BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 92/2011]

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

In respect of

Mukund Merchandize Pvt. Ltd.

(PAN. Not Available)

In the matter of M/s Bakra Pratisthan Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in trading in the scrip of M/s Bakra Pratisthan Ltd. (hereinafter referred to as **"BPL"**) at the Calcutta Stock Exchange (hereinafter referred to as **"CSE"**), whose shares witnessed sharp price rise from ₹18.50 to ₹380/- (1954% increase) during the period from January 15, 2004 to March 15, 2005 (hereinafter referred to as "**investigation period**").

2. On analysis of the trading data obtained from CSE it was observed that the transactions of four brokers viz: Basant Periwal & Co (hereinafter referred to as "**BPC**"), Ashok Kumar Kayan (hereinafter referred to as "**AKK**"), Ahilya Commercial Pvt. Ltd (hereinafter referred to as "**ACPL**"), and Rajendra

Prasad Shah (hereinafter referred to as "**RPS**"), constituted 85% of the volume in the scrip of BPL. The role of the brokers and the entities who had traded in the scrip of BPL was scrutinized. It was alleged that through collusion with the brokers and their clients, shares of BPL were transacted in such a manner that led to creation of artificial volume in the scrip and was designed to create a false market leading to significant price movement in the scrip.

3. It was alleged that the Mukund Merchandize Pvt. Ltd. (hereinafter referred to as "**Noticee**") in collusion with the brokers and clients created artificial volume and a false market leading to significant price movement and thereby violated the provisions of regulations 4 (2) (a) and (e) SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as **"PFUTP"**). Consequently, in respect of the alleged charges, the Noticee would be liable for monetary penalty under section 15HA of SEBI Act.

4. In order to ascertain the role/connection of the Noticee in the matter the Investigating Authority, SEBI (hereinafter referred to as "**IA**") issued summons to the Noticee to provide certain information pertaining to its trading in the scrip of BPL during the investigation period. The Noticee acknowledged receipt of the summonses issued repeatedly but did not provide any information. Therefore, it was alleged that it had violated sections 11C(3) and 11C(5) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"). Consequently, in respect of the alleged charges, the Noticee would be liable for monetary penalty under section 15A(a) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated February 18, 2007 under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge the alleged violations of provisions of SEBI Act and PFUTP committed by the Noticee.

6. Subsequent to the transfer of Shri. Piyoosh Gupta, Shri V. S. Sundaresan was appointed as the Adjudicating Officer vide order dated November 19, 2007.

7. Subsequent to the transfer of Shri V. S. Sundaresan, I was appointed as the Adjudicating Officer vide order dated November 18, 2009.

SHOW CAUSE NOTICE, HEARING AND REPLY

8. Show Cause Notice No. EAD-5/VSS/SS/139504/2008 dated September 29, 2008 (hereinafter referred to as **"SCN"**) was issued to the Noticee through CSE under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under section 15HA and 15A of SEBI Act for the alleged violation specified in the said SCN.

9. The SCN was delivered to the Noticee through SEBI, Eastern Regional Office, Kolkata (hereinafter referred to as "**ERO**"). The SCN was affixed at the last known address of the Noticee. No reply was received from the Noticee. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 29, 2010 at ERO vide notice dated January 5,

2010. The notice was affixed at the last known address of the Noticee. However, neither did the Noticee appear nor extension was sought by the Noticee.

10. Subsequently supplementary show cause notice No. EAD-6/BM/JR/25121/2010 dated October 29, 2010 was issued to the Noticee through ERO alleging non-compliance of summonses issued to it under sections 11C(3) and 11C(5) of SEBI Act and to show cause why monetary penalty can be imposed under section 15A(a) of SEBI Act. The Notice was duly delivered to the Noticee however no reply was received from the Noticee. Thereafter Noticee was granted an opportunity of hearing on February 11, 2011 vide notice dated January 24, 2011. The Noticee failed to appear on the scheduled date although it had received the notice. A final opportunity of hearing was given to the Noticee on June 7, 2011 vide notice dated May 20, 2011 which got delivered. Once again, the Noticee failed to appear.

11. As can be seen from above that the notice was served on the Noticee as per rule 7(c) of the Rules. I am convinced that ample opportunity has been given to the Noticee to explain its case. Despite having been given ample opportunity, the Noticee has failed to avail the opportunity of filing any reply to the SCN and personal hearing. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the SCN and the documents available on record. I observe that the allegations against the Noticee are as follows:
    i. The Noticee was asked for certain information and was summoned to submit the same three times, two of which were acknowledged by the Noticee. However, the Noticee failed to provide the same.

ii. The Noticee had traded through the broker, RPS.

iii. The Noticee traded through the broker RPS with the clients of ACPL, AKK, BPC wherein the buy and the sell orders were allegedly entered into the system for the same quantity, same rate and almost the same time.

iv. The trades which were shown in the exchange was in the Noticee's client code but had actually been done for the client Neelkanth Goods Pvt Ltd.

v. The Noticee through collusion with the brokers and other clients transacted in the shares of BPL in such a manner that led to creation of artificial volumes in the scrip and was designed to create a false market leading to significant price movement in the scrip.

In view of the above it has been alleged that the Noticee has violated the provisions of regulations 4 (2) (a) and (e) and sections 11C(3) and 11C(5) of SEBI Act.

13. Now the issues that arise for consideration in the present case are :

a) Whether the Noticee colluded with the brokers and the clients to manipulate the market and had violated regulations 4 (2) (a) and (e) of PFUTP?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of SEBI Act?

c) Whether the Noticee had violated provisions of sections 11C(3) and 11C(5) of SEBI Act?

d) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A (a) of SEBI Act?

e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

14. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP and SEBI Act, which reads as under:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(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;

11C. Investigation

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

15. I would discuss the instant matter in two parts, one the issue of non-compliance of summons and the other is with respect to Noticee's dealings in the scrip of the company which resulted in creation of artificial volume and manipulating the market. I now proceed to discuss the issue of fraudulent and unfair trade practice by the Noticee.

FRAUDULENT AND UNFAIR TRADE PRACTICES

16. Although no information was received from the Noticee, the investigation was done by SEBI based on the limited information obtained from CSE and

the broker. Upon careful perusal of the materials available on record, including the trading details, movement of price, the entities that had traded in the scrip of BPL, I find the following:

a. The price of the scrip increased from ₹18.50 to ₹380/- (1954% increase) during the investigation period. I note that BPL is a small cap company with issued paid-up capital of ₹Rs.4.26 crore. I also note that for the years ended March 31 2005, March 31, 2004 and March 31, 2003 the company incurred loss (before tax) of ₹0.51 lakh, ₹0.66 lakh and ₹0.17 lakh respectively. As on March 31, 2005, the company had a negative EPS of 0.05. From this it is noted that the company was in losses continuously, which does not justify the sharp increase in the price of the scrip

b. The four brokers viz: BPC, AKK, ACPL and RPS had traded for 29,93,594 shares which constituted 85% of the total market volume in the scrip of BPL during the investigation period. The details of the said transactions are as given below.

Sl. No.	Name of the broker	Volume Buy / Sell	Traded from (Rs.)	Traded upto (Rs.)
1	Basant Periwal & Co.	18,42,152	18.50	380.00
2	Ashok Kumar Kayan	5,35,450	110.00	380.00
3	Ahilya Commercial Pvt. Ltd.	5,04,650	80.00	380.00
4	Rajendra Prasad Shah	1,11,342	110.00	379.00

17. It was observed during investigation that the Noticee traded through the broker RPS and was alleged that the trades which were shown in the exchange in the Noticee's code no. MO42 were done for another client

Neelkanth Goods Pvt Ltd. I find from the SCN, the Investigation Report (IR) and other materials on record that trades which have been shown in the exchange in the client code of the Noticee, M042 were all been done for Neelkanth Goods Pvt. Ltd. It was further observed that the change of client codes at the backend of the broker had not been reported to CSE. Few instances taken at random from the books of the broker are given below:

Trade Date	**Order No.**	**Order Time**	**Trade No.**	**Trade Time**	**Client Code**	**Name of client reported to CSE**	**Actual client after change**	**Buy Qty**	**Sale Qty.**
5/7/04	61794650	14:01:20	2192	14:01:20	M042	Mukund Merchandise Pvt. Ltd.	Neelkanth Goods Pvt. Ltd.	3500	
24/11/04	181480170	14:22:03	2295	14:22:03	M042	Mukund Merchandise Pvt. Ltd.	Neelkanth Goods Pvt. Ltd.	3000	
22/12/04	151811107	14:42:48	2430	14:42:49	M042	Mukund Merchandise Pvt. Ltd.	Neelkanth Goods Pvt. Ltd.	3650	
4/1/05	181482746	14:56:12	2480	14:56:12	M042	Mukund Merchandise Pvt. Ltd.	Neelkanth Goods Pvt. Ltd.	1500	

18. As per the trade and order log, the Noticee had bought 9,650 shares and sold 5,000 shares of BPL which constituted 0.42% of the total market volume. The trading volume of the Noticee is too miniscule to substantiate the serious charge of manipulation. It has been alleged that through collusion with the brokers and other clients the Noticee transacted in the shares of BPL in such a manner that led to creation of artificial volume and significant price rise. However the IR and other materials on record do not

indicate in any manner how the Noticee has created volume and price rise or manipulated the market. Further there is no evidence on record to show that the Noticee had connived with the clients and brokers to manipulate in the scrip of BPL. It has also been alleged that trades which were shown in the exchange in the Noticee's code no. MO42 were done for another client Neelkanth Goods Pvt Ltd and that the change of client codes at the backend of the broker had not been reported to CSE. There is no evidence on records to show whether the Noticee had any role to play for change of client code at the back office of the broker. Hence I do not hold the Noticee responsible for change of client code and not reporting to CSE. I am of the view that merely based on certain conjectures and surmises one cannot come to the conclusion that the Noticee had played any manipulative role in the trading of the scrip of BPL. There has to be some corroborative material on record to prove the allegation of manipulation. Making an allegation of manipulation against an entity merely on the ground of having bought certain number of shares is rather far fetched. To sustain the serious charges of market manipulation, high level of evidences are required and in the instant case I find no such evidence as far the Noticee is concerned. In the absence of the relevant material on record and evidence, the allegation of either creating artificial volume or market manipulation cannot be established. Keeping all this in view, I am of the opinion that the allegation of violation of regulations 4 (2) (a) and (e) of PFUTP by the Noticee does not stand established.

NON-COMPLIANCE OF SUMMONS

19. It is noted that in order to investigate the role of the Noticee in the alleged manipulation and fraudulent trade practice in the scrip of BPL summonses were issued to the Noticee by the IA. The details of summonses issued vis-à-vis status of its compliance by the Noticee are as under:

Date of Summons	Proof of delivery	Status of Compliance
June 2, 2006	Returned Undelivered	Nil
June 14,2006	Received and acknowledged by the Noticee.	Neither submitted the documents nor appeared in person
June 28,2006	Received and acknowledged by the Noticee.	Neither submitted the documents nor appeared in person

20. The IA vide the above summonses sought details such as complete address with phone numbers, name of promoters/directors/partners, PAN No., demat account details, details of transactions in the scrip, copy of contract notes, copy of relevant statement of accounts issued by the broker, statement of deliveries made to the broker and received from the broker, details of relevant bank transactions, details of all off-market transactions, details of relationship with promoters/directors and brokers, reason for trading in the scrip of BPL etc.

21. It may be noted from the copy of the summonses that two of the three summonses were signed by the Noticee hence it had duly acknowledged the summonses. Given the fact that two of the summonses were acknowledged by the Noticee it can be stated that the Noticee was given sufficient opportunity to submit information before the IA. The Noticee was further informed of consequential proceedings of Adjudication and Prosecution under the SEBI Act which may follow as a result of non-compliance with the said summonses. It is observed that two of the summonses issued by the IA were received and acknowledged by the Noticee. The Noticee had neither appeared in person before the IA nor furnished the details sought by the IA. Had the Noticee complied with the summonses and provided the factual information at the appropriate time, the role of the Noticee, its nature of trading and link, if any with other entities involved in the trading in the scrip of the company could have been established. The IA would have been benefited and in a better position to examine the role of the Noticee and other entities involved in the alleged

manipulative trading. It is amply clear that the information sought by the IA was crucial and central to the investigation and failure on the part of the Noticee to comply with the summonses had indeed hampered the investigation. I find that the Noticee was under an obligation to provide the information as sought by IA. The decision to call for such information and the judgment as to its relevancy is completely at the discretion of the IA and is in furtherance of the discharge of his official duties. The Noticee under the summons is only obliged to co-operate with the IA and furnish the required information, since the same was very much available with it. In case of any evasion of the regulatory requirements, which are enforced in the interests of the investors, due cognizance should be taken and liability should be fixed thereon. Thus, as the Noticee did not provide the information, the same thwarted the attempts of SEBI to effectively gather vital evidence for the timely conclusion of the investigation proceedings. I also note that the information sought by the IA was within the realm of the Noticee and could have been provided easily.

22. I also find that as the Noticee failed to appear in person before the IA, its statement could not be recorded. Further, I find that the Noticee was given adequate opportunity by the IA to comply with the summonses. I am also of the view that it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with IA and promptly produce all documents, records, information, etc., to the IA. If persons are allowed to flout the summonses issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. In addition to this, the Noticee also failed to submit any reason for the non-compliance of the summonses during the adjudication proceedings. Moreover, the summonses were issued to the Noticee three times and received by it twice and in both the occasions the Noticee acknowledged the summons but

failed to comply with the same. This also shows that its default was repetitive in nature.

23. In the light of the above, I hold that the allegation of violation of the provisions of sections 11C(3) and 11C(5) of SEBI Act by the Noticee stands established.

24. The Honorable Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in Appeal No.95/04 in Mayfair Paper & Board Pvt. Ltd. V SEBI held that *"failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act"*.

25. It is not possible to quantify the exact gains made by the Noticee or the loss caused to the investors as a result of the failure on his part to comply with the summons. The Hon'ble SAT had the occasion to consider a similar factual situation in *Appeal No: 114 of 2005 Nokia Finance International Pvt. Ltd.Vs SEBI*. In the said appeal, the Honorable SAT examined the failure on the part of the appellant to provide necessary information to the IA of SEBI. In the said matter, while upholding the penalty imposed by the Adjudicating Officer, the SAT observed that the appellant could have availed the opportunity to submit the required information, however, he failed to do so and the penalty has been imposed in terms of the provisions of law. The order passed by SAT is relied upon in this case for guidance. Considering the aforesaid observations of SAT, the failure on the part of the Noticee to comply with the summonses has to be viewed seriously.

26. Further, I have also perused the order dated January 07, 2009 of SAT in Appeal No. 106 of 2006 DKG Buildcon Pvt. Ltd. V SEBI, the SAT has stated inter-alia, that*" By not responding to the summons, the representative(s) of the appellant did not appear before the investigating officer as a result whereof their statements could not be recorded. This obviously, hampered the investigations…."*

27. Thus, the aforesaid violations by the Noticee make it liable for penalty under section 15A(a) of SEBI Act which read as follows:

> ***15A. Penalty for failure to furnish information, return, etc.-*** *If any person, who is required under this Act or any rules or regulations made thereunder,-*
> *(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

28. While determining the quantum of penalty under section 15A(a) it is important to consider the factors stipulated in section 15J of 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."*

29. It is not possible to quantify the exact gains made by the Noticee or the loss caused to the investors as a result of the failure on its part to comply with the summonses. With regard to the repetitive nature of the default, I find that the IA had issued three summonses to the Noticee, all of which were received and acknowledged by it and the Noticee failed to comply with them. This repeated failure indicates that the default is of repetitive in nature.

<u>ORDER</u>

30. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹4,00,000/- (Rupees Four Lakh only) under section

15A(a) on the Noticee which will be commensurate with the violation/s committed by it.

31. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Jayanta Jash, General Manager, SEBI, Eastern Regional Office, L&T Chambers, 3rd Floor, 16, Camac Street, Kolkata – 700 017.

32. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **June 14, 2011**	**BARNALI MUKHERJEE**
Place: **Mumbai**	**ADJUDICATING OFFICER**