducted by SEBI revealed that circular/reversal/matched trades were carried out by Aditya, Abhilash, the aforesaid three Investment companies and Shakuntala in the shares of various companies listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) in a fraudulent and manipulative manner, as elaborated later in this order.
5. Consequently, based on the investigation, a common Show Cause Notice (SCN) dated September 29, 2011 was issued against Aditya, Abhilash, Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy alleging violation of Regulations 4(1), 4(2)(a) and (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003. The relevant Regulations are extracted below:-
 - *Regulation 4(1): Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
 - *Regulation 4(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:-*
 - *Regulation 4(2)(a): Indulging in an act which creates false or misleading appearance of trading in the securities market*
 - *Regulation 4(2) (e):- any act or omission amounting to manipulation of the price of a security.*

6. **Allegations in SCN**

- 6.1. It was alleged in the SCN that Aditya and Abhilash along with the three investment companies have executed circular/reversal/matched trades amongst themselves at BSE and NSE during the investigation period from January 01, 2008 to May 31, 2008. In the first pattern of fraudulent and manipulative trade, it was alleged that Aditya/Abhilash purchased various scrips, as identified in the investigation, at a lower price from one of the investment companies and

subsequently, on the same day, Aditya/Abhilash squared off their position in the shares at a higher price by selling them to same/different investment company. It was alleged in the SCN that the said circular/reversal/matched trades had created artificial and false volume in the scrips. It was further alleged that Aditya/Abhilash had earned profit on all such transactions and these 3 companies have incurred losses. This was achieved by manipulating the price downwards from the current/ruling price of the scrip in the first leg and then manipulating the price upwards from the current/ruling price of the scrip in the second leg. The price was brought down in the first leg and up in the second leg by simultaneous placing of orders of Aditya/Abhilash and 3 investment companies at the same/almost the same time.

6.2. Similarly, another pattern of circular/reversal/matched trading was alleged in the SCN wherein Aditya/Abhilash had first sold the shares at a higher price to one of the investment companies in the first leg and later squared off their position by buying at lower price from the same/different investment company in the second leg. The price of scrip was again manipulated in these cases also by simultaneous placing of orders by Aditya/Abhilash and three investment companies at the same/almost the same time. In the SCN, it was further alleged that in a few instances, it was also observed that Aditya & Abhilash had traded ahead of investment companies and Shakuntala and also squared off their outstanding position by matching their orders with the investment companies. In these cases, it was alleged in the SCN that the artificial volume was created in the scrips and prices were manipulated by the said persons.

7. Details of service of SCN

The SCN was served on Aditya by Registered Post. Even though the investigation report brought out that Aditya and Abhilash were connected entities, the SCN could not be served on Abhilash in the normal course. Subsequently, SEBI vide letter dated May 11, 2015, requested SMC Global Securities Limited (stock broker of Abhilash) to serve a copy of the SCN on Abhilash. Thereafter on May 21, 2015, the SCN was affixed on the last known address of Abhilash. Further paper publication was done on January 8, 2016 through The Times of India (English) and Anandabazar patrika (Local vernacular) regarding the SCN dated September 29, 2011. In the meantime, SMC Global Securities Limited vide letter dated May 30, 2015, informed that she is no longer living at the last known address and after an enquiry from neighbours in the vicinity, it was known that the flat was remaining locked for more than a year. Even after the paper publication, Abhilash did not appear for receiving the SCN, nor submitted any reply to the SCN. In view of the same, I am convinced that sufficient opportunities have been granted to her and she is not keen to avail any opportunity of submitting

reply to the SCN or hearing in this regard.

8. Reply to SCN and submissions

8.1. In reply to the SCN, Aditya Sharma *inter alia* submitted that :-

- a) *At no point of time, he was a director/ authorized signatory/ executive signatory in any bank / demat account;*
- b) *He had no decision making authority on behalf of any of the abovementioned three investment companies;*
- c) *He had no prior experience of equity markets / financial sector;*
- d) *He was an employee of Shibir India from July 2003;*
- e) *He was working with Shibir India till January 2011. Then suddenly he received summons from Court to appear; when he confronted Nirmal Pujara he told him not to worry and said that due to SEBI investigation he had to file this complaint case in Court against him just to show SEBI;*
- f) *On instruction/ guidance of Nirmal Pujara his trading account was opened with the broker on 19th January 2008 and was closed in May 2008. He further submitted that in his account only these transactions happened in his lifetime;*
- g) *The trades executed in his trading account were done as per the instructions/ orders of Nirmal Pujara, Jayanta Pujara and Mrinal Kanti Roy and they all are the beneficiaries for the transactions done in his trading account;*
- h) *The first transaction and last transaction was executed in these companies and to complete these transaction they used my trading account. It is evident that there are series of transactions and it cannot happen until and unless these are planned and executed by the investment companies and their directors and authorized signatories jointly;*
- i) *Nirmal Pujara and Jayanta Pujara are not the promoters of these three investment companies. They are relative of the promoters of these three companies and of Shakuntala D Wadhwa. Mrinal Kanti Roy is a chartered accountant;*
- j) *He had drawn attention to the statement on oath given by Nirmal Pujara and Mrinal Kanti Roy on November 15, 2010, wherein in reply to Q.10 "Who used to take decision for transactions during the investigation period?" Nirmal Pujara and Mrinal Kanti Roy replied that the said decision for investment was taken by the authorized person / Directors of the company. No Transactions executed without the consent of authorized person/ directors of these investment companies. One of the authorized person for all 3 investment companies is Nirmal Pujara and M.K. Roy is authorized person for Rishra;*
- k) *Board of Directors of all these three investment companies have clearly stated that any of the two directors / authorised signatories jointly are authorised to take decision for purchase and sale of equity shares and are jointly authorised to sign demat instruction slips to transfer shares to broker and also are jointly authorised to sign the cheques for payments to brokers. Nirmal Pujara as director and Jayant Pujara as authorised signatory are common signatories and decision making authority in all these three companies and Mrinal Kanti Roy as Director in Rishra Investments and Damodardas Wadhwa as authorised signatory in Shibir India Ltd are also jointly*

authorised with Nirmal Pujara and Jayant Pujara to take decision to buy and sale to sign all the cheques and demat instruction slips jointly;

- l) The replies as per SCN, submitted by the said three investment companies, Shibir India Ltd, Rishra Investments Ltd and Amar Investments Ltd to SEBI on 23/10/2008 and 14/02/2010 along with the Board Resolution copies, which clarifies in detail all the answers such as on what basis the transaction took place, who took decision to trade and to complete the chain of flow of information etc;*
- m) As mentioned in SCN, that Nirmal Pujara, Jayant Pujara and Mrinal Kanti Roy were the authorised persons to deal in securities and to place orders with the brokers as per KYC submitted by Rishra Investments, Amar Investments and Shibir India to brokers Microsec capital and Anand Rath Securities;*
- n) The brokers Microsec capital and Anand Rath Securities replied to SEBI that Nirmal Pujara had placed the orders on behalf of the investment companies;*
- o) It appears from the SCN that when SEBI summoned Nirmala Pujara and Mrinal Kanti Roy to appear at its office on 15/11/2010, after returning back they decided to file complaint case on behalf of Shibir India Ltd by furnishing false information against him before the metropolitan magistrate Court just to distance themselves from him so that they can show SEBI that they are innocent;*
- p) In reply to the SEBI letter dated 18/10/2010, Amar Investment vide its letter dated 15/11/2010 in answer to SEBI's Question no. 21 had replied that the company's holding of shares were further enhanced / reduce for tax purposes and not for any other purposes as being alleged or apprehended by the Investigating authority;*
- q) It shows that Nirmal Pujara, Mrinal Kanti Roy and Jayant Pujara wanted to take benefit personally, book losses for tax planning purpose for these companies and Shakuntala D Wadhwa, so they deliberately entered into these transactions with him, if they would have transferred the shares through stock exchange directly from one investment company to other then they would not have seen benefitted, so they executed the trades in such manner that one investment company is selling the shares in market and other investment company is buying or Shakuntala D Wadhwa is selling and the investment company is buying by using his trading account.*

8.2. On the other hand, Nirmal Pujara, Jayant Pujara and M. K. Roy contended that the orders on behalf of investment companies were put by their executive Aditya Sharma and hence they are not involved in these manipulative trades. They also stated that a criminal complaint has been filed against Aditya and Abhilash before the Metropolitan Magistrate in Kolkata. It was further stated by them that Shakuntala Wadhwa is wife of late Dungsishi J Wadhwa (died in year 2004) who was one of the main promoters of these investment companies and that Aditya used to place orders on her behalf also, as she had no knowledge about the market.

8.3. Considering the facts and circumstances of the case, an opportunity of personal hearing was granted to Aditya and Abhilash on March 22, 2016. In response to the hearing opportunity

Aditya vide letter dated March 15, 2016 *inter alia* submitted that

- a) *‘He is not keeping well since 2006 as his pancreas and liver do not function and now he is fully dependent upon insulin and other lifesaving medicines;*
- b) *.....*
- c) *Shibir India has filed false complaint case against him in Court through its authorized representatives Nirmal Pujara on December 14, 2010, but after filing the case in the Court Nirmal Pujara has always been absenting himself and not attending Court on the date fixed for hearing;*
- d) *He appeared in the Court on all the days fixed by Court for evidence, but Nirmal Pujara did not appear before the Court;*
- e) *When the Court fixed date on 03/09/2012 as last chance for evidence then Nirmal Pujara appeared and submitted his deposition on oath wherein he gave his submissions in front of Ld. Metropolitan Magistrate that he is authorized representative of Shibir India Ltd and Aditya Sharma was his employee and said that we used to give verbal instruction to the accused no. 1 and he used to carry on transaction according to the instructions;*
- f) *That after filing the complaint case against him, Nirmal Pujara deliberately did not appear in the Court for 23 times in the last five years, it clearly appears that they have filed the Court case only to safeguard themselves from any SEBI proceedings so that they put everything on him;*
- g) *As an ordinary small employee he followed the instructions on his employer for his livelihood;*
- h) *He is an unmarried man and also physically disabled ”*

9. **Consideration of Issues.**

9.1. I have carefully perused the replies to the SCN and the submissions made by Aditya. Since Abhilash did not choose to respond to the SCN nor did she avail the opportunities of personal hearing to make her submissions in defence, I am constrained to consider the available documents on record and the circumstantial evidence to evaluate her role in the alleged dealings.

9.2. There are two issues that need to be considered to evaluate the validity of the charges made out against Aditya and Abhilash in the SCN.

- a. Do the transactions cited in the SCN show evidence of price and/or volume manipulation?
- b. If so, have Aditya and Abhilash played a part in putting through the transactions?

9.3. There are 13 sets of transactions cited in the SCN involving the scrips of Rajshree Sugars, KSB Pumps, Fag Bearings, Aventis Pharma, Goodyear India, Gillette India, Hitesh Gear, Akzo India, Kansai Nero and Kenna Metal. A close look at these transaction as brought out in various tables at para 6 of the SCN clearly reveals an unmistakably similar pattern. In all these cases, the

transaction originated with a sale from one of the three investment companies to Aditya (or Abhilash) at a price much below the last traded price. This has been cleverly executed by placing matching buy and sell orders with minimal time difference at almost similar prices and volumes. Subsequently, Aditya (or Abhilash) placed sell orders for the same scrip almost matching with a buy order from one of three investment companies (or Shakuntala) matching both in terms of price and volume and again with minimal time difference. The price at which the sell leg order is placed by Aditya / Abhilash was much above the last traded market price. As a result, in all the transactions, Aditya (or Abhilash) executed buy orders at much below the prevailing market price (last traded price) and exited the scrips at much higher than the last traded price, making a neat profit in the bargain. Since counterparty to these transactions was either one of the three investment companies (or Shakuntala), the corresponding loss was borne by these companies or Shakuntala. All these transactions constitute a very significant chunk of the total volumes transacted in the scrip in the market as a whole. Thus clearly, these transactions could achieve the following objectives :

- I. By executing the transactions in large volumes (in comparison to the normal volumes transacted in the scrip), the transactions created an optical illusion of the scrip being very actively traded. Such artificial volumes induced the gullible investors to enter the scrip in the hope of further upward moves in the scrip.
- II. By placing the buy and sell orders at a price much below/ above the last traded price, Aditya/Abhilash got the dual benefit of buying the scrip at an artificially depressed price and selling the same scrip at a highly inflated price. Besides blatant price manipulation, this resulted in Aditya/ Abhilash making windfall profits at the expense of the three investment companies (or Shakuntala).
- III. I note that the 'huge volumes' of both buy and sell orders placed by the Noticees had its own significance, in the kind of scrips that were chosen to be manipulated by them. The scrips were barely liquid and not many market participants were trading. The abnormally huge size of the orders had the effect of subsuming other smaller orders which were "waiting-to-be-executed" on the system by immediately matching with them on a price time priority basis and leaving behind a substantial part of the "huge orders" to match with the Noticees' contra-orders at the price quoted by the Noticees. By doing this, the Noticees achieved the desired manipulative effect (i.e. inflating or depressing the price).

9.4. The manner in which the above transactions were ordered and executed clearly indicates that there was a well thought out strategy behind these transactions to circumvent the normal price discovery

process in the market and perpetrate fraud both in terms of creating artificial volumes and price manipulation. Therefore, the answer to the issue raised at paragraph 9.2(a) is clearly in the affirmative.

9.5. The second issue at 9.2(b) relates to the involvement (or otherwise) of Aditya and Abhilash in the above fraudulent transactions. As already stated, Abhilash has not proffered any defence by choosing not to respond to SCN and by not availing the opportunities of personal hearing. Aditya's defence mainly revolves around the theme that, at no point of time, he was a director/ authorized signatory for any of the Companies' dealings and he was only an employee carrying out the instructions. He also contended that he was never a decision making authority on behalf of the three investment companies and that he had no experience of equity markets. This contention of Aditya does not sound credible as he had been appointed by Shibir (as per the contentions of Shibir) as a market trader for the very purpose of handling work related to stock market. It again does not stand to reason that Aditya, being fully conversant with all aspects of stock markets, allowed his trading account to be misused by others. To extend this argument further, it is just not credible or logical that he was a silent spectator to not only his trading account being misused but also his bank account misuse through which the transaction proceeds would pass. It defies logical explanation that he would have allowed others free access to his bank account to siphon away the profits made in the stock market transactions. In my view, if Aditya and Abhilash knowingly allowed someone to operate their demat and bank accounts for fraudulent and manipulated trades, they are equally responsible for the offence. Following the unlawful instruction of the employer is not a defence at all. I have noted that all profits in the alleged fraudulent and manipulated trades were received by Aditya and Abhilash and the investment companies suffered losses. Aditya has not taken any civil / criminal action against his employer for operating and misusing his account for the manipulative trades. Abhilash failed to submit any reply to the allegations in the SCN.

10. With regard to the fraudulent transactions of Aditya and Abhilash as found hereinabove, I deem it relevant to refer to the following observations of the Hon'ble SAT, in the matter of Ketan Parekh Vs. Securities and Exchange Board of India (Appeal No. 2 of 2004):

".....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.”

11. In view of the above, I find that Aditya Kumar Sharma and Abhilash Sharma have violated Regulation 4(1), 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003.
12. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act read with Regulation 4(1), 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, hereby direct that Aditya Kumar Sharma and Abhilash Sharma are prohibited from buying, selling or dealing in the securities market, directly or indirectly, in any manner whatsoever, for a period of five years.
13. This order shall come into force with immediate effect.
14. Copy of this order shall be forwarded to the stock exchanges and depositories for necessary action.

Date: December 20, 2017

Place: Mumbai

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA