

**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.	Dhiren Agrawal HUF	AAGHD9696H

In the matter of Jolly Plastic Industries Ltd.

BACKGROUND

1. Jolly Plastic Industries Ltd. (hereinafter referred to as “**JPIL / Company**”) is in the business of trading of plastic, plastics related materials and PVC. The company is listed on BSE.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in the scrip of JPIL 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 JPIL during the period February 14, 2012 to November 27, 2014 (hereinafter referred to as “**Investigation Period**”).

3. During the investigation period, corporate announcements were related to declaration of financial results and meeting of the Board of Directors of the company. The company made an announcement pertaining to stock split and declared November 14, 2014 as the record date. However, the company later withdrew the record date and announced that the new record date would be intimated after shifting the company's scrip code to demat mode. Further, it is observed from the Investigation Report (hereinafter referred to as “**IR**”) that the net profit of the company for the year ending March 2012 and, March 2013 was zero and that of year ending March 2014 and March 2015 was ₹ 0.01 crore and ₹ 0.07 crore respectively.
4. During the investigation period 91,24,200 shares were traded through 5,549 trades. Trading in JPIL was suspended w.e.f February 17, 2003 on account of non-submission of quarterly results and later revoked w.e.f February 13, 2012. The scrip was suspended from trading as a surveillance measure since January 7, 2015. There were no trades in the scrip from November 28, 2014 i.e. after the investigation period until January 7, 2015.
5. The scrip was in physical rolling with the market lot size being 100 shares throughout the investigation period. Further, the scrip was traded in ‘T’ group from February 14, 2012 to August 21, 2014, and started trading in ‘P’ group on September 02, 2014 (there was no trading in the scrip at BSE during August 22, 2014 to September 01, 2014). The scrip price opened at low price of ₹ 10 on February 14, 2012 and touched a high of ₹ 317 on November 18, 2013 and closed at ₹ 122 on November 27, 2014.
6. Based on price trend (rise/ fall), the investigation period has been split into 5 patches, details of which are given below:

Period	Dates		Opening Price (volume) on first day of the period(₹)	Closing price (volume) on last day of the period (₹)	Low price(volume) during the period (₹)	High Price(volume)) during the period (₹)	Avg. no. of (shares) traded daily during the period
Scrip suspended during pre-investigation period							
During Patch-1	14/02/2012 – 18/12/2012	Price	10	90.8	10 (14/02/2012)	90.8 (18/12/2012)	341
		Vol	100	100	100 (on 56 different trading days)	5100 (29/11/2012)	
Patch-2	19/12/2012 – 05/02/2013	Price	92.6	35.55	34.5 (05/02/2013)	92.6 (19/12/2012)	1,430
		Vol	4,900	4,600	100 (on 14 different trading days)	13900 (09/01/2013)	
Patch-3	06/02/2013 – 23/09/2013	Price	34.55	305	34.55 (06/02/2013)	305 (23/09/2013)	14,977
		Vol	500	3,000	100 (on 12 different trading days)	140100 (04/09/2013)	
Patch-4	16/12/2013 – 25/06/2014	Price	288	49.5	49.5 (25/06/2014)	301.8 (16/12/2013)	41,852
		Vol	38,600	100	100 (on 39 different trading days)	459100 (25/03/2014)	
Patch-5	09/07/2014 – 27/11/2014	Price	51.95	122	49.65 (03/09/2014)	122 (27/11/2014)	17,750
		Vol	10,600	42,200	100 (on 11 different trading days)	105500 (20/11/2014)	
No trading and subsequently scrip suspended on 07/01/2015							

SHOW CAUSE NOTICE

7. Consequent to the investigation, a show cause notice dated December 22, 2017 (hereinafter referred to as “SCN”) was served on Dhiren Agrawal HUF (hereinafter referred to as “**Noticee**”) in the extant matter. The SCN *inter alia* alleged as follows:

a) The Last Traded Price (hereinafter referred to as “LTP”) analysis of the 5 patches was done and the details of patch 5 qua the Noticee is given below:

LTP Analysis: Patch 5 - (Price Rise: July 9, 2014 to November 27, 2014):

- During this patch, the price of the scrip rose from ₹ 51.95 (open price on July 9, 2014) to ₹ 122 (close price November 27, 2014). The close price as on June 25, 2014 was ₹ 49.5. Since this was a price rise patch, buy side of the trades were analysed. On the basis of their net positive LTP contribution as buyers, the following top 10 entities were considered for further analysis:

Buyer Name	LTP impact all trades in ₹	QTY traded (all trades)	No of trades (all trades)	LTP impact (with LTP diff > 0) in ₹	QTY traded (with LTP diff > 0)	No of trades (with LTP diff > 0)	LTP impact (with LTP diff < 0) in ₹	QTY traded (with LTP diff < 0)	No of trades (with LTP diff < 0)	QTY traded (with LTP diff = 0)	No of trades (with LTP diff = 0)	% of Positive LTP to Total Market Positive LTP
Dhiren Agrawal HUF	24.4	800	8	24.4	700	7	0	0	0	100	1	20.24
Chandrakanta Laddha	11.05	2300	20	14.4	600	6	-3.35	200	2	1500	12	11.95
Raghav Bahl	9.15	250300	172	13	41000	16	-3.85	700	4	208600	152	10.78
Indravadan P Mehta	5.2	100	1	5.2	100	1	0	0	0	0	0	4.31
Kapilkumar Jadhav	5.2	700	5	5.2	100	1	0	0	0	600	4	4.31
Ram Bhopal Agarwal Sons HUF	5.15	200	2	5.15	100	1	0	0	0	100	1	4.27
Uttam Bagri HUF	4.9	100	1	4.9	100	1	0	0	0	0	0	4.07
Mould Trading P Ltd	4.7	63000	30	7.2	35900	9	-2.5	800	3	26300	18	5.97
A M Trader	4.45	100	1	4.45	100	1	0	0	0	0	0	3.69
Arif Shaikh	2.9	800	5	3.2	700	4	-0.3	100	1	0	0	2.66
Top 10 Sub Total	77.1	318400	245	87.1	79400	47	-10	1800	10	237200	188	72.25
Rest Of Market	-4.6	498100	234	33.45	155500	37	-38.05	20500	24	322100	173	27.75
Market Total	72.5	816500	479	120.55	234900	84	-48.05	22300	34	559300	361	100

- From the above table, it is noted that the Noticee has contributed ₹ 24.4 to positive LTP (20.24% of market positive LTP) through 7 trades for 700 shares. It was observed that in the above 7 positive LTP contributing trades, the buy order was placed for small quantity (100 shares i.e. 1 lot) before the sell order. Such 7 trades were executed on 7 consecutive days and resulted in positive LTP contribution of ₹ 24.4. Details of these 7 positive LTP contributing trades of Noticee is given below:

Trade Date	Buyer Name	Seller Name	Buy Order Time	Buy Order Price	Buy Order Disclose Quantity	Sell Order Time	Sell Order Price	Sell Order Disclose Quantity	Trade Price	LTP Difference
15.09.2014	Noticee	Nailesh Rajnikant Kamdar	09:29:25	63.8	100	12:01:42	63.8	100	63.8	2.9
16.09.2014	Noticee	Vashisth V Pandit	11:02:58	66.95	100	15:22:24	66.95	100	66.95	3.15
17.09.2014	Noticee	Ramaswamy Manickam Subramaniam	09:25:07	70.25	100	13:08:26	70.25	300	70.25	3.3
18.09.2014	Noticee	Madhukar Appaji Jadhav	09:47:55	73.75	100	12:02:55	73.75	100	73.75	3.5
19.09.2014	Noticee	Ramaswamy Manickam Subramaniam	09:34:03	77.4	100	10:54:19	77.4	200	77.4	3.65

Trade Date	Buyer Name	Seller Name	Buy Order Time	Buy Order Price	Buy Order Disclose Quantity	Sell Order Time	Sell Order Price	Sell Order Disclose Quantity	Trade Price	LTP Difference
22.09.2014	Noticee	Ramjibhai Govindbhai Makani	09:23:36	81.25	100	10:42:29	81.25	100	81.25	3.85
23.09.2014	Noticee	Kotturu Madhusudhana Rao	09:17:24	85.3	100	12:00:21	85.3	200	85.3	4.05

- As can be seen, in the above trades, buy order was placed before the sell order. The buy orders were placed for small quantity (100 shares i.e. 1 lot) at prices significantly above LTP, which were subsequently matched by sell orders. These trades for small quantity were executed on 7 consecutive days and contributed to significant positive LTP during Patch -5.
 - Noticee could have placed a buy order of 700 shares at ₹ 63.8 (his buy order price) on September 15, 2014 itself, but he chose to place buy orders for a minimum lot size on 7 consecutive days with each buy order at higher than LTP. Noticee continued this pattern until the buy order dated September 23, 2014 placed at ₹ 85.30. It is alleged that such trading pattern of Noticee has resulted in increasing the price of the scrip. Therefore, it is alleged that Noticee had no bonafide intention to buy.
 - Considering that Noticee had repeatedly entered into such trades (7 nos.) on consecutive days (7 days) and contributed to significant positive LTP of ₹ 24.4 (20.24% of market positive LTP), it is alleged that Noticee was not acting as genuine buyer and had no bona fide intention to buy. It is evident from the above trading pattern that the Noticee was instrumental in marking the price higher and was not merely entering into the buy transactions. In view of the same, it is alleged that the Noticee has manipulated the price of the scrip and created a misleading appearance of trading in the scrip by such trades.
- b) In view of the above it is alleged that the Noticee had manipulated the price of the scrip and created a misleading appearance of trading in the scrip by such trades. Hence, it is alleged that Noticee has violated Regulations 3(a),(b),(c),(d) and Regulations 4(1), 4(2)(a) and (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 it for the alleged violation of the provisions of PFUTP Regulations.

REPLY & HEARING

8. It is noted from material made available on record that the SEBI has not received any reply in the extant matter from the Noticee till date. In order to proceed further in the matter, vide hearing notice dated October 9, 2018, the Noticee was granted an opportunity of hearing on October 30, 2018 at SEBI Bhavan, Mumbai. Proof of service of hearing notice is on record.
9. Noticee failed to appear for the personal hearing without giving any reason. In view of the facts and circumstances of the case and failure of the Noticee to avail the opportunity of hearing, I am of the view that principles of natural justice have been followed in the matter and I deem it appropriate to decide the matter on the basis of facts / material available on record.

FINDINGS & CONSIDERATIONS

10. Before delving into the merits of the case, I note that the Noticee has neither replied to the SCN nor has attended the hearing. Proof of service of SCN and hearing notice are on record. In this regard, the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble Tribunal observed as follows:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

11. Without prejudice to the above observation, I proceed to examine the matter on merits. To that effect, I have perused the SCN 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 JPIL and created a misleading appearance of trading in the scrip during the period July 9, 2014 to November 27, 2014?
- (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?

Issue No. 1 - *Whether the Noticee has manipulated the price in the scrip of JPIL and created a misleading appearance of trading in the scrip during the period July 9, 2014 to November 27, 2014?*

12. It is noted from the material made available on record that during patch 5 the scrip was in physical rolling with the market lot size being 100 shares. From the records, it is observed that the Noticee has executed 8 trades in the scrip for 800 shares. Out of the said 8 trades, 7 trades were over the LTP for 700 shares. It is noted from the trade details of the Noticee that it has placed buy orders on 7 consecutive trading days and at a successive higher rate. If the Noticee was a reasonable buyer and had an intention to hold a good amount of shares of the company then he would have bought more than 1 lot on its first trading day at a price of ₹ 63.8 rather than buying 1 lot each on consecutive days and that too at a higher price from the previous day. Further, on the third and fifth day of trading, the sell order disclose volume was of more than 1 lot but still the Noticee bought shares in 1 lot. Thus, the Noticee had the opportunity to buy considerable shares at one go but the Noticee overlooked the same and went on to buy shares at higher price the next day. If the Noticee was a genuine buyer and had an interest in the scrip, it would have bought shares more than 1 lot at a time. It is not the case of the Noticee that it had put buy orders in substantial quantity and Noticee's buy orders were not being executed which made the Noticee put buy orders for minimum lot. Further, it is noted that Noticee's buy orders were placed before the sell order that too at a great positive variance from

the LTP. The LTP difference range was ₹ 2.9 to ₹ 4.05. Thus, the Noticee was continuously willing to pay more to acquire the shares, which is completely opposite of a reasonable buyer behavior of buying shares at a low price.

13. Furthermore, out of the said 7 over the LTP trades, it is noted that the frequency of putting buy orders over the LTP was on consecutive trading days. The same shows a consistency (both in terms of volume and price) in the way the Noticee was putting orders in the scrip. Further, the fundamentals of the company also does not justify Noticee's persistence of putting buy orders over the LTP.

14. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *Shri Lakhi Prasad Kheradi Vs. SEBI* decided on June 21, 2018 wherein the Hon'ble Tribunal was addressing the issue wherein the entity had contributed to 9.17% of the market New High Price in 9 trades for 1 share each for the total value of 9 shares within a span of two weeks. The Hon'ble Tribunal observed as follows:

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

15. In the extant matter the Noticee by executing trade in minimum lot on 7 occasions has contributed to ₹ 24.4/- to the positive LTP which is 20.24% of total market positive LTP (highest net LTP contributor during the patch). Further, no justification has been put forth by the Noticee as it has not chosen not to furnish a reply or avail of the opportunity of a personal hearing in the extant proceedings.

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. Taking support of the observations of Hon'ble Apex Court in Kishore R Ajmera matter, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, 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 attending circumstances an inference will have to be drawn.
18. In the instant matter Noticee has repeatedly bought shares in minimum lot over the LTP at frequent intervals, even though it had the opportunity to buy more shares on multiple occasions. If the Noticee was a genuine buyer then it had the opportunity to buy share in more than 1 lot on multiple occasions but still the Noticee chose not to buy share in more than 1 lot at a time and continued to execute buy trades at

successive higher prices by buying just 1 lot at a time on 7 instances. Further, the fundamentals of the company also do not support the persistent interest shown by the Noticee in buying the scrip at prices higher than LTP.

19. In light of the aforesaid findings, it is held that the Noticee's trading in the scrip was manipulative in nature and had 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?*

20. 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;

21. In view of the conclusion arrived at paragraph 19 wherein it has been held that the trades in single lot executed by the Noticee over the LTP in the scrip are manipulative and misleading in nature, it is also held that such trades are fraudulent in nature and would operate as deceit upon any person trading in the extant scrip. Further, as discussed in preceding paragraphs, the Noticee by executing impugned trades in the scrip has also manipulated the price of the scrip. I therefore, 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?*

22. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed. The said Regulations apart from other things aims to preserve and

protect the market integrity in order to boost investor confidence in the securities market. By executing manipulative trades, as has been executed by the Noticee in the instant matter, the price discovery system itself is affected. It also has an adverse impact on the fairness, integrity and transparency of the stock market. In view of the same and considering the violations committed by the Noticee, I find that it becomes necessary for SEBI to issue appropriate directions against the Noticee.

ORDER

23. 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 Dhiren Agrawal (PAN: AAGHD9696H) from accessing the securities market for a period of four years from the date of this order and further prohibit the Noticee 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. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing securities holding, including units of mutual funds, of the Noticee shall remain frozen.
24. The order shall come into force with immediate effect.
25. 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.

-Sd-

DATE: February 8, 2019

PLACE: Mumbai

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