

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Rajlaxmi Industries Ltd.

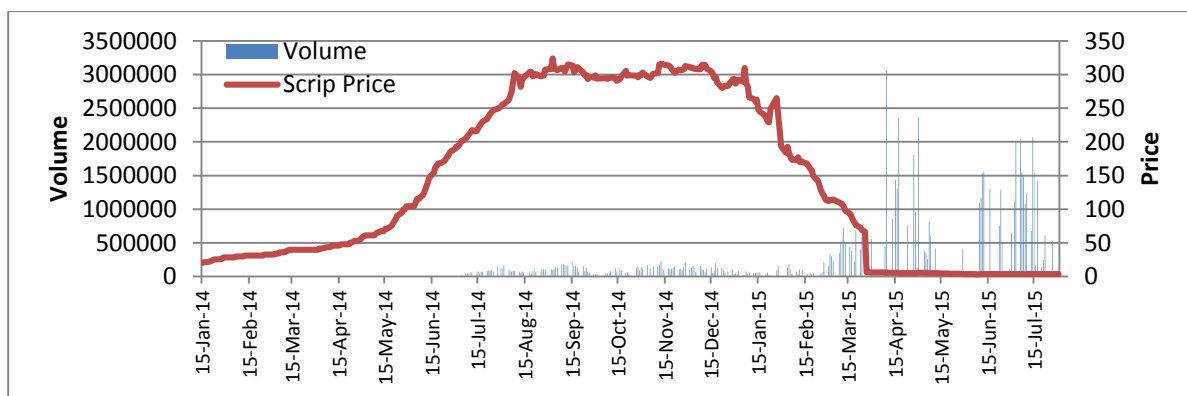
S.No.	Names of the Noticee	PAN
1.	Ms. Rashmi Kothari	AQNPK8748E

BACKGROUND

1. Rajlaxmi Industries Ltd. (hereinafter referred to as “Company/Rajlaxmi”) was engaged in trading of textiles and got listed in the equity segment of Bombay Stock Exchange (hereinafter referred to as “BSE”) on February 5, 1986. The scrip was subsequently suspended by BSE w.e.f. February 17, 2003 for non-compliance with provisions of clause 41 of the Listing Agreement. The suspension was revoked w.e.f. December 8, 2010 and trading in the securities of the Company was resumed in "T" group.

2. The scrip of the Company witnessed unusual fluctuation in price and volume from January 01, 2014 to July 31, 2015 (hereafter referred to as “Investigation Period”), although there was prima facie, no change in the fundamentals of the Company. The price of the scrip rose from Rs.20.25 on January 15, 2014 to Rs.193.2 on July 01, 2014 and reached a further high of Rs.323.8 on September 02, 2014 and thereafter, the price of the scrip started declining and closed at Rs.3.9 on July 31, 2015. The average volume of shares traded in the scrip also saw steep rise during the Investigation Period. The unadjusted price-volume chart is placed below:

Chart 1: Unadjusted Price-Volume Chart



3. Based on the above, Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the scrip of Rajlaxmi for the Investigation Period, so as to find out whether the upward movement in the price was on account of normal trades executed in the scrip or due to any act of price manipulation. Investigation was made into the trading in the scrip of the Company between January 15, 2014 to July 01, 2014 and from July 02, 2014 to September 02, 2014 (hereinafter referred to as ‘Patch-1’ and “Patch-2” respectively). The price volume data for the scrip of Rajlaxmi is given below:

Table 1

Period	Dates		Open (Rs)	Close (Rs.)	Low (Date) (Rs.)	High (Date) (Rs.)	Avg. no. of (shares) traded daily during the period.
During Investigation	15/01/14- 01/07/2014 (Patch-1)	Price	20.25	193.20	20.25 (15 Jan 14)	193.20 (01 Jul 14)	22
		Vol.	50	75	0 (17 Jan 14)	135 (13 Jun 14)	
	02/07/2014– 02/09/2014 (Patch-2)	Price	197.05	323.80	197.05(03 Jul 14)	323.80(02 Sep 14)	80,634
		Vol.	8,350	97,250	8,350(03 Jul 14)	169,740(01 Aug 14)	
	03/09/14- 26/03/15 (Patch-3)	Price	308.5	66.40	66.40(26 Mar 15)	319.00(11 Sep 14)	129,855
		Vol.	118,100	66	66(26 Mar 15)	725,313(12 Mar 15)	
	27/03/15- 31/07/15 (Patch-4)	Price	6.50	3.90	3.48(09 Jun 15)	6.50(27 Mar 15)	549,811
		Vol.	4,902	2,031	10(08 Jun 15)	3,063,022(09 Apr 15)	
After Investigation	(01/08/2015- 26/08/2015)	Price	3.95	2.85	2.85(26 Aug 15)	4.00(19 Aug 15)	146,536
		Vol.	208,830	31,855	2,701(05 Aug 15)	693,896(20 Aug 15)	

4. As can be noticed from the above data, the price of the scrip reached its highest level on September 02, 2014, when the Company's market capitalization value

stood at Rs.1003.78 crore. It was observed that the financial performance of the Company during the Investigation Period did not support the rapid increase in the price of the scrip of the Company. The Company had revenue of only Rs.15.18 crore and Rs.13.39 crore and corresponding net profits of Rs.0.42 crore and Rs.0.11 crore in FY 2013-14 and 2014-15 respectively. The financials of the Company during the relevant period are further presented in detail as under:

Table 2: Company Financials (Source – bseindia.com) (Rs. in Crore)

Particulars	Year Ended		
	2013-14	2014-15	2015-16
Sales	15.18	13.39	6.09
Other Income	0.66	0.92	0.00
Total Sales	15.84	14.31	6.09
Profit /Loss after Tax	0.42	0.11	0.04

5. During the Investigation Period, no major corporate announcements were made by the Company other than split announcement, declaration of financial results and meeting of the Board of Directors of the Company. Thus, it was observed that there were no major corporate announcements and no positive material development which could trigger the price rise of its scrip.
6. An analysis of trading executed during Patch 1 revealed that trades by Ms. Rashmi Kothari (hereinafter referred to as “Noticee”) on various days during the Patch-1 resulted in increase of price of the scrip continuously from Last Traded Price (Positive LTP). Out of the total price increase of Rs. 173.90 during this period, 58.42% price increase was on account of 26 trades by the Noticee. Analysis of each of the 26 LTP positive trades shows that every time the Noticee had placed buy

order before sell order was placed, at a price higher than the last trade price (LTP).

Details of the positive LTP trades done by the Noticee are given below:

Table 3: Trading Details of Rashmi Kothari

S. N o	TRADE_DATE	Buyer NAME	Buy Order Time	Sell Order Time	Trade Time	Buy Order Quantity	Sell Order Quantity	Traded Quantity	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff
1	12/02/2014	RASHMI KOTHARI	09:00:01	15:22:29	15:22:29 9	5000	50	50	31.2	31.2	31.2	1.45
2	02/04/2014	RASHMI KOTHARI	09:00:00	13:34:18	13:34:18 8	5000	25	25	41.65	41.65	41.65	1.95
3	07/04/2014	RASHMI KOTHARI	09:00:00	13:59:12	13:59:12 2	5000	50	50	43.7	43.7	43.7	2.05
4	22/04/2014	RASHMI KOTHARI	09:00:00	11:47:34	11:47:34 4	5000	15	15	50.5	50.5	50.5	2.4
5	25/04/2014	RASHMI KOTHARI	09:00:00	10:54:04	10:54:04 4	5000	50	50	53	53	53	2.5
6	29/04/2014	RASHMI KOTHARI	09:00:00	14:22:56	14:22:56 6	5000	50	50	55.65	55.65	55.65	2.65
7	30/04/2014	RASHMI KOTHARI	09:00:00	11:30:37	11:30:37 7	5000	50	50	58.4	58.4	58.4	2.75
8	02/05/2014	RASHMI KOTHARI	09:00:00	14:02:51	14:02:51 1	5000	50	50	61.3	61.3	61.3	2.9
9	09/05/2014	RASHMI KOTHARI	09:00:00	10:39:25	10:39:25 5	5000	10	10	64.35	64.35	64.35	3.05
10	12/05/2014	RASHMI KOTHARI	09:00:00	10:17:58	10:17:58 8	5000	10	10	67.55	67.55	67.55	3.2
11	23/05/2014	RASHMI KOTHARI	09:00:00	11:39:22	11:39:22 2	1000	10	10	90.4	90.4	90.4	4.3
12	26/05/2014	RASHMI KOTHARI	09:00:00	13:42:12	13:42:12 2	1000	50	50	94.9	94.9	94.9	4.5
13	27/05/2014	RASHMI KOTHARI	09:00:00	13:33:05	13:33:05 5	1000	50	50	99.6	99.6	99.6	4.7
14	05/06/2014	RASHMI KOTHARI	09:00:00	12:58:16	12:58:16 6	1000	50	50	115.2	115.2	115.2	5.45
15	09/06/2014	RASHMI KOTHARI	09:00:00	12:45:00	12:45:00 0	1000	10	10	120.95	120.95	120.95	5.75
16	11/06/2014	RASHMI KOTHARI	09:00:00	10:04:34	10:04:34 4	1000	10	10	133.25	133.25	133.25	6.3
17	12/06/2014	RASHMI KOTHARI	09:00:00	09:50:18	09:50:18 8	1000	10	10	139.9	139.9	139.9	6.65
18	13/06/2014	RASHMI KOTHARI	09:00:00	11:48:14	11:48:14 4	1000	10	10	146.85	146.85	146.85	6.95
19	17/06/2014	RASHMI KOTHARI	09:00:00	10:01:47	10:01:47 7	1000	50	50	161.85	161.85	161.85	7.7

Order in respect of Ms. Rashmi Kothari in Rajlaxmi Industries Ltd.

20	18/06/2014	RASHMI KOTHARI	09:00:00	14:51:55	14:51:5 5	1000	50	50	165.05	165.05	165.0 5	3.2
21	19/06/2014	RASHMI KOTHARI	09:00:00	15:08:01	15:08:0 1	1000	25	25	168.35	168.35	168.3 5	3.3
22	23/06/2014	RASHMI KOTHARI	09:00:00	12:13:51	12:13:5 1	1000	50	50	171.7	171.7	171.7	3.35
23	25/06/2014	RASHMI KOTHARI	09:00:00	10:03:40	10:03:4 0	1000	50	50	178.6	178.6	178.6	3.5
24	27/06/2014	RASHMI KOTHARI	09:00:00	10:11:31	10:11:3 1	1000	75	75	185.75	185.75	185.7 5	3.6
25	30/06/2014	RASHMI KOTHARI	09:00:00	10:18:18	10:18:1 8	1000	50	50	189.45	189.45	189.4 5	3.7
26	01/07/2014	RASHMI KOTHARI	09:00:00	11:23:03	11:23:0 3	1000	75	75	193.2	193.2	193.2	3.75

7. Thus, as can be noticed from the above table, the Noticee started placing buy orders on 12/2/2014 for Rs. 31.20/- per share and continued increasing her bids by placing buy orders at higher rates till 1/7/2014 when she placed her buy order for 1000 shares @ Rs. 193.20/- per share. It may be noticed that the Noticee used to place her buy orders exactly at 9:00 AM for shares ranging from 1000 to 5000 shares, much before someone placed sell orders. Such type of trading behaviour by the Noticee while trading in the scrip of the Company was alleged to amount to manipulation of the price of the scrip and in violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”). Therefore, a Show Cause Notice (hereinafter referred to as “SCN”) dated November 10, 2017 was issued to the Noticee calling upon to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of SEBI Act, 1992 should not be issued against her.
8. The Noticee replied to the SCN vide letter dated February 20, 2018. Her submissions are highlighted in brief as under:

- That the Noticee had earlier received another SCN on the same subject from Adjudicating Officer (hereinafter referred to as “AO”) who, after considering her submissions has passed an order dated 31.1.2018 disposing of the said proceedings in her favour. The Noticee made references to the order of the AO and requested for disposal of the present proceedings in her favour.
- That the Noticee was an ordinary investor who dealt in securities market in compliance with law and unlike informed institutional investors, retail investors like her have limited skill and experience of fundamental and technical research for making investment decision. Trading decisions are mostly made on the basis of news, rumors in print and electronic media, grapevines, investment decision of other investors, intuition and psychology of other investors.
- That the Noticee decided to deal in the scrip of Rajlaxmi since the Company was undergoing management change and referred to the Annual Report of year ending 2013 which mentioned about the new promoters led by Rahul Jagnani, a young and ambitious entrepreneur, with rich business experience. New promoters are upbeat of turning over the Company from its dismal state to a significant entity in textiles sector and as first step, promoters have caused infusion of fresh funds into the Company with a preferential issue of equity shares of Rs. 30 cores received from persons other than the promoters.
- That the Noticee understood that the Company is in expansion mode with the fresh issue of funds and from the grapevine and other investors it was understood that HNI and strategic investors had put their money in the Company and were upbeat about its future prospects. She also took a look

at financials of the Company and found that the Company posted loss for the year ending 31.3.2013 but has started showing minor improvements and was becoming profit making slowly. Therefore, the Noticee thought that she should deal in the shares of the Company for a short term trading and that it was common practice that investors look for such news based scrips even if they are fundamentally weak. Though there was risk in dealing in Rajlaxmi scrip since many people were not dealing in the scrip, the Noticee believed she should deal in the said scrip before the Company becomes popular and other players enter the market. She wanted to take the first mover advantage by undertaking calculated risk with a view to earn minor profit with small investment.

