WTM/RKA/IVD/ID-3/42/2013

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under sections 11(4)(b) and 11 B of the Securities and Exchange Board of India Act, 1992 read with regulation 11 and 13(3)of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

In the Matter of Jagsonpal Pharmaceuticals Limited

In respect of Gloria Investments Limited.

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1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the dealings in the scrip of Jagsonpal Pharmaceuticals Limited (hereinafter referred to as 'Jagsonpal') for the periods of August, 2000 to December, 2000 (hereinafter referred to as 'first period of investigation') and July, 2001 to October, 2001 (hereinafter referred to as 'second period of investigation'). During both the periods of investigation, the scrip of Jagsonpal was listed at National Stock Exchange of India Ltd. ('NSE'), Bombay Stock Exchange Limited ('BSE') and Delhi Stock Exchange Limited (DSE).

2. It was observed that, during the first period of investigation, the price of the scrip of Jagsonpal at NSE increased from ₹ 599 as on August 18, 2000 and touched a high of ₹700 as on September 11, 2000 and reached to ₹660 as on November 01, 2000. An irregular pattern in trading volumes in the scrip was also observed, wherein the trading volume varied between only 5 shares, as on August 18, 2000 to, 39200 shares as on October 31, 2000. At BSE, the scrip witnessed comparatively lesser trading volume. At both these exchanges, volume in the scrip was observed mainly on those days when select individuals/ entities had traded in the scrip. At DSE, the scrip was traded for two days i.e. on November 15, 2000 and November 16, 2000 only.

3. During the second period of investigation, the price of the scrip of Jagsonpal at NSE fell down from ₹319.20 as on July 02, 2001 to ₹129.50 as on October 31, 2001. The trading volume in the scrip varied between 18,985 shares as on July 16, 2001 to only 1 share as on October 08, 2001

at NSE. At NSE, out of total 65 trading days, on 48 days the volumes were less than 1,000 shares and on 28 days (out of total 65 trading days), volumes were less than 100 shares. It was observed that two groups were creating artificial volume and manipulating the price of the scrip. The first group was active in NSE and BSE, and the second group was active in NSE and DSE. The constituents of first group dealt in both periods of investigation and constituents of second group dealt only in the first period of investigation. Gloria Investments Ltd. (hereinafter referred to as the 'the noticee') was a member of second group that consisted of the following stock brokers and clients-

Stock Brokers

(a) HB Securities Ltd. (*HB Securities*), stock broker-NSE

(b) Fincap Portfolio Ltd., (*Fincap*), stock broker - NSE

(c) RRB Master Securities Delhi Ltd., (*RRB Master*), stock broker - DSE

(d) UTI Securities Ltd., *(UTI*), stock broker-NSE

Clients:

i. HB Stockholdings Ltd. *(HB Stockholding)*

ii. Har Sai Investments Ltd. *(Harsai)*

iii. Alaknanda Capital Services P. Ltd. *(Alaknanda)*

iv. Gloria Investments Ltd.

4. After the analysis of the trading details along with the volume in the scrip of Jagsonpal, it was *prima facie* observed that during both the periods of investigation, the noticee had indulged in cross/structured/ synchronized trades with HB Stockholding and Alaknanda in the scrip of Jagsonpal, at NSE. It was further observed that the time difference between the buy and sell order put by the noticee and its counter parties were few seconds only. The price and quantity of the buy and sell orders placed by the noticee and the counter parties were same in most of the transactions. The orders were put at consistently higher price than the previous day's close price. SEBI issued a show cause notice ('SCN') dated September 02, 2005 to the noticee alleging that it had placed these orders with a *mala fide* intention to manipulate the price of shares of Jagsonpal and create false volume in the scrip, thereby the noticee was alleged to have violated the provisions of regulation 4 (a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 ('PFUTP Regulations 1995') read with regulation 13(3) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations 2003') to the noticee.

5. The noticee vide letter dated September 30, 2005 submitted that the SCN did not accompany any supporting documents and requested for all the relevant the documents relied upon in the SCN. SEBI vide letter dated December 02, 2005 had informed the noticee that all the documents relied upon in the instant proceedings have already been provided along with the SCN. Thereafter, vide letter dated December 19, 2005, the noticee submitted its reply to the SCN.

6. Two opportunities of personal hearing were granted to the noticee. However, the notices for personal hearing were returned undelivered with an endorsement from postal department that no such company exists at the specified address. The relevant notice of personal hearing was published in newspaper and also posted on the SEBI website (www.sebi.gov.in).

7. As informed by the Share and Transfer Agent (STA) of Jagsonpal i.e., MCS Ltd., Mr. Lalit K. Malhotra was Power of Attorney (PoA) holder of the noticee. On July 19, 2013, the relevant documents as was requested by the noticee in its reply were forwarded to Mr. Lalit K. Malhotra on his address, as was provided by MCS Ltd. However, the said letter was also returned undelivered with an endorsement from post department as "Shifted". Therefore, a letter was pasted at the last known address of Mr. Lalit K. Malhotra, requesting him to collect the said documents within 15 days from SEBI's New Delhi office. However, neither the noticee nor its PoA has yet collected the relevant documents as was requested by the noticee.

8. Considering the above I am of the opinion that enough opportunities of personal hearing has been granted to the noticee, I, therefore, proceed with on the basis of material available on record. I have carefully considered the SCN, reply of the noticee and the material available on record. The submissions of the noticee are summarized below:
   i. SCN is barred by limitation.
   ii. At the time of transactions in question, provisions of PFUTP Regulations, 1995 were in force and applicable. The present proceeding has been initiated after PFUTP Regulations, 1995 was repealed and the PFUTP Regulations, 2003 is not applicable from retrospective date therefore, no part of the said regulations can be applied to the proceedings relating to the period prior to its commencement.
   iii. All the allegations in the SCN are denied.
   iv. Just on assumption of relationship, investigation officer has jumped to the conclusion that the noticee has created artificial volume and was involved in fraudulent and unfair trade practices.

v. The transactions in question were carried out on the screen of the exchange and the noticee gave deliveries of shares sold and made all due payments for the shares purchased by it. The trades were carried out on the market price existing at the time of the trade.

vi. SEBI vide its Circular no. SMDRP/POLICY/CIR-32/99 dated September 14, 1999 has allowed the negotiated deal including cross deals on the screen of the stock exchange and as per price and order matching mechanism. Therefore, even if the contention that there were cross deals is assumed, the said transaction cannot be alleged as fraudulent.

vii. The price and volume of the scrip has never been constant in the scrip of Jagsonpal. Even the period beyond both the period of investigation, there were instances of such fluctuation in volume and price. For example during January 03, 2000 to January 31, 2000 the price kept fluctuating in the range of ₹ 675 to ₹ 789. During the period February 01, 2000 to February 29, 2000 price range was ₹ 621 to ₹709.9. Even before and after both the period of investigation the scrip of Jagsonpal was irregularly traded. For instance, on January 19, 2000 quantity traded was 800 shares and on January 25, 2000 it was 12000 shares, on February 04, 2000, the quantity traded was 100 shares and on February 22, 2000 it was 22100 shares. On March 07, 2000 the quantity traded was 25900 shares and on March 15, 2000, it was 100 shares, on March 27, 2000 the traded quantity was 51000.

viii. The statement made in the SCN that 'at both the exchanges, volume in the scrip was observed mainly on those days when selected individuals/ entities traded in the scrip' is vague and devoid of any substance.

ix. The total quantity of the transactions entered into by it is submitted to be of too negligible volume to create any artificial volume.

x. It has not done any synchronized transactions with any entity.

xi. It has not committed anything, which amounted to manipulation of price of the scrip or creating a false or misleading appearance of trading of the scrip.

9. I have considered the SCN, the reply of the noticee and relevant material available on record. I note that the transaction in question relates to the period July 2001 to October 2001. After completion of the investigation in the matter in those transactions the SCN was issued to the noticee on September 02, 2005. Since SEBI Act does not prescribe any timeline for issuance of SCN after completion of investigation, the contention that the SCN is time barred cannot be accepted.

10. I further note that the transaction in question took place when the PFUTP Regulations, 1995 were in force. The PFUTP Regulations, 1995 was repealed and replaced by the PFUTP

Regulations, 2003 with effect from July 17, 2003 and when the instant proceeding commenced by issuance of the SCN dated September 02, 2005, the PFUTP Regulations, 2003 were in force. The saving provisions in regulation 13(2) of PFUTP Regulations, 2003 makes it clear that notwithstanding repeal of the PFUTP Regulations, 1995, any violation of regulations 3, 4, 5 and 6 thereof shall be investigated and proceeded against in accordance with the procedure laid down in PFUTP Regulations, 2003. I note that in the present proceedings, the noticee has been charged with violation of regulation 4 of the PFUTP Regulations, 1995 that was in force when alleged violations took place. In my view, by virtue of the operation of regulation 13(2) of PFUTP Regulations, 2003, the proceedings for such default can be initiated under the PFUTP Regulations, 2003. I, therefore, find that the present proceedings are not bad in law as sough to be contended by the noticee.

11. The noticee has further contended that the transactions of the noticee were carried out on the screen of the exchange, I am of the view that merely because the shares were traded under the anonymous screen based trading system of the exchange and the deliveries were taken and payments were made, can not be reasion to conclude that all such transactions are alawys genuine and not manipulativeWhether such transactions are manipulative or not will depend on the facts and circumstances of the case. In this regard, the following observations of Hon'ble SAT in its order dated December 13, 2010 in Appeal no. 190/2010 - *Ajmera Associates Pvt. Ltd. Vs. SEBI* is worth mentioning:

> *"... It is not in dispute that the trading system that we have on the stock exchanges is a blind trading system which maintains complete anonymity of the persons trading. The broker while executing an order (buy or sell) cannot possibly know at the time of placing the order through the system as to who the counter party is or even the counter party broker..........Despite the anonymity of the system, we have seen market players and the intermediaries like the brokers executing manipulative trades by defeating the system and this is usually done by placing the buy and sell orders simultaneously for the same amount and at the same price......"*

12. Coming to the merits of the case, I do not find anything on record to suggest any connection between the noticee and its counter parties, namely; HB Stockholding and Alaknanda or between the noticee and the stock broker HB Securities through whom the noticee has traded in the scrip of Jagsonpal. I, further, note that on same facts and circumstances as in present proceedings, Hon'ble SAT vide order dated August 27, 2013 in the respect of HB Stockholding Ltd. vs. SEBI (Appeal No. 114 of 2012) and Alaknanda Capital Services Pvt. Ltd. vs. SEBI. (Appeal no. 160 of 2012) set aside SEBI orders passed against them with regard to the transactions including their trades with noticee in the scrip of Jagsonpal. While deciding the merits of the transactions, Hon'ble SAT held the following.

" … It is an admitted position that the major charge of price manipulation has not been proved by the learned WTM on basis of the documents and evidence brought before him. Thus the only question which remain for us to look into is whether there was any abnormality in the volume of the scrip as a result of the Appellants' trades. In this regard we have minutely perused the SCN as well as documents, other material and certain graph produced by the parties before us. The facts clearly indicate that fluctuations of a similar nature in the volumes of the scrip existed even before the period when the Appellants did not execute any trade. The SCN itself makes it clear that there were ups and downs in the volume during the preceding and subsequent six months of the period of investigation in question. Therefore, we find that the charge of volume manipulation is also hollow and baseless

Further, it is not disputed by the Respondent that delivery of shares was taken and payments were made by the appellants for the trades in question as required by law. It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties……. "

13. Similarly, further in view of the above findings, Hon'ble SAT, vide order dated October 01, 2013, also set aside the SEBI order dated July 23, 2013 in respect of the stock broker HB Securities Ltd.

14. I note that the Hon'ble SAT while allowing the appeal vide its said order dated August 27, 2013 has dealt with impugned transactions on merits. I, therefore, am of the view that the directions as contemplated in the SCN against the noticee are not called for and accordingly, the present proceedings are disposed of.

Date: November 12th, 2013 **RAJEEV KUMAR AGARWAL**
Place: Mumbai **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA