

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 110-111 /2012]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING
INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES,
1995**

Against

- 1. Smt. Vibha Sharma [PAN: ASTPS5443A]**
- and**
- 2. Shri. Jitendra Kumar Sharma [PAN: AGYPS3486J]**

Background:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the trading activity of Smt. Vibha Sharma (hereinafter referred to as Noticee No. 1) and Shri Sanjay Kashiram More, following a report from the National Stock Exchange (NSE), to ascertain any instances of contravention of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "PFUTP Regulations") during the period from December 01, 2009 to March 31, 2010.
2. The investigation revealed that Shri Jitendra Kumar Sharma (hereinafter referred to as Noticee No. 2) is the husband of Noticee No. 1 and has been the equity dealer for the Central Bank of India (CBI) since May 08, 2008. He used to place orders for CBI with the brokers namely Kaviraj Securities P. Ltd (Kaviraj) and Trustline Securities Ltd (Trustline). The Noticee No. 1 has a trading account with the broker, Eureka Stock & Share Broking Services Ltd (Eureka). It was further observed that during the period under investigation,

on 16 days trades were executed in the account of Noticee No. 1 in such a way that the net quantity at the end of the day was zero (day traded). On 14 out of the said 16 days, the sell trades of Noticee no. 1 matched 100% with that of the buy trades of CBI. The Noticee No. 1 had earned a positive square off difference in all the trades with CBI as counter party. Noticee no. 1 traded for ₹ 35,63,000 on 14 scrip days whereas, in the remaining 26 days during the investigation period her trading was ₹ 8,48,000 only. Before placing the orders for CBI, shares were purchased in the account of Noticee No. 1 and sold to match the orders of CBI, thereby, earning undue profits at the cost of CBI and its customers.

Appointment of Adjudicating Officer:

3. In view of the above, SEBI vide Order dated April 16, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') and to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations by the Noticees.

Notice, Reply & Personal Hearing

4. The AO issued a common notice dated June 27, 2012 (hereinafter referred to as 'SCN') to the Noticees in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against them for the alleged violations as mentioned above.
5. The SCNs were sent to the Noticees by Registered Post Acknowledgment Due and the same were duly delivered. The Noticees vide letters dated July 12, 2012 and July 30, 2012 submitted their replies. They denied all the allegations made against them and requested for certain documents relied on in the proceedings so as to enable them to file further submissions before the AO. The AO provided all the documents, as available, to the Noticees as requested. Further, the undersigned, in the interest of natural justice and in

order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, vide letters dated September 06, 2012 granted an opportunity of personal hearing to the Noticees on September 14, 2012. The Noticee No. 2 along with their legal representative appeared before me and made oral submissions. In the said hearing, the Noticees requested for an opportunity of inspection of documents and make additional written submissions. Accordingly, an opportunity of inspection was granted to them on October 12, 2012. Upon completion of inspection, the Noticees made additional written submissions vide their letters dated October 18, 2012 and November 19, 2012.

6. The Noticees, *inter alia*, submitted that: The Noticee No. 2 has been employed with the bank since 1991 and have served the bank in various capacities including Branch Manager, Forex dealer and Equity Dealer. In the capacity of an Equity Dealer his work includes - preparation of technical charts for consideration of the Chief Dealer and promptly placing of orders for purchase and sale of shares with the bank's broker, in accordance with the instructions of the Chief Dealer. He was always acting under the control, instructions and supervision of the Chief dealer and was not involved with decision making mechanism. The dealing room of the Bank is located at its Central Office at the 5th Floor of Chandermukhi Building at Nariman Point. The dealing room with all necessary security features has its dedicated voice recorded telephone lines through which dealers like him place orders with the brokers. Mobile phones are not permitted to be used in the dealing room and hence, he did not carry his mobile to the office while working as equity dealer for the Bank. The Chief dealer or the Investment Committee of the Bank take the decision regarding the scrip, quantity and price to be invested / traded on a day-to-day basis and such decisions are taken at the beginning of the trading day / session and executed during the day.
7. The Noticee No. 1 traded in shares of various companies since April 2007 i.e. much before Noticee No. 2 became the equity dealer for the bank. In the interest of transparency, from time to time the Noticee No. 2 has kept the bank well informed regarding his wife's intention to trade, opening of her

trading and demat accounts with Eureka, with FRR shares, her intention to obtain registration as a sub-broker, etc. Noticee No. 1 receives research reports from various stock brokers/analysts and trades on the basis of such reports and on her perceptions. She tries to place the orders for the shares at a price near to the LTP, to follow the normal market mantra of "buy low sell high". As a day trader, her profit target is generally low and in order to make good profit, she trades in high volumes. Noticee No. 1 short lists scrips on the basis of TV channels, articles given in the newspapers, research reports of experts, opinion/advise/technical calls from her brokers and other publicly available material/ information. The matching of some of the orders placed by Noticee no. 1 on 14 out of the 40 days with that of CBI was a mere coincidence. Noticee No. 1 traded in many scrips in which CBI did not trade during the period from April 2007 to March 31, 2010 and that during the period April 2007 to March 2012 only 10 scrips matched coincidentally with those of CBI. In case of PRISMCEM and NIITLTD, the orders placed by the Bank did not match with orders of Noticee No. 1.

8. Further, they have availed the opportunity of inspection granted to them on October 12, 2012 but not all the documents and records as requested by them were provided and that there is no document, record or evidence on record to show that the Noticee No. 2 had communicated the details of the orders to be placed by CBI to Noticee No. 1 before placing the orders with the brokers and/or that Noticee No. 1 had traded on the basis of the same. The telephone lines in the dealing room were recorded, at all the times to ensure that there remains no scope for any manipulation/malpractices, etc.
9. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges against the Noticees mentioned in the SCN, the written & oral submissions made by them and the documents as

available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticees have violated the provisions of Regulation 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations?**
- (b) Does the violation, if any, on the part of the Noticee attract any penalty under Section 15HA of the SEBI Act?**
- (c) If yes, what should be the quantum of penalty?**

11. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations which read as under:-

Prohibition of certain dealings in securities

3. 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 securities 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 thereunder;*
- (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 thereunder.*

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.

- 12.** I find from the SCN that the Noticee No. 2 has been the equity dealer for the CBI since May 08, 2008. He used to place orders with the brokers for the share transactions of CBI. He is the husband of Noticee No. 1. During the period under investigation, in the account of Noticee No. 1 trades were executed on 40 trading days in various scrips viz. Welspunind, Dishman, Federal Bank, Erainfra, Subros, Opto Circuit, JSL, Aptech, Seamec Ltd and Jyothylab. Out of the 40 trading days on 16 trading days she had day traded i.e. bought and sold same quantity of shares and the net quantity at the end of the day was zero. She has traded only in single scrip each on all the 16 days. She bought the shares first and within minutes or the maximum of say one hour or so she sold the shares in all the instances. The counterparty to her sell trades were always CBI to the extent of 100% on 14 trading days. The sell orders by the Noticee No. 1 were placed always few minutes before CBI started placing the buy orders. The sell transactions of the Noticee started exactly at the start of the buy transactions of CBI in most cases. It is also pertinent to note that the Noticee No. 1 placed sell orders at a price significantly higher than the Last Trade Price (LTP) of the scrip but equal to or slightly below the buy order price of CBI.
- 13.** Further, it is also imperative to note that the daily average traded value by the Noticee No. 1 in 14 scrip days was ₹ 35,63,000 and in the remaining 26 scrip days it was only ₹ 8,48,000. She has traded only in a single scrip each, on all the said 14 trading days. The Noticee No. 1 had earned a positive square off difference in 13 out of 14 trading days where the counter party to her sell trades was CBI. The table below illustrates the above findings:

BUY ORDER QTY VIBHA	BUY ORDER RATE VIBHA	BUY BLTP AT ORDER ENTRY	SELL ORDER TIME VIBHA	SELL ORDER QTY VIBHA	SELL ORDER RATE VIBHA	SELL LTP AT ORDER ENTRY	BUY ORDER TIME CBI	BUY ORDER QTY CBI	BUY ORDER RATE CBI	BUY LTP AT ORDER ENTRY	SELL START Vibha	SELL END Vibha	BUY START CBI	BUY END CBI
10000	90	90	15:00:26	2000	93	90.15	15:10:16	100000	93.25	90.8	15:10:16	15:10:16	15:10:16	15:10:16
10000	231	230.55	13:48:18	4262	239	232	14:02:10	28324	239	232.2	14:04:20	14:04:20	14:02:10	14:04:20
10000	238	237.9	11:30:00	10000	238	236.55	15:03:10	100000	239	235.55	15:03:10	15:03:10	15:03:10	15:19:30
10000	231	231.15	12:10:38	5954	241	235.5	12:16:03	20000	241	238.5	12:16:03	12:16:03	12:15:20	15:13:30
10000	206.5	206.4	13:48:35	10000	210	205.85	13:55:14	20000	211	205.95	13:55:14	13:55:23	13:55:02	13:55:30
20000	49.5	49.15	12:51:54	20000	51.4	49.95	14:00:37	100000	51.6	50.2	14:00:37	14:00:37	14:00:37	14:00:37
10000	94	93.55	14:18:48	10000	98.25	94	14:39:05	200000	98.75	94.3	14:39:05	14:39:05	14:39:05	14:39:05
20000	77	77.05	13:48:27	10342	81	77.85	14:55:47	100000	81.25	77.95	14:55:47	14:55:47	14:55:47	15:29:30
20000	208.55	208.5	12:50:23	14216	215	208.5	13:10:32	100000	215.5	208.55	13:10:32	13:10:32	13:10:32	13:10:32
20000	204.5	204.8	14:25:17	20000	210	204.55	15:22:34	100000	211	204.4	15:22:34	15:22:34	15:22:34	15:22:34
25000	99.75	99.45	14:59:54	16174	105	99.9	15:25:32	200000	107	99.7	15:25:32	15:25:32	15:25:32	15:25:32
25000	168	167.75	12:08:32	25000	173.5	168.5	12:30:24	200000	175	172.3	12:30:24	12:30:24	12:30:24	12:30:24
500 to 2500	200.5	200.5	12:51:45	6207	208	204	13:23:17	25000	208.25	206.8	13:23:17	13:23:17	13:23:17	13:23:17
1000 to 2000	172	171.65	14:14:27	4300	174.95	174	15:16:18	100000	177.05	173.35	15:16:18	15:16:18	15:16:18	15:16:18

14. From the above table, it is evident that the trades executed in the account of Noticee No. 1 are the outcome of fraudulent and manipulative scheme devised by the Noticees, which is further illustrates with the example of two of the trades as under which are included in the table:

- i) On February 22, 2010, Noticee No. 1 through her trading member Eureka placed a buy order for 20,000 shares of Opto Circuit (India) Ltd. at ₹ 208.55 per share at 10:20:05 when the LTP prior to order entry was ₹ 208.50. Only 14,216 shares got executed between 10:20:05 and 12:49:11 in 44 trades. Subsequently, she deleted the order for 5784 remaining shares that did not get executed at 12:49:55. Then, she placed a sell order for 14,216 shares at ₹ 215 at 12:50:23 when the last traded price at order entry was ₹ 208.50. Subsequently, CBI through trading member Kaviraj placed a buy order for 1,00,000 share at ₹ 215.50 at 13:10:32 when the LTP at the order entry was 208.55. The entire sell order quantity of 10000 shares by Noticee No. 1 matched with the buy order of CBI at 13:10:32 i.e. at the start of buy transaction of the CBI itself. Thus, the sell order of her got executed and she earned a profit of ₹ 91,769.

- ii) On February 23, 2010, the Noticee no. 1 through trading member Eureka placed a buy order for 20,000 shares of Opto Circuit (India) Ltd. at ₹204.50 per share at 11:22:31 when the LTP prior to order entry was ₹204.80. Only 10,128 shares got executed between 12:17:39 and 13:57:57 in 9 trades. Subsequently, she increased the order rate for 9,872 remaining shares that did not get executed at ₹204.75. Thus remaining shares got executed between 14:13:04 and 14:13:20. Then, she placed a sell order for 20,000 shares at ₹210 at 14:25:17 when the last traded price at order entry was ₹204.55. Subsequently, CBI through trading member Kaviraj placed a buy order for 1,00,000 share at ₹211.00 at 14:25:17 when the LTP at the order entry was ₹204.40. The entire sell order quantity of 20000 shares by Noticee No. 1 matched with the buy order of CBI at 15:22:34 i.e. at the start of buy transaction of the CBI itself. Thus, the sell order of her got executed and she earned a profit of ₹ 107,532.

15. Now, I am dealing with the contentions of the Noticees as under:

- (i)** I have noted the submission of the Noticee No. 2 that he was not taking investment decisions and that the Chief dealer or the Investment Committee of the Bank take the decision regarding the scrip, quantity and price to be invested / traded on a day-to-day basis and such decisions are taken at the beginning of the trading day / session and executed during the day by the Noticee No. 2. Therefore, it is evident that The Noticee No. 2 comes to know at the beginning of the trading day itself which scrip the Bank is going to buy during the course of the day; and there were always time lag between the actual execution of the trades and the Noticee No. 2 being aware of the investment decisions of CBI.
- (ii)** I concede that the dealing room of the Bank is located at its Central Office at the 5th Floor of Chandermukhi Building at Nariman Point. The dealing room with all necessary security features has its dedicated voice recorded telephone lines through which dealers like the Noticee No. 1 place orders with the brokers. Mobile phones are not permitted to be used in the dealing room and hence, he did not carry his mobile to the office while working as equity dealers for the Bank. However, I note that he has not been prohibited from going out of the dealing room at any point of time during the day and make communications through the use of telephones/mobiles not registered in his or bank's name outside the dealing room or using any other mode of communication to his wife or broker or any other person. Here I should consider that someone with his expertise and experience in dealing in securities should be conversant with the systems and procedures as also the loopholes therein.
- (iii)** The Noticee No. 1 submitted that the dealings made by her on the said 16 days were based on receiving research reports from various stock brokers/analysts and traded on the basis of such reports and on her perceptions. She short lists scrips on the basis of TV channels, articles given

in the newspapers, research reports of experts, opinion/advise/technical calls from her brokers and other publicly available material/ information. I do not concede with the above submissions as these are general in nature and are not backed by any documentary evidence supporting the same.

- (iv) I am not at all convinced with the contentions that matching of the orders placed by Noticee no. 2 on 14 out of the 40 days with that of CBI was a mere coincidence. It is not merely the matching of her trades with that of CBI on 14 days but the synchronizing of the various elements of her transactions systematically and with absolute precision with the trades of CBI like order time, price, quantity and execution time of the trades as illustrated in the table above can't be a mere coincidence at any stretch of imagination.
 - (v) Further, the Noticees submitted that not all the documents and records including complete investigation report, as requested by them were provided by the Investigation Department of SEBI during the inspection and that there is no document, record or evidence on record to show that the Noticee No. 2 had communicated the details of the orders to be placed by CBI to Noticee No. 1 before placing the orders with the brokers and/or that Noticee No. 1 had traded on the basis of the same. I note that though the complete investigation report was not provided, the relevant findings of the investigation on which the charges are leveled were provided to the Noticees. I agree to the submissions made by the Noticees that, there is nothing on record to show that the Noticee No. 1 communicated with Noticee No. 2 and tipped his wife of the trading details of CBI so as to assist her to trade based on that information and earn profits. However, a relationship of husband and wife is a fiduciary relationship and information between the two can be exchanged in many ways. Therefore, the Noticees could exchange between them without leaving any evidence on paper to show the communication between them as they are husband and wife.
- 16.** From the foregoing, after considering the allegations as per the SCN, submissions made by the Noticees and the material available on record I

conclude that the trades executed in various scrips during the 14 days during the investigation period with CBI as the counterparty to the sell transactions of Noticee No. 1 are the outcome of a well orchestrated fraudulent and manipulative scheme for earning positive square off difference by the Noticees. The profits earned by the Noticee No. 1 by entering into such trades are summarized in the table below:

Sl. No.	Trade Date	Scrip	Buy Qty	Sell Qty	Net Qty	Buy Value	Sell Value	Realized Profit
1.	22/12/09	Welspun India	2,000	2,000	0	1,80,000	1,86,000	6,000
2.	24/12/09	Dishman Pharma	4,262	4,262	0	9,84,433	10,18,618	34,185
3.	30/12/09	Federal Bank Ltd	10,000	10,000	0	23,79,963	23,80,000	37
4.	06/01/10	Dishman Pharma & Chem Ltd.	5,954	5,954	0	13,75,374	14,34,914	59,540
5.	12/01/10	Era Infra Engineering Ltd	10,000	10,000	0	20,68,933	21,00,000	31,067
6.	13/01/10	Subros Limited	20,000	20,000	0	9,88,019	10,28,000	39,981
7.	14/01/10	Welspun India Ltd.	10,000	10,000	0	9,39,772	9,82,500	42,728
8.	28/01/10	Welspun India Ltd	10,342	10,342	0	7,96,334	8,37,702	41,368
9.	22/02/10	Opto Circuits (i) Ltd.	14,216	14,216	0	29,64,671	30,56,440	91,769
10.	23/02/10	Opto Circuits (l) Ltd.	20,000	20,000	0	40,92,468	42,00,000	1,07,532
11.	24/02/10	Jindal Stainless Ltd.	16,174	16,174	0	16,13,328	16,98,270	84,942
12.	02/03/10	Aptech Ltd.	25,000	25,000	0	42,05,290	43,37,500	1,32,210
13.	12/03/10	SEAMEC ltd.	6,207	6,207	0	12,57,371	12,91,056	33,685
14.	15/03/10	Jyothi Labs Ltd.	4,300	4,300	0	7,41,475	7,52,285	10,810
TOTAL								7,15,854

17. The Noticees have even produced the judgment of the Hon'ble Securities Appellate Tribunal in *Dipak Patel Vs. The Adjudicating Officer (SAT Appeal No. 216 of 2012 decided on 09/11/2012)* in which Regulation 4(2)(q) of PFUTP Regulations, 2003 has been interpreted by the Tribunal. However, the present case does not deal with the violation of the said Regulation but Regulation 3 (a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003. The CBI

deals in shares on its own account and on behalf of its customers. CBI is a publically listed company and any loss incurred on its investments adversely would affect the interests of its own shareholders and customers. Therefore, the fraudulent and manipulative activities of the Noticees fall upon the CBI and its customers and ultimately on the investors of the securities market. In other words, the undue profits earned by the Noticees are nothing but the losses to them.

18. In view of the above, it is established beyond doubt that the Noticees have acted in collusion and have together violated Regulation 3 (a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 warranting imposition of monetary penalty under Section 15HA of the SEBI Act, 1992.

19. While determining the quantum of penalty under section 15HA of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

20. I observe from the material available on record that the Noticees have earned an undue profit of ₹ 715854 by indulging in the unfair and fraudulent trade practices. These undue profits earned by the Noticees fall upon the CBI and its customers and ultimately on the investors of the securities market. In other words, the undue profits earned by the Noticees are nothing but the losses to them. The material available on record does not indicate that the defaults by the Noticees are repetitive in nature. In my view the Noticee No. 2 being in a fiduciary relation with his employer i.e. CBI which is a large public sector bank

indulging and scheming such fraudulent and manipulative trading activities should be viewed seriously.

Order

21. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 25,00,000 (Rupees twenty five lakhs only) on Mrs. Vibha Sharma and Shri Jitendra Kumar Sharma, to be paid jointly and severally, under Section 15HA of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticees.

22. The penalty amount as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID4, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: December 19, 2012

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**