- That the Noticee decided to deal in the shares of the Company by strategizing to purchase 3500-5000 shares and thereafter liquidate the same in short term when she gets minor profit, hence put buy order of 5000 shares while received only 50 shares on 12.2.2014. The Noticee stated that she thought that not many people are ready to part away with their shares since they might see value in it and she put orders at the beginning of the day on all days, however, was able to get only few shares that too, after waiting for a long period of time.
- That no action has been proposed against the said sellers whose trades might have influenced the price of the scrip and erroneously all burden of price rise has been saddled on gullible investors like her. Noticee stated that she has no relationship with any of the counterparties to the impugned trades and that she is not a preferential allottee and has no relationship with the Company or its promoters/directors and does not belong to the Group-1/suspected entities mentioned in the Investigation Report, etc. The

Noticee also claimed to have been singled out and no action has been taken against the other entities who contributed to alleged positive LTP. Therefore, the Noticee submitted that her dealing in the scrip of Rajlaxmi was fair and transparent and has denied violation of provisions of PFUTP Regulations.

9. The reply of the Noticee was perused and in the interest of principles of natural justice, further opportunity of hearing was granted to the Noticee on October 31, 2018. However, no one appeared on behalf of the Noticee on the date of hearing. Therefore, one more hearing opportunity was given to the Noticee on December 5, 2018. Mr. Ketan Rupani appeared for the Noticee on December 5, 2018 and presented his arguments for the Noticee. Prior to that, the Noticee, vide letter dated December 1, 2018 had submitted some additional information as per requisition sent to her, which are considered. During the hearing on December 5, 2018, the Noticee was further asked to provide some more information to which the Noticee has responded vide letters dated December 7, 2018 and December 27, 2018. The reply and other submissions of the Noticee are dealt with in the subsequent paragraphs.

ISSUES FOR CONSIDERATION AND FINDINGS

10. After perusing the SCN and considering the submissions made by the Noticee, I find that the only issue that merits consideration is whether the trading by the Noticee in the scrip of Rajlaxmi Industries Ltd., can be considered as trades executed in due course of dealing in securities or as manipulative in nature in violation of the provisions of PFUTP Regulations. In this case, regulations

3(a),(b),(c),(d) and 4(1),4(2) (a),(e) of the PFUTP Regulations have been alleged to be violated by the Noticee. The said provisions read 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;*
 - (b)*
 - (c)*

(d)

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

11. It is pertinent to recall that the price of the Rajlaxmi scrip opened at Rs.20.25 on January 15, 2014 and in 63 trades spread across 53 trading days, price of the said scrip increased to Rs.193.2 on July 01, 2014. Thereafter, from July 02, 2014 onwards, in 3956 trades spanning across 41 trading days the price of the stock reached a further high of Rs.323.8 on September 02, 2014. Thereafter price of scrip started declining and after the stock was split into the ratio of 10:1 on March 26, 2015, the price of the scrip opened at Rs.6.50 on March 27, 2015 but declined further and closed at Rs.3.9 on July 31, 2015.
12. The price fluctuation narrated above is exhibited in detail in Table 1 above. On perusal of the said table, one can notice that there was a huge price rise from Rs. 20.25 to Rs. 193.20 during Patch -1 while the average shares traded daily was only about 22 shares. During Patch -2, the price has risen from Rs. 197.05 to Rs. 323.80 while the average shares traded daily was about 80,634 shares. I find that Patch-2 has witnessed both huge rise in price and rise in volume traded in the shares of the Company. Patch -3 (September 3, 2014 to March 26, 2015) and Patch-4 (March 27, 2015 to July 31, 2015) witnessed price drop from Rs. 308.5 to Rs. 66.40 and from Rs. 6.5 to Rs. 3.90. The average shares traded daily were about 1,29,855 and 5,49,811.
13. The rapid price rise of the scrip from Rs. 20.25 to Rs. 323.80 and thereafter, a drastic fall to Rs. 3.90 is certainly a very unusual and significant movement in the price of the scrip of Company. Further, the daily average shares traded also moved from 22 shares in the Patch-1 to 5,49,811 shares in Patch-4 during the Investigation Period demonstrates abnormally huge fluctuation in volume traded. Thus the scrip

of the Company witnessed huge fluctuations in price as well as in volume and such wide fluctuation assumes more peculiarity considering the fact that just before the Investigation Period, there was no trading in the scrip between April 20, 2011 and January 15, 2014. Further, I note that the price of the scrip closed at Rs.2.85 on August 26, 2015 following which trading in the scrip was suspended with effect from August 27, 2015 by BSE.

14. More importantly, the aforesaid abnormal fluctuation in the price and volume of Rajlaxmi shares did not have any support from the Company financials. As evident in table-2 presented above, the profit of the Company has seen a fall from the years 2013 to 2015. In any case, the Company had revenue of only Rs.15.18 crore and Rs.13.39 crore and meagre net profits of Rs.0.42 crore and Rs.0.11 crore in FY 2013-14 and 2014-15 respectively which cannot justify such unusual movement in the price and volume of shares traded during the above period. As pointed out earlier, there were also no major corporate announcements made by the Company except for the stock split, declaration of financial results and meeting of Board of Directors of the Company. Moreover, the shares of the Company were suspended from trading from February 17, 2003 for non-compliance with provisions of Clause 41 of Listing Agreement which was revoked after 7 years w.e.f. December 8, 2010 and trading in the scrip was again suspended with effect from August 27, 2015 by BSE. Therefore, on a totality, I do not find any bonafide reasons as to why the price of the scrip of a company having a poor trading history & poor fundamentals, would witness a steep surge for about 9 months followed by steep decline in next 10 months. I, therefore, find that the huge fluctuation in volume and price of scrip of the Company was extremely unusual and was not supported by the fundamentals of the Company.

15. I note that during Patch-1, when the price of the scrip of the Company has increased from Rs. 20.25 to Rs. 193.20, 26 buy trades placed by the Noticee have resulted in 58.42% price rise. In all of the 26 trades of the Noticee, she has been placing buy orders at a higher price than last traded price. As pointed out earlier, the Noticee has been placing orders at 9.00 am from February 12, 2014 to July 1, 2014 on a continuous basis well before the sell orders appeared on the screen. The buy quantity orders placed by the Noticee were in the range of 5000 to 1000 shares while actual sell happened for only 10 to 75 shares every day. The Noticee was repeatedly placing orders in the price range of Rs. 31.2, 41.65, 43.7, 50.5, etc. always at a price higher than the last traded price which moved the price of the shares of the Company from Rs. 31.2 to Rs. 193.2 from February 12, 2014 to July 1, 2014. The above trading behavior of the Noticee is unusual and prima-facie manipulative. No prudent buyer would like to buy asset including shares at higher price by successively quoting a price higher than the previous bid before seeing the sell offer from the counterparty. In the present case, however, the Noticee goes on to place buy orders at prices above the last traded price continuously over six months and did not wait for the sell order to be placed before placing her buy order. Therefore, these trades were on the face of it looks abnormal and deceptive too. Further, considering that there was no such change in the Company's fundamentals warranting such price rise during Patch-1, I find the Noticee's trades look all the more unusual and manipulative. The Noticee kept on placing huge quantities of buy orders displaying an artificial demand for the scrip of the Company and executed trades at artificial price, thereby ostensibly created a misleading appearance of normal trading in the shares of the Company.
16. I find that the Noticee has not disputed her trades or trading pattern or contribution to the price rise. Instead, the Noticee has provided

explanations/justification for carrying out such trading. The Noticee's main contentions are that she is a bonafide investor and has dealt in the scrip of Rajlaxmi in the normal course of trading on the basis of news, rumors, trading by others, etc. for short term profit and that her trading was within her financial and risk bearing capacity. She has also relied on the order passed by the Adjudicating Officer (AO) and requested for disposal of the present proceedings on the same line.

17. The order dated January 31, 2018 passed by the AO was perused. On perusal of the Adjudication Order, I find that the main grounds on which the Adjudicating Officer concluded that the charges against the Noticee are not sustainable are that she was not connected to the Company and did not belong to the groups which were being examined during the Investigation Period and that she was not one of the preferential allottees. The AO has also observed that out of the 140 trading days during which the Noticee has traded, she has executed first trades only on 26 days. The Noticee has provided reasoning for selecting the scrip of the Company based on news from print and electronic media and that she had traded in 29 other scrips also during the said period.
18. Admittedly, the two proceedings initiated against the Noticee before the AO and the undersigned are based on the same facts and allegations. However, it is pertinent to acknowledge here that the outcome/consequences desired under law from these two proceedings are different. While the Adjudication Proceedings are initiated under relevant provisions of SEBI Act to levy monetary penalty for violation of securities law, the proceedings under section 11 of SEBI Act aim at issuing disciplinary directions like debarment, warning, etc in the interest of investors and securities market. The scheme of SEBI Act, envisage initiation of multiple proceedings and there is no prohibition in initiating an adjudication

proceedings as well as proceedings under section 11 of the SEBI Act for the same set of offence/breach of Securities Laws. It is also trite law that each proceeding warrants to be adjudicated on its own merit. Order passed in one quasi-judicial proceeding shall not be binding the outcome of another proceedings validly initiated under law, though the quasi-judicial authority may make reference to, or rely on the findings recorded in one proceedings while adjudicating the other proceeding pending before it. Each proceeding is required to be decided and adjudged independently to serve the objective of the legislative provisions under which the proceedings have been initiated. The legislative framework under SEBI Act and the provisions of relevant SEBI Regulations do not envisage that the order passed by the Adjudicating Officer would abate or shall be binding on any other proceeding initiated under separate provisions of the Act even though both the proceedings have emanated out of same set of facts and allegations. Any endeavor to make a contrary interpretation would render either of the proceedings as nullity/otiose, which will render the legislative framework of SEBI Act unenforceable. Such an interpretation as being advanced by the Noticee, if accepted, would make the proceeding before me a mere mechanical/procedural in nature leaving no outstanding issue for adjudication and would render the outcome of the pending proceeding as *fait accompli*. In other words, if an order is passed by an adjudicating officer deciding the issue against the entity in an adjudication proceedings the same would *ipso facto* make the Noticee liable to be held guilty in other pending proceeding just because both the proceedings are based on same set of facts and vice versa. Therefore, each proceeding needs to be decided on merit based on the facts and allegations made and after considering the reply/response advanced by the Noticee without being tied up with the decision taken in another proceedings against the same noticee in the same case.

19. Admittedly, the Noticee does not belong to any of the groups which were examined in the Investigation Period. She was also not a preferential allottee of shares by Rajlaxmi Industries Ltd. However, to examine whether the trading done by the Noticee in the scrip of the Company was manipulative in nature or not, absence of the above said factors do not absolve the Noticee from the violation if her trades are indeed found to be manipulative per se. I note that the SCN in the proceedings before me does not make any allegation that the Noticee has any connection with the counter party or the Noticee was related to the Company in any manner. Therefore, the Noticee's attempt to prove her bona fide on the ground that she did not belong to any group or she was not a preferential allottee will not bear any relevance to determining the question as to whether her trades in the scrip of Rajlaxmi were intended to manipulate the price of the shares. Therefore, the issue remains for examination is whether or not the trades executed by the Noticee in itself were capable of creating a misleading appearance of genuine trades and thereby had potential to induce other investors to buy the said scrip. This will further lead me to determine whether or not the Noticee ought to be charged for violating the provisions of law as has been charged in the SCN, for allegedly manipulation of price in the scrip. In this connection the observations of Hon'ble Supreme Court in the case of *SEBI v Kishore Ajmera* (Civil Appeal No. 2818 of 2008; dated February 23, 2016) may be referred to. The relevant extract is as under:

"...According to us, knowledge of who the 2nd party/ client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous, it will be too naïve 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.....”

20. I have already discussed and analysed the trading patterns and contributions to LTP by the Noticee in the earlier paragraphs especially from paragraphs no. 11 to 15 wherein it has been demonstrated how the trading pattern of the Noticee clearly indicated that she was placing her buy orders at higher and higher prices only to increase the price of the share defying general principles of business prudence. In this regards, I refer to the order of the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in the matter of *Ketan Parekh v. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006) in which the Hon’ble SAT observed 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.”

21. I also refer to the observations made by the Hon’ble SAT in its order dated March 21, 2014 in *Saumil Bhavnagari v. SEBI*:

“... but by purchasing shares at the higher price in LTP in most of the trades, the noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the noticee’s trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired

level and thereby influencing the innocent/gullible investors. By purchasing at a higher price in most of his trades, the noticee had given the wrong impression about the price of the scrip in the market... It is an accepted state of affairs that in cases of manipulation of the volume and / or price of a particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant.”

22. Considering that the weak fundamentals of the Company did not inspire the huge price rise in its scrip in Patch-1 and considering the fact that the scrip was suspended from trading from February 17, 2003 to December 8, 2010 and did not have any trading between April 20, 2011 to January 15, 2014 even after revocation of suspension, the aggressive enthusiasm displayed by the Noticee in her trading pattern comprising 109 buy orders at price higher than LTP over six months and 26 positive LTP trades contributing to Rs.101.60 (58.42%) price rise during the Patch -1 cannot be called a normal trading behavior. Noticee on the one hand in her own submissions has claimed to be educated till 12th standard and a lay investor who does not know the technicalities of the securities market, while on the other hand, has executed trades with sophisticated precision which are not normally executed by a prudent investor of the market. The pattern of trading executed by the Noticee in my view does not support her submission that she is a housewife and an ordinary lay investor not having good knowledge of the market. During the entire period, Noticee never waited to see the movement of the market before placing her buy orders. It seems the only objective of the Noticee during the relevant period was to buy the shares at any price/cost and in the process, place the buy orders immediately at the opening of the trading session and that too always above the LTP. During the course of hearing, the Noticee was asked to furnish the name and details of persons whom she claims to have consulted for

taking her buying decisions, however, Noticee's response was evasive and perfunctory. Noticee has not furnished any justified reason as to why she continued to place buy orders for the period of six months and never decided to sell in between to book a profit. In regards the submission of the Noticee that she traded in 29 other scrips during the period, I find that the Noticee has mainly sold the shares in the said scrips, and cannot be compared to the trading pattern in the scrip of Rajlaxmi. Therefore, such an explanation does not come to her help in justifying her trades in the scrip of Rajlaxmi.

23. Noticee's submission that she decided to buy the shares and earn profit before others jump in the fray, also does not find support from the trading pattern of the Noticee in the scrip of the Company. Noticee claims to be an innocent lay investor but decides to invest in a scrip of a company which remained suspended for long period and whose fundamental were not sound enough to inspire confidence in any innocent and lay investor so much so to express such keenness to buy the scrip at any cost. Trading pattern of placing large buy orders immediately on the opening of the trading sessions above the LTP over a period of time, no sale in between to book a profit or to hedge the price risk and thereafter exiting at a price when the price of the scrip was on rise **raises bona fide suspicion on the motive behind trading done by the Noticee.**

24. As regards the observations made by the AO that out of 140 trading days in the scrip during which the Noticee has traded, she has executed first trades only on 26 days, I note that 26 trades of the Noticee may prima facie appear to be very small, but in this case the trading pattern of the Noticee ought to be viewed more closely against the background of the poor financials of the Company with no noteworthy change in its fundamentals. The 26 LTP trades of the Noticee have contributed to 58.42% of the total price rise during Patch-1 and considering that the average

shares traded in Patch-1 was 22 shares, her 26 trades do not appear to be insignificant at all. Further, the Noticee has been placing 109 buy orders at a price higher than LTP and 58 such buy orders were placed at 9:00 am, which shows that the intention of the Noticee was nothing but to create misleading appearance of trading of the scrip and to increase the price of the scrip.

25. The Noticee has stated that she had executed trades in the scrip of the Company inspired by the Annual Reports which mentioned about its ambitious new promoters and prospect of infusion of funds into the Company by non-promoters and also by news items about investment by HNIs. Noticee on one hand claims to have checked the Annual Report and financials of the Company from the BSE website which means she was fully aware that the scrip of the Company was under suspension and yet she chose to put 109 buy orders at positive LTP in the scrip of the Company causing a price rise of the scrip by her own action. The Noticee has been placing buy orders in the range of 1000-5000 shares while trades were happening for about 20 shares only. I also note that during the period January 15, 2014 to February 11, 2014, before the Noticee started trading in the scrip, (i.e. on February 12, 2014), there were only 9 trades for 525 shares with daily traded quantity in the range of 50-100 shares. The Noticee remained oblivious to this fact and started trading in the scrip by putting orders with quantity of 5000 shares. Interestingly, despite these orders materializing in trades for only 10-100 shares, the Noticee continued to place daily orders for 5000 shares till May 12, 2014 and for 1000 shares thereafter.
26. I find that the total trading volume during the period of January 15, 2014 to July 1, 2014 was for 2515 shares out of which the Noticee alone accounted for 1255 shares, i.e. accounting for around 50% of the total traded volume. The trades executed by the Noticee resulted in LTP contribution of Rs.101.6 on 26 trading

days. Further, out of these 26 trading days her trades were the only trades during the 25 trading days. Therefore, despite the fact that there was no substantial trading interest in the scrip for a period of five and half months, the Noticee continued to put large buy orders at higher prices which resulted in significant rise in price of the scrip. Such placing of large volume of buy orders in a scrip as soon as the market opened continuously was apparently aimed at artificial price rise and volume in the scrip. The Noticee has not been able to provide any information /details of the news items and the investment by other strategic investors in the scrip which, *inter-alia*, inspired her trades, to support her sudden exuberance for trading in the scrip. Therefore, I do not find the explanations furnished by the Noticee for her trades in the scrip to be satisfactory.

27. One of the arguments of the Noticee is that she saw huge potential in the scrip of Rajlaxmi and belief in the revival of the Company by the new promoters for which she placed her buy orders continuously buying as many shares as possible. However, Noticee in contradiction to such an explanation, has sold her shares which she bought after so much of efforts and personal research, within a short span of time and did not hold them for longer even if she saw a lot of promise in the scrip in the long run. The Noticee does not seem to be forthcoming with the actual reasons for placing buy orders 109 times at higher than LTP in a scrip which was suspended earlier and had no trading as such in the pre Investigation Period. The Noticee is a regular trader as per her own submissions, hence, all the more I do not find her submission to be plausible enough to give her a benefit of doubt considering the pattern and structure of her trades. It is indeed the Noticee who apparently had structured her trades in a manner to raise the price of the scrip of the Company.

28. Notwithstanding the exact personal reasons of the Noticee that made her trade in the scrip in such an abnormal manner, the violation of the Noticee will have to be determined independently based on her trading pattern and other factors. In this regards, I refer to the order of Hon'ble SAT in case of *Ketan Parekh v. SEBI*, wherein Hon'ble SAT has categorically held that in order to find out 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 of the cases, because direct evidence in such cases may not be available. Therefore based on the attendant facts and circumstances of the case, the trades of the Noticee are to be judged whether or not they possess the elements to be classified as manipulative and fraudulent, and considering the trading pattern of the Noticee and the background of the scrip vis-a-vis explanation furnished by the Noticee, I find the trades of the Noticee to be manipulative and fraudulent. I also note that the Noticee has relied on several cases decided by Hon'ble SAT to submit that there should exist a higher degree of probability for pressing charges of executing alleged fraudulent trades. In this regards, I rely on the case decided by Hon'ble Supreme Court in *SEBI v. Kishore Ajmera*; Civil Appeal No. 2818 of 2008 (dated February 23, 2016), wherein with respect to the evidence pertaining to market manipulations the apex court has observed that :-

"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...”

29. The Noticee has also submitted that no action has been proposed against the sellers whose trades might have influenced the price of the scrip and she has been singled out as no action has been taken against the other entities who contributed to alleged positive LTP. I find that the Noticee has already received a copy of the Investigation Report wherein it has been clarified that other than the Noticee, the number of trades of other entities who contributed more than 5% to positive LTP were not found to be significant enough to adduce any adverse inference, hence, trades of the Noticee were shortlisted for further analysis. Since investigation has not found any adverse implication of the trades of other entities, the contention advanced on behalf of the Noticee is not tenable. In any case, one who comes into equity must come with clean hands and can't shift the burden of justifying the allegations by claiming that violation against certain others have not been acted upon. Similarly, the Noticee's reliance on some revocation orders passed by SEBI in unrelated cases claiming that directions imposed on certain entities for similar allegations of LTP contribution was revoked, is also misplaced and irrelevant as the facts and circumstances of each case are distinguished and noticees of different unrelated cases cannot be put on same footing because allegations in these cases are similar. Further, the said revocation orders referred to by Noticee were passed in the administrative capacity by the competent authority dealing with a pending interim order and pursuant to a detailed investigation on those cases it was decided not to proceed against the said entities and interim orders were revoked. In the case of Noticee, SCN has been issued after detailed Investigation during which the Noticee's trades were found to be instrumental in price manipulations and

violation of provisions of PFUTP Regulations. In this regard, to address the grievance of Noticee, I rely on the findings of Hon'ble SAT in the case of *Systematix Shares & Stocks India Limited v. SEBI* (2012) in which it also had the occasion to deal with a similar argument of the appellant that the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone is also discriminatory and observed that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."*

30. Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading*, has observed that Regulation 4(1) of PFUTP Regulations in clear and unmistakable terms has provided that *"no person shall indulge in a fraudulent or an unfair trade practice in securities"* and refers to its own judgment in *SEBI v. Shri Kanhaiyalal Baldevbhai Patel and Ors* that

"31 Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'."

31. Hon'ble Supreme Court further observes in the case of *Rakhi trading* that

"Having regard to the fact that the dealings in the stock exchange are governed by the principles

of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market.”

32. Hon’ble Supreme Court in the case of Rakhi Trading has appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market is not a platform for any fraudulent or unfair trade practice. Hon’ble Court has observed that *“The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market. Orchestrated trades are a misuse of the market mechanism.”*

33. I find that the Noticee’s pattern of trading in the scrip, as demonstrated in this order at earlier paragraphs, is devoid any reasonable explanation and it clearly points out how the Noticee has raised the price of scrip artificially and has created a misleading appearance of trading in the scrip at such artificial prices. There is no doubt that the trades in the scrip of Rajlaxmi by the Noticee are manipulative, fraudulent and constitute unfair trade practice in violation of provisions of Regulations 3(a),(b),(c),(d) and 4(1),4(2) (a),(e) of the PFUTP Regulations. In view of the grave implications of such trades in the market, I find it imperative to issue the following directions qua the Noticee

DIRECTIONS

34. In view of the above, in exercise of powers conferred upon me under Sections 11, 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the securities market, I hereby restrain the Noticee from accessing the securities market and further prohibit the Noticee from buying, selling or otherwise dealing in the

securities market, directly or indirectly, for a period of two years from the date of order. It is, further, clarified that the existing holding of securities of the Noticee, including the units of mutual funds, shall remain frozen during the period of restraint.

35. The Order shall come into force with the immediate effect.

36. A copy of this order shall be forwarded to the Noticee, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: FEBRUARY 1, 2019

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER