

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

In respect of:

S. No.	Name of the Entity	PAN
1.	M/s Nishith M Shah HUF	AAEHN5511R

In the matter of Shree Shaleen Textiles Limited

BACKGROUND

1. Shree Shaleen Textiles Limited (hereinafter referred to as “**SSTL / Company**”) was incorporated in the year 1980. SSTL’s key Products/ Revenue Segments include Cloth trade. The company is listed only on BSE Ltd.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in the scrip of SSTL based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. The focus of the investigation was to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by certain entities in the scrip of SSTL during the period period November 01, 2011 to November 30, 2014 (hereinafter referred to as “**Investigation Period**”).

3. During the investigation period, corporate announcements broadly included declaration of financial results and meetings of the Board of Directors of the Company. Further, it is observed from the Investigation Report (hereinafter referred to as “IR”) that net sales of the company increased from ₹ 0.37 crore as on March 31, 2011 to ₹ 2.65 crore as on March 31, 2014. The profit of company increased from ₹ 0.30 crore for the year ended March 31, 2011 to ₹ 0.48 crore for the year ended March 31, 2014.
4. On the basis of price rise/fall, during the investigation period, 4 patches were identified. The open, high, low, close price of the scrip before, during and after the period of investigation are as under:

Patches	Period	Particulars	Open	High	Low	Close	Avg. Volume
Pre IP Period	01/09/2011 – 30/10/2011	Price	52.5 [16/09/2011]	70.15 [18/10/2011]	52.5 [16/09/2011]	70.15 [18/10/2011]	50
		Volume	50 [16/09/2011]	50 [Multiple Dates]	50 [Multiple Dates]	50 [18/10/2011]	
Patch-1 - Pre Bonus – IP Period	01/11/2011 – 29/03/2012	Price	73.65 [02/11/2011]	77.30 [06/02/2012]	73.65 [02/11/2011]	77.30 [06/02/2012]	50
		Volume	50 [02/11/2011]	50 [Multiple Dates]	50 [Multiple Dates]	50 [06/02/2012]	
Patch – 2 - Post Bonus – IP period	30/03/2012 – 05/03/2013	Price	4 [30/03/2012]	111.85 [05/03/2013]	4 [30/03/2012]	111.85 [05/03/2013]	142
		Volume	50 [30/03/2012]	5010 [15/02/2013]	2 [28/12/2012]	25 [05/03/2013]	
Patch – 3 - Post-Split – IP period	06/03/2013 – 31/12/2013	Price	23.45 [07/03/2013]	66.15 [07/10/2013]	23.45 [07/03/2013]	59.1 [31/12/2013]	251640
		Volume	10025 [07/03/2013]	831801 [31/12/2013]	15 [02/04/2013]	831801 [31/12/2013]	
Patch – 4 - Price Fall period	01/01/2014 – 30/11/2014	Price	59.1 [01/01/2014]	59.95 [06/04/2014]	4.93 [11/08/2014]	6.75 [28/11/2014]	392184
		Volume	281813 [01/01/2014]	6195523 [26/03/2014]	1 [12/02/2014]	959726 [28/11/2014]	
Post IP Period	01/12/2014 – 31/01/2015	Price	7.00 [01/12/2014]	7.12 [26/12/2014]	4.95 [09/12/2014]	6.06 [06/01/2015]	327443
		Volume	1136350 [01/12/2014]	1389650 [15/12/2014]	650 [19/12/2014]	1000 [06/01/2015]	

SHOW CAUSE NOTICE

5. Consequent to the investigation, a show cause notice dated July 28, 2017 (hereinafter referred to as “SCN”) was served on M/s Nishith M Shah HUF (hereinafter referred to as “Noticee”) in the extant matter. The SCN *inter alia* alleged as follows:

- a) The LTP analysis of the 4 patches was done and the details of Patch 2 is given below:

LTP Analysis: Patch-2: Post Bonus – Price Rise Period – 30/03/2012 to 05/03/2013:

- During this period, the price of the scrip opened at ₹ 4 (Opening Price) as on March 30, 2012 to ₹ 111.85 (High Price and Close Price) as on March 05, 2013. Further, with ex-date of March 06, 2013, SSTL sub-divided face value of shares from ₹ 10/- to ₹ 2/. The list of shareholders received from RTI (Purva Sharegistry (I) Pvt Ltd.) was analyzed and it was observed that as on March 31, 2012, 85.34% of the share capital (5,76,050 shares out of 6,75,000 shares) were held in physical form or with entities which had converted warrants (shares issued on conversion of warrants were under lock-in till November 14, 2012). The net top 10 sellers LTP analysis were carried out as under:

PAN	Name	Net LTP			Pos. LTP			Negative LTP			Zero LTP		% of +ve LTP to Mkt +ve LTP
		Net LTP	Trade Qty	No.of Trades	Pos. LTP	Trade Qty	No.of Trades	Neg. LTP	Trade Qty	No.of Trades	Trade Qty	No.of Trades	
AHQPK9496D	Anjana Arun Karwa	14.03	322	11	14.03	322	11	0.00	0	0	0	0	15.52
AAQHS7786D	Shyam Rathi Huf	12.98	70	7	12.98	60	6	0.00	0	0	10	1	14.36
AABPG5669E	Jayeshkumar Narottamdas Gandhi	12.45	95	4	12.45	95	4	0.00	0	0	0	0	13.77
AAEHN5511R	Nishith M Shah Huf	11.00	75	3	11.00	75	3	0.00	0	0	0	0	12.17
AAFPG5855L	Bharati Jayesh Gandhi	8.58	110	6	8.58	110	6	0.00	0	0	0	0	9.49
AISPG4164H	Deval Jayesh Gandhi	6.33	60	4	6.33	60	4	0.00	0	0	0	0	7.00
AEJPK2394G	Maheshkumar Ghewarchand Vanigota	4.80	10	1	4.80	10	1	0.00	0	0	0	0	5.31
ABXPH7639E	Vishnu Daji Hode	4.15	30	1	4.15	30	1	0.00	0	0	0	0	4.59
AFDPG6008E	Kajal Sunil Gowadia	3.95	10	1	3.95	10	1	0.00	0	0	0	0	4.37
AEXPG4216P	Shivani Amit Gowada	3.60	10	1	3.60	10	1	0.00	0	0	0	0	3.98
Total		81.87	792	39	81.87	782	38	0.00	0	0	10	1	90.57
Market		107.85	9947	137	107.85	1617	69	0.00	0	0	8330	68	100.00

- From the above table, it can be observed that top 10 net sell LTP entities contributed to 90.57% of market positive LTP.
- In view of the low volume price increase and substantial positive LTP contribution (90.57% of market positive LTP) by top 10 net LTP contributors,

as sellers, sell orders of the top 10 net sell LTP contributors contributing more than 5% of the positive LTP in more than one trade were analyzed and the trades of the Noticee are as under:

Order date	Order time	Order No.	Sell Client name	Sell order rate	sell order qty	pending buy order at this price	LTP variation	Shareholding before sell order as per Demat Account	No. of trades in a day
21.01.2013	12:47:18.2000010	12000112098013	Nishith M Shah HUF	54.10	25	22170	2.55	2000	1
06.02.2013	11:20:55.5888380	13000102140466	Nishith M Shah HUF	72.30	25	14000	3.40	1975	1
01.03.2013	10:30:47.7416780	22000117023014	Nishith M Shah HUF	106.55	25	25760	5.05	1950	1
Period: 21.01.2013 to 01.03.2013; No. of Trades: 3; LTP contribution: 11.00 (12.17% of Pos. LTP Cont.)									

- From the table above, it was observed that the Noticee had sold few shares (25 shares) in-spite of holding more shares and having more buy demand at the price that Noticee placed the sell orders. It can also be observed that the Noticee has not executed more than one trade in a day. Further, aforesaid trades were the only trades executed during the day. By these trades, the Noticee matched the prevailing buy orders which were placed at the prices higher than the LTP and contributed to increase in the price of the scrip with each of its trades. In view of the repeated nature of such trades by the Noticee, it is alleged that it has increased the price of the scrip.
- b) In view of the above it is alleged that the Noticee as seller has indulged in trades that resulted in the manipulation of the price of the scrip and has created misleading appearance of trading in the scrip through the aforesaid trades which has resulted in the alleged violation of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a), (e) of PFUTP Regulations.
- c) The Noticee was advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should not be initiated against the Noticee for the alleged violation of the provisions of PFUTP Regulations. Further, the Noticee was advised to submit a reply to the SCN within 21 days from the date of receipt of the SCN.

REPLY & HEARING

6. In response to the SCN, the Noticee vide its letter dated August 18, 2017 requested additional 15 days' time to submit a reply to the SCN. The Noticee's request was acceded to and vide an email dated August 22, 2017, Noticee was advised to submit the reply by September 5, 2017.
7. Vide letter dated September 4, 2017, Little & Co., representing the Noticee *inter alia* made the following submissions:
 - a) The Noticee is trading of shares since 2010. The main source of income for the Noticee is from trading in shares.
 - b) Noticee usually invests on the basis of the tips from friends, relatives, brokers, fund houses, other news media and SMS. The decision to buy or sell shares is taken by Noticee by looking at the market conditions and news analysis in media.
 - c) Noticee is holding more than 8 to 10 scrips. Some physical shares are delisted and lying in physical form.
 - d) Noticee neither knows nor is involved directly or indirectly with any Directors/ Promoters of the company.
 - e) Noticee submits that 100 shares of SSTL were purchased by him in the past in physical form and not by conversion of share warrants and neither under the preferential allotment of shares made during the investigation period. Noticee sold those 100 shares for ₹ 6,400/- from the period January 21, 2013 to March 11, 2013. Noticee submitted copies of extract / contract bills pertaining to the said trades.
8. Noticee vide its letter dated February 19, 2018 requested for inspection of documents in the matter and authorized Mr. Vikas Bengani (hereinafter referred to as 'AR') to represent to conduct the inspection and to represent the Noticee before SEBI. Vide letter dated February 22, 2018, Noticee was advised to conduct the inspection in the matter on March 7, 2018.

9. The AR conducted the inspection of documents on the scheduled day. The AR was given the photocopy of Investigation Report, Action Taken Report and BSE Inspection Report along with a CD containing Order Log Trade Log. The AR had also requested for certain other documents in the matter at the time of inspection. The AR was informed vide an email dated March 9, 2018 that all the documents relied upon to issue the SCN have been provided to the Noticee. Further, the AR was advised to submit additional reply, if any to the SCN on or before March 23, 2018.
10. The Noticee vide its letter dated March 13, 2018 *inter alia* made the following submissions:
- a) It is not the allegation against the Noticee that it has any connection/relation and/or collusion with the counterparties to its trades in the scrip of SSTL.
 - b) No action had been recommended against the counterparties to Noticee's trades. The same yardstick should be applied in its case also. Noticee cannot sell shares without the support of buyers.
11. Vide hearing notice dated November 14, 2018, the Noticee was granted an opportunity of hearing on November 22, 2018 at SEBI Bhavan, Mumbai. On the day of scheduled hearing the AR appeared on behalf of the Noticee and reiterated the submissions made vide its reply dated March 13, 2018. The AR was advised to submit the following documents / information on or before November 30, 2018:
- Third party verifiable documents such as demat statement and broking account statement during the relevant period i.e. one year preceding and one year after the Investigation period in order to substantiate the normal trading pattern of the Noticee.
 - Additional details such as how the Noticee acquired the shares, at what price, on which date, on market or off market and the source of funds for such purchase. The details has to be supported with third party verifiable documents such as bank statements and Income Tax Returns for three years preceding the purchase of the shares.

12. Pursuant to the hearing, the Noticee made additional written submissions vide its letter dated November 30, 2018. The same are summarized hereunder:

- Noticee is placing reliance on SEBI order dated May 7, 2015 passed in the matter of *SMS Techsoft (India) Ltd.* wherein it was observed as follows:
“...I note that trading at LTP variation and trades among themselves are not illegal per se...”
- Noticee submitted a copy of its bank statements and IT Returns for the years 2012-2014.

FINDINGS & CONSIDERATIONS

13. I have perused the SCN, written and oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

- (i) Whether the Noticee has manipulated the price in the scrip of SSTL during the period March, 2012 to March, 2013?
- (ii) If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?
- (iii) If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?

14. Before embarking upon the necessary discussions, I would like to reproduce the relevant provisions of PFUTP Regulations:

Regulation 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.

Regulation 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;

Issue No. 1 - *Whether the Noticee has manipulated the price in the scrip of SSTL during the period March, 2012 to March, 2013?*

15. It is noted from the material made available on record that the Noticee has executed 3 sell trades in the scrip which were over the LTP for 75 shares. Noticee's LTP contribution in the scrip is ₹ 11/- which is 12.17% of positive LTP contribution in the scrip. From the material made available on record, I note that though the Noticee was holding substantial number of shares (2,000 shares as on January 21, 2013), the Noticee was releasing miniscule quantity of shares (25 in number) even though there

were large pending buy orders over the LTP. The days when the Noticee had executed the said 3 trades, pending buy orders were in the range of 14,000 shares to 25,760 shares. It is observed that when the Noticee was trading, out of 15 trading days on 12 trading days only 1 trade was executed in the scrip. This coupled with the fact that the average volume in the scrip during Patch- 2 of the investigation period which spanned for almost a year, was 142 shares, would make a prudent investor to sell its shares at the very first opportunity that he/she is coming across. In the given situation, there were considerable buy order quantity pending in the system and that too over the LTP. It is not the case of the Noticee that on multiple occasions it had placed sell orders for more than 25 shares and the order was not executed. Thus, based on the trading pattern of the Noticee in the scrip, it is held that the same is manipulative in nature.

16. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on miniscule quantities traded. It must not be forgotten that every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicate a fraud. In this regard, the observations of Hon'ble Supreme Court of India in *SEBI Vs. Kishore R Ajmera et.al.* decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in

the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate 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...”

17. At the time of the hearing, the Noticee was advised to submit its demat statement and broking statement, one year preceding and one year after the investigation period, to substantiate its normal trading pattern. The Noticee, however, failed to submit the same even though it is its own account and the Noticee has access to it. Noticee's trading in other scrips was accessed through the system. It is noted that during the financial years 2011-2012 and 2012-2013, Noticee has traded in five scrips including SSTL. In four other scrips, Noticee has put only on one instance sell order in miniscule quantity (18 shares) and for the rest of its trading as a seller, the Noticee has put sell order in sizeable quantity. Moreover, in the scrip of Alembic Pharmaceuticals Ltd., when the Noticee was trading, the price of the scrip opened at ₹ 74/- on February 11, 2013 (first day of Noticee's trading) and closed at ₹ 97.4/- on March 19, 2013 (last day of Noticee's trading) with a high of ₹ 110.95 on March 11, 2013. During its trading in the scrip of Alembic Pharmaceuticals Ltd., Noticee had never put its sell orders in miniscule quantity (25 shares or less) though the price of the scrip was increasing. Similarly, in the scrip of DCB Bank Ltd., when the Noticee was trading, the price in the scrip increased from ₹ 43.9/- to ₹ 49.05/- with a high of ₹ 52.2/-. But the Noticee barring one instance (18 shares) out of 37 instances, had put sell order in significant quantity. In the remaining two scrips, the Noticee has traded only on one day and has put sell order for substantial quantity of shares (700 shares in one and 5000 shares in the other scrip).
18. Thus, from the above, it can be gathered that during the normal course of Noticee's trading, the Noticee does not put sell orders for miniscule quantity of shares. Noticee's trading behavior in the scrip under inquiry does not follow its usual pattern of putting sell orders. Hence, the trading behavior of the Noticee in other scrips also does not justify its trading in SSTL which has already been held to be manipulative.

19. I also note that the Noticee was advised to submit details as to how it acquired the shares, at what price, date and the mode of acquisition. However, the Noticee failed to submit the same.
20. Noticee has submitted that the Noticee is neither connected to the counter parties to its trades nor is connected with the Directors / Promoters of the company. In this regard, I note that the extant matter is not based on the connection between the Noticee and the company / its Directors, rather on the manipulative transaction carried out in the scrip. As observed by Hon'ble Apex Court in the matter of *SEBI Vs. Kishore R Ajmera et.al*, in matters like the current one, totality of the attending facts and circumstances surrounding the allegations has to be seen to arrive at a conclusion. In the instant matter Noticee was repeatedly entering sell orders for miniscule quantity inspite of having substantial holding and large pending buy orders in the system. Further, Noticee's trading behavior in SSTL was at variance from its trading pattern in others scrips. All the aforesaid, indicates that the Noticee was not a genuine trader in the scrip.
21. In view of the above, the findings that have been gathered from various circumstances for instance volume of the trade effected, the period of persistence in trading in the scrip, the particulars of the buy and sell orders, trading behavior in other scrips, the totality of the picture that emerges leads to the conclusion that the Noticee by executing the aforesaid sell trades has manipulated the price of the scrip and has created a misleading appearance of trading in the scrip.

Issue No. 2 - *If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?*

22. In view of the conclusion arrived at paragraph 21, I find that the Noticee has violated Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

Issue No. 3 - *If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?*

23. In view of the violations committed by the Noticee, I find that it becomes necessary

for SEBI to issue appropriate directions against the Noticee.

ORDER

24. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain Nishith M Shah, HUF (PAN: AAEHN5511R) from accessing the securities market for a period of two years from the date of this order and further prohibit it 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 two years, from the date of this order. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticee shall remain frozen.
25. The order qua the Noticee shall come into force with immediate effect. It is clarified that separate order(s) will be passed in respect of other entities against whom show cause notice dated July 28, 2017 has been issued in the extant matter.
26. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

DATE: January 08, 2019

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**