

WTM/AB/EFD-1/DRA-1/03/ 2018-19

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA**

ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Partani Appliances Ltd.

In respect of:

Sr. No.	Name of the Entity/Noticees	PAN no.
1.	Girish Kumar Agrawal	ABJPA7327E
2.	Girish Kumar Agrawal & Sons (HUF)	AADHG4862K
3.	Sankalp Garg	AIMPG6109Q
4.	Suryapratap Gupta (HUF)	AAMHS9766F
5.	Shakira Sharfuddin Shaikh	APQPS9295E
6.	Sajjan Kedia	AENPK7771D
7.	Global Enterprises	AAJFG7931K

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”.

Background:-

1. Income Tax Department had forwarded list of some scrips being traded on the stock exchange, in which price manipulation was alleged to have been carried out to generate bogus Long Term Capital Gains. Partani Appliances Ltd. (hereinafter referred to as ‘PAL’ or ‘the company’) is one such scrip that was referred in the list. On the basis of the aforesaid reference, SEBI conducted investigation for alleged manipulation in the scrip price of PAL on BSE to ascertain whether there was violation of any provisions of SEBI Act, 1992 and SEBI (PFUTP) Regulations,

2003. The investigation was carried out for the period from 20/10/2014 to 31/03/2015 (hereinafter referred to as **‘the Investigation Period’**). From the ‘Last Traded Price’ (**‘LTP’**) analysis carried out for the price of PAL on BSE, the investigation observed that Noticees at Sr. No. 1 to 7 indulged in creating a misleading appearance of trading and manipulated the scrip price of PAL.

2. A Show Cause Notice (**‘SCN’**) dated September 22, 2017 containing the findings of investigation along with the Annexures of documents that were relied upon was issued and duly served upon all the Noticees at Sr. no. 1 to 7. The SCN had alleged that the Noticees had created a misleading appearance of trading and manipulated the scrip price of PAL and consequently violated Regulation 3(a),3(b),3(c),3(d) and Regulation 4(1), 4(2)(a) and 4(2)(e) of SEBI (PFUTP) Regulations, 2003. The Noticees were called upon to show cause as to why suitable directions under section 11(4)(b) and section 11B of the SEBI Act, 1992, for manipulating the price in the scrip of PAL, should not be issued. Noticee at Sr no. 6 was served the SCN by way of affixture.

Findings of the Investigation:

3. PAL was incorporated in the year 1985, operating in consumer durables sector. The scrip was earlier listed on Ahmedabad Stock Exchange. As informed by Ahmedabad Stock Exchange, there was no trading in the scrip after 2001. Subsequently, w.e.f. 16/10/2014, the scrip was listed for trading on BSE. As per the information available on the BSE website, it is observed that PAL has been suspended for trading on BSE w.e.f. 24/09/2015 as a surveillance measure.
4. For LTP Analysis, the Investigation Period was divided into four patches. It was noted that during the Patch-1, the price of the scrip of the company opened at Rs.47.45 (20/10/14), which was the lowest during patch-1 (from 20/10/2014 to 19/12/2014), reached a high of Rs.172.3 (18/12/14) and closed at Rs.171.95 on 19/12/14 with a net LTP of Rs.124.5 and a market positive LTP of Rs.133.05 with a total traded volume of 82850. It was alleged that the noticees to the present

proceeding were responsible for manipulation in price of PAL inter alia, during the first patch (**‘Patch-1’**) i.e. period from 20/10/2014 to 19/12/2014.

5. For LTP analysis of different patches during Investigation Period, three groups of entities were identified. These groups were formed on the basis of connections, more specifically stated in the investigation report, amongst the constituents of the group. Group 1 consisting of 34 entities, Group 2 consisting of 13 entities and Group 3 consisting of 3 entities. Noticees in this proceeding at Sr. no. 1 to 7, belong to Group 1. The alleged connections of noticees at Sr. no. 1 to 7 with the directors/promoters of PAL, or with other entities in Group 1 which are related to PAL, or related with the directors/promoter of PAL, are as stated below:

Sr. No.	Name of the Noticee	Connection details
1.	Mr. Girish Kumar Agrawal	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
2.	Girish Kumar Agrawal & Sons (HUF)	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
3.	Mr. Sankalp Garg	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
4.	Suryapratap Gupta (HUF)	As per RTA data, noticee received by promoter of PAL – Mrs. Lakshmi Partani
5.	Mrs. Shakira Sharfuddin Shaikh	As per CDSL/NSDL data, noticee received shares in off market transfer from Mrs.

		Asha Khadaria (partner of noticee at Sr. no. 7)
6.	Mr. Sajjan Kedia	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares. Further, as per DIN/ PAN details available on MCA website, Sajjan Kedia is the brother of Mrs. Asha Khadaria – partner of noticee no. 7.
7.	M/s. Global Enterprises	As per RTA data, physical shares were brought by Asha Khadaria (partner of Global Enterprises) from promoters of PAL viz. Ms. Margareta Alvares and Mr. Ramesh Partani. Further, Asha Khadaria sold shares in off market to noticee at Sr. no. 5. As per DIN/ PAN details available on MCA website, Sajjan Kedia (noticee no. 6) is the brother of Asha Khadaria. Common address of Noticee no. 7 with certain entities of Group -1, namely Forever Flourishing Finance & Investments Pvt. Ltd., Golden Medows Exports Pvt. Ltd. and Laxmiramuna Investments Pvt. Ltd. Funds transfer observed via bank account between Golden Medows Exports Pvt. Ltd. and PAL, and also Laxmiramuna Investments Pvt. Ltd. and PAL.

6. Pursuant to LTP analysis of the trades by the noticee at Sr. no. 1 to 7, the following were noted:

- i. The price of the scrip rose from Rs.47.45 to Rs.171.95 during Patch-1. From the analysis of the 38 trades that contributed Rs.133.05 to positive LTP, it was observed that 28 trades carried out by seven of the group-1 entities viz., Sajjan Kedia, Suryapratap Gupta HUF, Girish Agarwal & Sons HUF, Girish Kumar Agarwal, Shakira Sharfuddin Shaikh, Sankalp Garg & Global Enterprises on the sell side contributed Rs.103.90 (i.e., 78.09% to market positive LTP).
- ii. Out of the 28 trades, it was observed that for 25 trades, though the buy orders were available for large quantities (ranging from 50 to 28000 shares), six entities of group-1 viz., noticee no 1 to 6, were placing sell orders in small quantities or single digits i.e., mostly 2 or 3 or 5 or 10 shares. One entity of group-1 viz., noticee no. 7, placed sell orders in the range of 5 to 250 shares while the buy orders were available in the range of 50 to 28000 shares.
- iii. By executing such trades, the connected counterparties matched the price of prevailing buy orders which were placed at a higher price than the last traded price and thus contributed to the increased scrip price with each of their trades. It was also observed that these 25 trades were done on 25 different trading days between 21/10/2014 to 8/12/2014 and each trade resulted in a higher LTP, thereby contributing Rs.103.75 to positive LTP (i.e., 77.98% to market positive LTP).
- iv. The following table summarizes the 25 trades executed and quantity of shares held by the 7 noticees at Sr. no. 1 to 7, as sellers in Patch-1 which contributed to price rise:-

Sr. No.	Date of transaction	Seller name	Sell order volume	Buy order volume	LTP contribution (Rs)	LTP contribution (% to market positive LTP)	No of shares held before trade	Balance no of shares after trade
1	28/11/2014	GIRISH AGARWAL & SONS HUF	3	50	5.65	4.25	30000	29997
2	03/12/2014		2	250	6.55	4.92	29997	29995
		Total	5	300	12.20	9.17		
1	27/11/2014	GIRISH KUMAR AGRAWAL	2	250	5.40	4.06	30000	29998
2	02/12/2014		3	250	6.25	4.70	30000	29997
		Total	5	500	11.65	8.76		
1	08/12/2014	GLOBAL ENTERPRISES	5	28000	2.95	2.22	133000	132995
2	11/12/2014		250	9000	3.10	2.33	106000	105750
		Total	255	37000	6.05	4.55		
1	28/10/2014	SAJJAN KEDIA	5	100	2.85	2.14	14500	14495
2	30/10/2014		5	500	3.15	2.37	14495	14490
3	10/11/2014		5	1000	3.65	2.74	14490	14485
4	11/11/2014		5	1000	3.80	2.86	14485	14480
5	14/11/2014		5	1000	4.20	3.16	14480	14475
6	18/11/2014		5	500	4.40	3.31	14475	14470
7	20/11/2014		5	250	4.65	3.49	14470	14465
8	24/11/2014		5	250	4.90	3.68	14465	14460
		Total	40	4600	31.60	23.75		
1	01/12/2014	SANKALP GARG	5	250	5.95	4.47	30000	29995
		Total	5	250	5.95	4.47		
1	04/12/2014	SHAKIRA SHARFUDDIN SHAIKH	5	250	6.85	5.15	15000	14995
2	05/12/2014		3	250	2.85	2.14	14995	14992
		Total	8	500	9.70	7.29		
1	21/10/2014	SURYAPRATAP GUPTA HUF	10	1600	2.45	1.84	50000	49990
2	22/10/2014		5	300	2.60	1.95	49990	49985
3	27/10/2014		5	1000	2.70	2.03	49985	49980
4	29/10/2014		5	100	3.00	2.25	49980	49975
5	31/10/2014		5	100	3.30	2.48	49975	49970
6	07/11/2014		5	1000	3.45	2.59	49970	49965
7	12/11/2014		5	1000	4.00	3.01	49965	49960
8	25/11/2014		2	1000	5.10	3.83	49960	49958
		Total	42	6100	26.60	19.99		
		Total of 7 connected entities	360	49250	103.75	77.98		

v. It was observed from the transaction statements from depositories (NSDL/CDSL), that all the entities in the above table were holding substantial quantity of shares during the period of their respective sale transactions. Despite holding substantial quantity of shares, these entities released limited number of shares and matched the buy orders which were above LTP with volume in small quantities or single digit in instances as detailed above.

7. In view of the above observations during investigation, the SCN thus alleges Noticee no. 1 to 7 to have violated Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a) & 4(2) (e) of SEBI (PFUTP) Regulations, 2003 and calls upon the noticees

to show cause as to why suitable directions under section 11(4)(b) and 11B of the SEBI Act, 1992, should not be issued against them.

Replies and submissions at personal hearing:

8. Noticee at Sr. no. 7 vide their reply dated 16/01/2018, noticee at Sr. no. 5 vide its reply dated 25/01/2018, noticee at Sr. no. 4 vide their reply dated 23/01/2018 and noticee at Sr. no. 6 vide its reply dated 27/01/2018, have inter alia raised the following similar contentions:

- i. Noticee no. 4 and 6 contended that they have no connection with the promoters of PAL and that they bought the shares in off market physical transfer from Pawanaj Merchantile Pvt. Ltd. ('PMPL')
- ii. The grouping of entities is erroneous and misleading and that the noticees have erroneously been lumped with others. Unrelated and unconnected entities have been grouped together based on mere surmise and conjectures to draw adverse inference without any basis. Normal relationships have been unduly stretched in order to somehow bunch us with other entities.
- iii. The trades were carried out by our broker on screen based mechanism of the stock exchange, wherein it is not possible to know the counter party buyer or counterparty broker. At the relevant point of time, we were not aware of other persons/entities including the noticees part of this proceeding and the same was of no concern to us. SEBI has erroneously clubbed us with the other noticees in this proceeding and has erroneously drawn adverse inference against us.
- iv. The SCN itself recognises that the alleged trading was miniscule portion of the total trading. The allegations of creating positive LTP cannot sustain in view of the miniscule quantum of our alleged trades during the Investigation Period. Such miniscule quantum of alleged trade cannot result in price rise.

- v. Admittedly, we have not bought even a single share, therefore, it cannot be alleged that we were instrumental in establishing a price higher than the last traded price.
- vi. With regard to the allegation that despite holding substantial quantities of shares, we had sold limited number of shares, it is submitted by these noticees that a prudent broker/investor would never sell all of his clients holdings/his holdings as the case may be, at one shot, especially if the price of the scrip is on a bullish trend.

9. Noticee no 1,2 and 3 vide their replies dated 10/07/2018, additional submissions dated 11/10/2018, 31/10/2018 and through their counsels at personal hearing on 08/10/2018, have inter alia raised the following similar contentions:

- i. The SCN alleges that noticee no. 1, 2 and 3 bought shares from promoter/promoter related entity of PAL. The annexures provided with the SCN only show that the shares were transferred in physical mode from one Ms. Margareta Alvares to Noticee no. 1, 2 and 3, but it fails to provide any evidence or prove any linkage/ connection of Ms. Margareta Alvares with PAL.
- ii. On the physical transfer of shares from Ms. Margareta Alvares to noticees at Sr. no. 1, 2 and 3, that is allegedly linking the said noticees as forming part of Group 1, it is contended by the said noticees that they were not aware of the transferor at the time of transaction. The alleged physical transfer was a blank transfer wherein the transferor executes a blank transfer deed without entering the details of the transferee and tenders the blank transfer form along with the share certificates to the prospective buyer. It is contended that the buyer of such shares may choose to register the transfer with the company or may simply hold the blank transfer form along with the share certificates until he sells it to the next purchaser. It is the case of the noticee at Sr. no 1,2 and 3 that

they have purchased the shares from one entity by the name of 'Pawanaj Merchantile Pvt. Ltd' ('PMPL') for which they have produced copies of supporting bank statements showing payments made to PMPL and copies of bills as procured from PMPL in support of their claim. It is the case of the said noticees that they had never bought shares from Ms. Margareta Alvares, rather they have bought the shares from PMPL.

- iii. That Ms. Margreta Alvares is not shown as part of 'promoter/promoter group' entity in the shareholding pattern filed at BSE since 2014. Hence, she is not part of promoter or promoter group.
- iv. That without prejudice for the sake of argument, even if the shares in physical transfer were purchased from the promoter of PAL, the same ipso fact does not make the noticee a party to the alleged manipulation in the scrip of PAL.
- v. It is the case of noticees at Sr. no. 1,2 and 3 that the SCN or SEBI fails to provide any evidence which could reasonably demonstrate that the said noticees along with the promoters of PAL or the other noticees named in the SCN were operating with prior understanding and are together responsible for manipulating the price of PAL.
- vi. That there was significant time gap between the time when the buy orders were placed and the sell orders were punched in. If the noticees were to collude and jack up the price in the scrip of PAL, the buy and the sell orders would have been placed simultaneously. It is argued that, since, there is a significant time gap between buy and sell orders, it proves that there was no malicious intent and the trades were genuine and in the ordinary course of business.
- vii. It is argued by the counsels of the noticee at Sr. no. 1, 2 and 3 that the allegations in the SCN are based on the investigation in the present matter which was initiated upon the reference received from income tax

department as to make enquiry as to the securities market was in any way utilised to avail the benefits of long term capital gains. It is argued by these counsels that SEBI is not expected to make roving and fishing enquiry just to implicate the said noticees based on the pre-drawn conclusions, surmises and conjectures by the income tax department.

viii. On the allegation of releasing very small quantities of shares despite possessing large quantities in demat account, the noticee at Sr. no. 1, 2 and 3 contend that it is an undeclared rule in stock markets that a buyer will aggressively buy a stock when prices are going up and seller will start selling when the prices start to fall. They further argue that, the said noticees decision of not to sell all the shares in Patch-1 was purely driven out of market sense rather than any other consideration as alleged in the SCN. It is further argued by these noticees that they released the shares in such small quantities only in order to test the depth of the market, thereafter as the price in the scrip was rising, the said noticees decided to hold the shares for further period.

10. Noticee at sr. no. 5 vide email dated 20/09/2018, noticee at sr. no. 6 vide email dated 12/09/2018, noticee at sr. no. 7 vide its email dated 12/09/2018 and noticee at sr. no. 4 vide its email dated 22/09/2018, have expressed their desire of not attending the personal hearing and requested their replies to be treated as final submissions in this proceeding.

11. During the hearing held on 8/10/2018 and vide their additional submissions dated 11/10/2018, the noticee no 1 to 3 furnished copies of share certificates, share transfer forms and promoter shareholding pattern of PAL. Thereafter, SEBI vide email dated 30/10/2018, forwarded copies of the share transfer forms as furnished by the Registrar & Transfer Agent of PAL ('RTA') and the promoter holding details of PAL and sought submissions, to which the said noticees vide their additional submissions dated 31/10/2018, reiterated their stand.

12. It is also noted that the Noticees at Sr. no. 1, 2 and 3 vide letter dated 30/10/2017 had sought for inspection of documents relied upon which were provided to the said noticees.

Consideration of Issues and findings:

On consideration of the SCN and its annexures, the replies by the noticees and the submissions made at personal hearing, I observe the following:

13. It is argued by Noticee at sr. no. 1,2 and 3 that, SEBI is not expected to make roving and fishing enquiry just to implicate the noticees based on the reference from the income tax department and on the pre-drawn conclusions, surmises and conjectures by the income tax department. In support of this contention, the advocates for the said noticees have relied upon the judgement of the Punjab and Haryana High Court in the matter of Ravindra Singh vs. Kishan Lal Panwar and the order of Hon'ble SAT in the matter of Sudha Commercial Ltd. vs. SEBI (order dated 20/01/2017). I note that, the investigation in the present matter was initiated based on the reference received from income tax department, wherein the department had forwarded list of some scrips being traded on the stock exchange, in which price manipulation was alleged to have been carried out to generate bogus Long Term Capital Gains. PAL was one such scrip that was referred in the list. I note that consequently an independent investigation was carried out by SEBI to identify whether there has been any manipulation in the price of the scrip of PAL and whether the same was in violation of SEBI (PFUTP) Regulations, 2003. I also note that the SCN has not relied upon any pre-drawn conclusions of the income tax department. I also note that it was not a roving and fishing enquiry, in fact the investigation has observed that the price of scrip of PAL rose from Rs. 47.45 to Rs. 171.95 during Patch-1 and that the 28 trades carried out by the Noticees during Patch-1 contributed to 78.09% of market positive LTP during Patch-1. I further note that, regardless of the intent of the noticees, the fact of manipulating the price of the scrip will attract Regulation 3 (a) and 4(1) of SEBI (PFUTP) Regulations, 2003. On perusal of the SCN and the finding of the investigation contained therein, I observe that the purpose of this proceeding is not in connection with the LTCG issue, but to deal with those who manipulated the price of scrip of PAL and, whether the same was in violation of

SEBI (PFUTP) Regulations, 2003. Therefore, the contention of the Noticees has no merit.

14. The Noticees have submitted that the allegations levelled in the SCN are not supported by any evidence and that the allegations of serious violations like SEBI (PFUTP) Regulations, 2003 should not be on the basis of mere preponderance of probabilities, surmises and conjectures. In support of their contention they have cited the following order/ judgement :-

- i. KSL & Industries Ltd. v. SEBI (SAT Appeal no. 9/2003 decided on 30/09/2009) – cited by Noticee no. 1,2 and 3
- ii. Union of India v. Chaturbhai M. Patel (AIR 1976 SC 712) – cited by Noticee no. 1,2 and 3
- iii. Parsoli Corporation v. SEBI (Appeal no. 146/2011, SAT order dated 12/08/2011) – cited by Noticee no. 1,2 and 3
- iv. Sterlite Industries v. SEBI (appeal no. 20/2001, SAT order dated 22/10/2001) – cited by Noticee no. 1,2 and 3
- v. Union of India v. H.C. Goel (AIR 1964 SC 364) – cited by Noticee no. 1,2 and 3
- vi. L.D. Jaisinghani v. Naraindas N. Punjabi (1976) 1 SCC 354/ AIR 1976 SC 373 – cited by Noticee no. 1,2 and 3
- vii. Razikram v. J.S.Chauhan (AIR 1975 SC 667) – cited by Noticee no. 1,2,3,5 and 6
- viii. Ambalal v. Union of India (AIR 1961 SC 264) – cited by Noticee no. 1,2 and 3
- ix. Seth Golakchand v. Seth Kudilal (AIR 1966 SC 1734) – cited by Noticee no. 1,2, 3,5 and 6
- x. Babubhaidesai v. SEBI (SAT order dated 15/02/2016) – cited by Noticee no. 7,5,4 and 6
- xi. Smitaben N. Shah v. SEBI (SAT order dated 30/07/2010) – cited by Noticee no. 7,5,4 and 6
- xii. Bank of India v. Degala Surya Narayana (AIR 1999 SC 2407) – Cited by Noticee. No. 6,4 and 5

- xiii. Varanasaya Sanskrit Vishwa Vidyalaya & Anr. v. Dr. Rajkishore Tripathi and Anr. – cited by Noticee. No. 6,4 and 5

In this regard, I have considered the aforesaid case laws and note that the facts of the above cases are different from the circumstances of the present case, as the case under consideration is not based on surmises and conjectures since, the evidence brought by the investigation in the present matter in the form of Unique Client Code details, bank account statements, data from RTA, records from depositories, records from MCA 21 portal, details of trading by the noticees during the Investigation Period, pattern of trading, magnitude of impact of such trading on LTP (as seen at para 6(iv) above) etc. are sufficient to substantiate the allegations in the SCN.

15. Further, I note the observations of the Hon'ble Supreme Court in the matter **SEBI v. Kishore R. Ajmera (2016) 6 SCC 368**, dealing with the standard of proof while imposing civil liabilities under SEBI Act, 1992 or the regulations framed there under:

“.....facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.....”

*“.....While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. **The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned.** Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.....”*

16. It is argued that the grouping of the entities for the purpose of investigation is erroneous and misleading. It is contended that unrelated and unconnected entities have been lumped together to draw adverse inference. In this connection, it is noted that the purpose of classifying entities into groups is to narrow down the investigation to a few who may be further be probed for inquiry into the alleged violation. It merely aids the investigation to focus on the identified groups and avoids any roving and fishing enquiry. Generally, the entities are classified into groups based on common parameters observed amongst the constituents such as common address, common directorship, common partnership, funds transfer between constituents, linkage with promoter, director or KMP of the company, similar trading pattern in the same scrip, impact of their trading on the price/volume of the scrip .etc. In the instant case, the alleged connections established amongst the noticees to this proceeding as forming part of Group-1 is detailed at Para 5 above i.e. all the Noticees have been alleged to have bought the shares in off-market from the promoter/ persons related to the promoters and have sold it on the stock exchange in a manner which has artificially impacted the LTP. Hence, I do not find any unreasonable and unconnected classification in grouping of the entities.

17. SCN points out that noticee no. 1, 2 and 3 have bought the shares of PAL through off market physical transfer from promoter of PAL, namely Margareta Alvares. However, it is the case of these noticees that they didn't knew about the identity of the transferor of these shares since they had purchased the shares from PMPL by way of blank transfer. In this connection, the followings are observed:

- i. In terms of section 2(i) of Securities Contract Regulation Act, 1956 which defines a 'spot delivery contract' as under:

"spot delivery contract" means a contract which provides for,-

actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from

the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;.....

Thus, in accordance with the above provision, in a transaction of share transfer in the off market physical mode, the payment for the securities and the delivery of the securities alongwith the share transfer form must be completed within the same day or by the next working day. In the present case, the purported transfer of shares of PAL between PMPL and the noticee at sr. no. 1, 2 and 3 should have been completed at the most by 26/07/2013 (the next working day), since payment of consideration (Rs. 3 lacs by each of the said noticees) towards the purchase of the said shares of PAL, as reflected in the copies of the bank statements (as annexed by the said noticees in their replies dated 10/07/2018) appears to have been made on 25/07/2013. Further, the said noticees have also annexed with their replies dated 10/07/2018, copies of bills as issued by PMPL to the said noticees, for the purported purchase of shares of PAL (by way of blank transfer). The said bills are dated 27/07/2013. Further, in their written submissions dated 11/10/2018 at para 3(a), noticees at sr. no. 1, 2 and 3 claim to have purchased the shares of PAL from PMPL on 27/07/2013.. Thus if the contention of the said noticees were to be accepted, then it would fall foul to the provisions of section 2(i) of the SCRA Act, 1956, whereby the purported transaction ought to have been concluded by 26/07/2013.

- ii. Five out of the seven noticees to this proceeding viz. Noticees at sr. no. 1,2,3,4 and 6 claim that they had not purchased the shares of PAL from the various entities as alleged in the SCN, rather they have bought the shares of PAL from one common entity i.e. PMPL. I note that, PMPL is a company whose name has been struck off from the register of companies as maintained by RoC.
- iii. Noticee no. 1,2 and 3 claim that they have made the payment for purchase of shares of PAL on 25/07/2013 to PMPL and that PMPL had issued bills

dated 27/07/2013, for the said purchase to the said noticees. The copies of the said bills have been annexed with their replies dated 10/07/2018 by the said noticees. In this regard, I note that the copies of share transfer form 7B relating to the purchase of the shares in question, as furnished by RTA of PAL – M/s. Aarthi Consultants Pvt. Ltd bears the date of execution as 28/08/2013. The copies of the aforesaid transfer forms were also sent to the Noticee at Sr. 1,2 and 3 for their comments, if any. I note that, if the claims of the Noticee no. 1,2 and 3 were to be true, then why the said share transfer forms were executed approximately one month after the purported payment of consideration to PMPL? This contradicts another claim by the said noticees in their replies, that they had purchased the shares of PAL for long term investment. I note that generally, when an investor who intends to hold shares for the long term, he would execute the share transfer form and lodge the same with the company for registering the transfer in their name, at the earliest occasion soon after the payment of the consideration to the seller, since he would avoid losing any entitlements associated with those shares in the interim. However, in the instant case, I note that the said noticees fail to explain cogently as to why they did not execute the share transfer deeds on the day of purported payment of consideration itself or immediately thereafter, especially when they intended to hold the shares for the long term.

- iv. I note from the share transfer forms 7B as furnished by the Noticee no. 1 to 3 and SEBI, that all the fields in the form, namely the details of the company, the details of the shares that were transferred, the details of the transferor (seller) as well as the details of the transferee (buyer), appears to be filled with same handwriting. This indicates that the shares were directly purchased by the Noticee no. 1 to 3 from Mrs. Margareta Alvares (promoter entity of PAL) and not from PMPL as claimed by the said noticees. I note that, had it been purchased by the said noticees by way of blank transfer from PMPL, then the handwriting in the column mentioning the details of the share transferor (seller) and the column mentioning the details of the transferee (buyer) may have been different.

- v. The copies of the three invoices dated 27/07/2013 furnished by Noticee no. 1,2 and 3, does not contain any payment details such as date of payment, mode of payment .etc., particularly, when the payment, as claimed by the said noticees, was already made for the purported purchase of shares of PAL to PMPL on 25/07/2013 itself. The non-inclusion of such a fundamental detail in an invoice, raises suspicion as to its genuineness.

- vi. Shares of PAL were infrequently traded. Investigation reveals that there was no trading in the scrip of PAL from 2001. The share certificates of PAL (bearing no. 994 to 1011) were issued to Mrs. Margareta Alvares on 05/07/2013 (as noticed from the copies of share certificate furnished by Noticee no 1,2 and 3 along with their additional submissions dated 11/10/2018). I note that as per the records of RTA of PAL, the said shares in question were transferred directly to the said noticees from Ms. Margareta Alvares on 20/09/2013. i.e. approximately 75 days after the date of issue of the said share certificates. However, the noticee at sr. no. 1, 2, and 3 claim to have paid to PMPL for the acquisition of shares on 25/07/2013 i.e. within 20 days from the issue of share certificates by the company to Mrs. Margareta Alvares. I find the claim of the said noticees suspicious since, in an infrequently traded scrip, without any significant corporate announcements or change in fundamentals of the company, the shares of PAL, as per the claims of the said noticees, underwent multiple transfers in a span of 20 days i.e. from Ms. Magareta Alvares to PMPL and later from PMPL to notice no. 1,2 and 3.

- vii. The share transfer form 7B in the case of noticee at sr. no. 3 (Sankalp Garg) shows the date of endorsement by RoC as 30/07/2013. Whereas, as claimed by the said noticee in its reply, that the payment for purchase of shares from PMPL was made on 25/07/2013. In this respect it would be appropriate to refer to section 108 (1A) of the Companies Act, 1956, which reads as under:-

(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and-

(a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person.....

Thus, the share transfer form has to be presented for endorsement to RoC, even before entering any details of the parties in the share transfer form. If PMPL were to make a blank transfer of such shares, then it ought to have made the purchase from Ms. Margareta Alvares on or before 25/07/2013. Consequently, PMPL ought to have had the transfer form endorsed by the RoC prior to or on 25/07/2013, if it intended to sell the said shares to Sankalp Garg on 25/07/2013. However, the share transfer form 7B in case of shares transferred to noticee no. 3 bears the date of endorsement from RoC as 30/07/2013. Hence, if shares are purported to have been bought from PMPL, then how does PMPL have a right to sell such shares which it does not possess on 25/07/2013, since the date of endorsement by RoC as seen on share transfer form is 30/07/2013? Hence, the arguments and the documents presented by noticee at sr. no. 3 seem to self-contradict and fails to prove the case of blank transfer from PMPL.

In view of the above observations at para 17(i) to 17(vii), I am inclined to accept the findings of the investigation as stated in the SCN, that reveal that the shares were purchased by the noticee at sr. no. 1, 2 and 3 from the promoter of PAL- Ms. Margareta Alvares (and not from PMPL as claimed by the said noticees), as evidenced by the records of RTA of PAL – M/s. Aarthi Consultants Pvt. Ltd. and also as shown in the share transfer forms 7B (relating to transfer of shares bearing share certificate no. 994 to 1011) and endorsements by the company on the respective share certificates (bearing no. 994 to 1011). It appears that the entire plea of purchase of shares from PMPL by way of blank transfer and not from Ms. Margareta Alvares (as reflected in the records of RTA) is being taken by the said

noticees in order to dissociate themselves in any manner whatsoever, from the connections established in the SCN between the said noticees and the promoter of PAL – Ms. Margareta Alvares,

18. The noticee at Sr. no. 1, 2 and 3 have argued that the SCN and investigation has failed to prove that Ms. Margareta Alvares was the promoter/promoter related entity of PAL. In their defence, the said noticees by way of additional written submissions dated 11/10/2018, have produced the shareholding pattern of PAL as declared on BSE from quarter ended June 2014 to June 2018. SEBI vide email dated 30/10/2018 had provided the said noticees inter alia with the statement of shareholding of PAL for the quarter ended September 2013 and December 2013, wherein Ms. Margareta Alvares was shown as part of 'promoter and promoter group', and sought their submissions. I observe that, while responding to the said email by way of additional written submissions dated 31/10/2018, the said noticees have conveniently chose to remain silent on this subject and have not submitted any reply on this point. I note that Ms. Margareta Alvares was disclosed in the shareholding pattern as part of promoter/promoter group for the quarter ending September 2013 and December 2013 by PAL. Hence, the aforesaid contention of the said noticees, has no merit.

19. It is argued by the noticee at sr. no. 1, 2 and 3 that there was significant time gap between the time when the buy orders were placed and the sell orders were punched in. They further contest that the said noticees were to collude and jack up the price in the scrip of PAL, the buy and the sell orders would have been placed simultaneously or within very little time gap. Here, I would emphasize that it may not always be the case that manipulators may punch orders at the same time. Manipulation has been found to be operating in many different ways. Hence, time gap of order punching between buy side and sell side may not always be the deciding factor. Further, I note that, generally, in a liquid scrip with a large investor base and greater public float, the trades take place frequently within short time gap (often time gap of split second), hence the manipulators in such scrips choose to place their orders within proximate time gaps. However, in an infrequently traded scrip, where the no. of investors participating in the trading of the scrip is less, it is not necessary

that the orders are placed simultaneously/within proximate time gap, since orders can be matched in such infrequently traded scrip, even when there is significant time gap between buy order and sell order.

20. It is contended by Noticee. no. 4 to 7 that the trades were executed by their broker on screen based trading platform wherein it is not possible to know the counterparty buyer or counterparty broker. They contend that at the time of trading they were not aware of any of the noticees to this proceeding. I observe, the mere fact that the orders were placed on a screen based trading platform does not absolve the possibility of manipulative trading. The pattern of trading, the repetitive nature of orders, the volume of trade, the illiquid nature of scrip, the magnitude of impact of trading on LTP .etc. all are the relevant factors for consideration while drawing an inference in the case of manipulation. In the present case, the findings of investigation as stated in the SCN observes the following:-

Seller Name (1)	Date of transaction (2)	Sell order volume (3)	Buy order volume (4)	LTP contribution (% to market positive LTP) (5)	No. of shares held before trade (6)
Noticee no. 7 (Global Enterprises)	08/12/2014	5	28000	2.22	133000
	11/12/2014	250	9000	2.33	106000
Total		255	37000	4.55	
Noticee no. 6 (Sajjan Kedia)	28/10/2014	5	100	2.14	14500
	30/10/2014	5	500	2.37	14495
	10/11/2014	5	1000	2.74	14490
	11/11/2014	5	1000	2.86	14485
	14/11/2014	5	1000	3.16	14480
	18/11/2014	5	500	3.31	14475
	20/11/2014	5	250	3.49	14470
	24/11/2014	5	250	3.68	14465
Total		40	4600	23.75	

Noticee no. 5 (Shakira Sharfuddin Shaikh)	04/12/2014	5	250	5.15	15000
	05/12/2014	3	250	2.14	14995
Total		8	500	7.29	
Noticee no. 4 (Suryapratap Gupta HUF)	21/10/2014	10	1600	1.84	50000
	22/10/2014	5	300	1.95	49990
	27/10/2014	5	1000	2.03	49985
	29/10/2014	5	100	2.25	49980
	31/10/2014	5	100	2.48	49975
	07/11/2014	5	1000	2.59	49970
	12/11/2014	5	1000	3.01	49965
	25/11/2014	2	1000	3.83	49960
Total		42	6100	19.99	

An analysis of the above trade data of Noticee no. 4 to 7 reveals that despite having large/sufficient buy volume (column 4 above) and large holdings before trade (column 6 above), the said noticees chose to sell quantities only in single digits (column 3 above). Further, noticee no. 6 and 4 appear to exhibit a consistent repetitive single digit sell order placing pattern for 8 trading days (column 3 above), despite having relatively large/ sufficient buy order volume (column 4 above) and large holdings (column 6 above). I also note that, despite sell order quantity being miniscule, the impact of the trades by the said noticees on the market positive LTP during patch-1 has been significant (column 5 above) viz. Noticee no. 7 contributed 4.55 % to market positive LTP, noticee no. 6 contributed 23.75 % to the market positive LTP, noticee no. 5 contributed 7.29 % to the market positive LTP and noticee no. 4 contributed 19.99% to market positive LTP.

21. It is the case of the noticees that they sold shares in Patch-1 in small quantities because they wanted to test the depth of the market. I don't agree with such a contention for the reason that in the era of screen based trading it is possible even for an individual retail client to see the market depth of at least first five orders in a row, while placing his bid. The screen based terminal also gives the retail client

access to other data such as - Day's High/Low price in the scrip, Previous day's closing price, Day's opening price, Last traded price .etc. In fact, all the noticees to this proceeding claim to have instructed their broker to sell their shares, who certainly can see all such data relating to a scrip. In view of the above and on analysis of the trading pattern as shown in the table at para 6(iv) and para 20 above, I do not agree with the contention of the noticees that they sold shares in small quantities because they wanted to test the depth of the market.

22. The SCN has alleged that the noticees at sr. no. 1 to 7 have committed violation of Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a) & 4(2) (e) of SEBI (PFUTP) Regulations, 2003. The extracts of the relevant provisions is as under:

3. Prohibition of certain dealings in securities

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 there under;

(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 there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, 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;

.....

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

.....

23. The Noticees to this proceeding have denied having violated any of the above provisions. Further, I note that the Noticee no. 4 to 7 have contended that the allegations of creating positive LTP cannot sustain in view of the miniscule quantum of their alleged trades during the Investigation Period - such miniscule quantum of alleged trade cannot result in price rise. However, I note that the trade quantity has to be seen in reference to factors such as the total volume in the scrip vis-à-vis the traded quantity, the repetitive nature of trades, the liquidity in the stock, magnitude of impact of the traded quantity on the last traded price .etc. I note that the trading pattern of the noticees to this proceeding (more specifically detailed in para 24 r/w para 6(iv) of this order), have resulted in 77.98% to market positive LTP during Patch-1. Thus, the quantity of trades may not be the sole deciding factor in many of the cases.

24. In respect of allegations made in the SCN that the Noticees were offering minuscule quantity of shares in sell orders at prevailing buy orders which were already at higher than the LTPs, I, note from the table produced in above para 6(iv) that the Noticee No.2, out of its two sell trades during Patch-1, executed on different dates, for three shares and two shares each, even when it was holding 30,000 and 29,997 shares, respectively, at the time of placing those two sell orders. Similarly, Noticee No. 1 has executed two sell orders on different dates and sell orders were placed for

two shares and three shares each time even when it was holding around 30,000 shares, at the time of placing those two sell orders. Noticee no. 7, has executed two sell orders for 5 shares (even when having 28,000 buy volume) and 250 shares (even when having 9000 buy volume) on different dates, even when holding 1,33,000 and 1,06,000 shares, respectively, at the time of placing the two sell orders. Noticee No. 3 has executed one sell orders for 5 shares (even when buy volume of 250 shares was available) when it had 30000 shares in holding, at the time of placing the sell order. Noticee Nos. 4, had placed 8 sell orders on different dates during Patch-1, out of which 6 sell orders were repeatedly placed for 5 shares each, even when it was holding 49990, 49985, 49980, 49975, 49970 and 49965 shares respectively, at the time of placing those six sell orders. Similarly, Noticee no. 6 had placed 8 sell orders on different dates repeatedly for 5 shares each during Patch-1, even after holding 14500, 14495, 14490, 14485, 14480, 14475, 14470 and 14465 shares respectively, at the time of placing the sell orders and having buy order volume as 100, 500, 1000, 1000, 1000, 500, 250, 250 respectively, at the time of placing these 8 sell orders. Noticee no. 5 had placed two sell orders on different dates, for 5 shares and three shares each, even after holding 15000 and 14995 shares respectively, at the time of placing the two sell orders.

25. I also note that, in the aforementioned 25 trades, the Noticees have placed miniscule quantities of sell orders on different dates matching the available buy price which were placed at higher price than the last traded price contributing to the increase in scrip price with each of their trades. It is also noted that far lesser quantities of sell orders were placed by the Noticees even when buy orders were available for higher quantities and the Noticees were also holding relatively higher quantities of shares in the scrip (as detailed at para 6(iv) above).

26. I also note that, when relatively large/sufficient buy order volumes were available, if the Noticees were the bonafide sellers, they should have sold substantial/equivalent number of shares held by them, corresponding to the buy order volume available. However, as seen in table at para 6 (iv), the noticees have placed sell orders only for single digit shares repeatedly one after the other for

almost 25 trading days in 40 days period to consistently set a New High Price in the scrip for each trading day. Had the Noticees did not intervene by putting the single digit sell orders the price of the scrip would not have risen to give rise to a New High Price for each trading day.

27. In view of the above, I find that these trades were manipulative and in violation of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (PFUTP) Regulations, 2003. I further note that, the proof of fraudulent and manipulative transactions is rarely found by direct evidence rather it always depends upon the given circumstances from which inferences are drawn from the factual details, the nature of transactions, conduct of the parties etc. In this respect, it would be relevant to refer the Order of the Hon'ble Securities Appellate Tribunal ("SAT") passed in the matter of Ketan Parekh Vs. SEBI (Appeal No. 2 of 2004 decided on 14.07.2006) observing as under:

".....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."

28. It is observed from the findings as given above, by entering into manipulative trades, the noticees were instrumental in establishing a price higher than the last traded price and thus contributed to increased scrip price with each of their trades. Thus, out of 38 trades that contributed to positive LTP in Patch-1, as a group, these seven noticees placed orders for 25 trades as enumerated at para 6(iv) above, on 25 different days and contributed to price rise by Rs.103.75 i.e., 77.98% of market positive LTP.

29. I further note that in Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013) decided by the Hon'ble Securities Appellate Tribunal ('SAT') on February 11, 2014), where an entity was found to have raised the New High Price (NHP) by placing just 1 share in buy order, in each of nine transactions, when sell orders were available for higher quantity (contributing to 9.17% of NHP), the Hon'ble SAT while upholding the findings and penalty imposed by the Adjudicating Officer, vide its Order dated February 11, 2014, *inter alia* observed as under:

“ 9..... Very fact that the appellant had indulged in self trades/ LTP/ NHP without giving justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades.

10.In the facts of the present case, in our opinion, no fault can be found with the decision of the AO that the trades executed by the appellant were manipulative trades and hence, the appellant was guilty of violating the SEBI Act and the PFUTP Regulations.

30. Hence, in view of the above, I find the seven noticees to this proceeding to be guilty of violating 3(a),3(b),3(c),3(d) and Regulation 4(1), 4(2) (a) & 4(2) (e) of SEBI (PFUTP) Regulations, 2003 and accordingly I pass the following order:

Directions:

31. In view of the above, I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain the noticees at sr. no. 1 to 7 viz. Girish Kumar Agrawal, Girish Kumar Agrawal & Sons (HUF), Sankalp Garg, Suryapratap Gupta (HUF), Shakira Sharfuddin Shaikh, Sajjan Kedia and Global Enterprises, from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of four years, from the date of this order. During the period of restraint, the existing holding, including units of mutual funds, of the Noticees shall remain frozen.

32. The order shall come into force with immediate effect.

33. A copy of this order shall be served upon all recognised stock exchanges and depositories and the Registrar and Share Transfer Agents of all Mutual Funds to ensure compliance with the above directions.

Sd/-

Date: 28th November, 2018

Ananta Barua

Place: Mumbai

Whole Time Member, SEBI