

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 15 HA of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Sr. No.	Name	PAN
1	Manish Mishra	AMPPM6823L
2	Vivek Chauhan	AHPPC9620A
3	M.T. Corporation	AAVFM2592E
4	Krone Investments	AASFM2420J
5	Ankur Sharma	BMIPS3640D
6	Himanshu Jayantilal Shah	AEJPS4758N
7	Bankim Jayantilal Shah	ACIPS6574R

The abovementioned persons are hereinafter individually referred to by their respective names or Noticee number and collectively as “the Noticees”)

In the matter of trading activities of certain entities in the scrip of Atlantaa Limited

1. Atlantaa Limited (hereinafter referred to as ‘the Company’) is a public company having its shares listed on Bombay Stock Exchange (‘BSE’) and National Stock Exchange (‘NSE’). Based on the investigation conducted (pursuant to a reference from NSE) into the trading activities in the scrip of the Company during the period August 01, 2022 to November 23, 2022 (“Investigation Period”), Securities and Exchange Board of India (‘SEBI’) issued a Show Cause Notice (‘SCN’) No SEBI/HO/IVD/ID12/OW//P/2024/21045/1 dated June 27, 2024 to the Noticees. The said SCN made the following allegations with respect to the Noticees:

- (a) Noticee 1 disseminated false and misleading information to public through videos on YouTube channels to induce trades or purchase of shares in the scrip of the Company.

- (b) Noticee 1 and Noticee 2 connived and collaborated with each other for creation and dissemination of misleading information to public through videos on YouTube channels with respect to the scrip of the Company.
- (c) Noticees 1 to 7 had colluded and engaged in a coordinated scheme to induce investors to acquire securities in the scrip of the Company by uploading false and misleading videos on two YouTube Channels.
- (d) As a part of this scheme, Noticees 1, 3, 4 and 5 bought shares at a lower price and subsequently, sold a substantial portion of their holdings at inflated prices, thereby, making unlawful gains of Rs. 1,12,01,144.70, at the cost of the investors. Hence, Noticees 1 to 7 are alleged to have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a), (d), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“the PFUTP Regulations”).
2. The above SCN was also issued to Monarch Network Capital Limited alleging that as the stock broker connected to Noticees 1, 3 and 4, it had not carried out necessary due diligence and not complied with the statutory requirements while dealing with clients in violation of Clause A (2) and (5) of Code of Conduct as specified in Schedule II under regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992. It was called upon to show cause as to why proceedings under Section 11B(2) read with Section 15HB of the SEBI Act should not be initiated against it for the alleged violations. The SCN with regard to Monarch Network Capital Limited was disposed of vide Settlement order passed on February 21, 2025. Accordingly, the allegations against the Monarch Network Capital Limited does not survive and hence is not subject matter of this order.
3. Vide above SCN, the Noticees were called upon to show cause as to why appropriate directions under section 11B(1), 11(4) read with Section 11(1) of the SEBI Act including directions to prohibit them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and directions not to be associated with any registered intermediary/listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever and disgorgement of unlawful gains of Rs. 1,12,01,144.70, jointly and severally, should not be issued against them. They were also called upon to show cause as to why proceedings under Sections 11B (2) and 11(4A), for imposing penalty

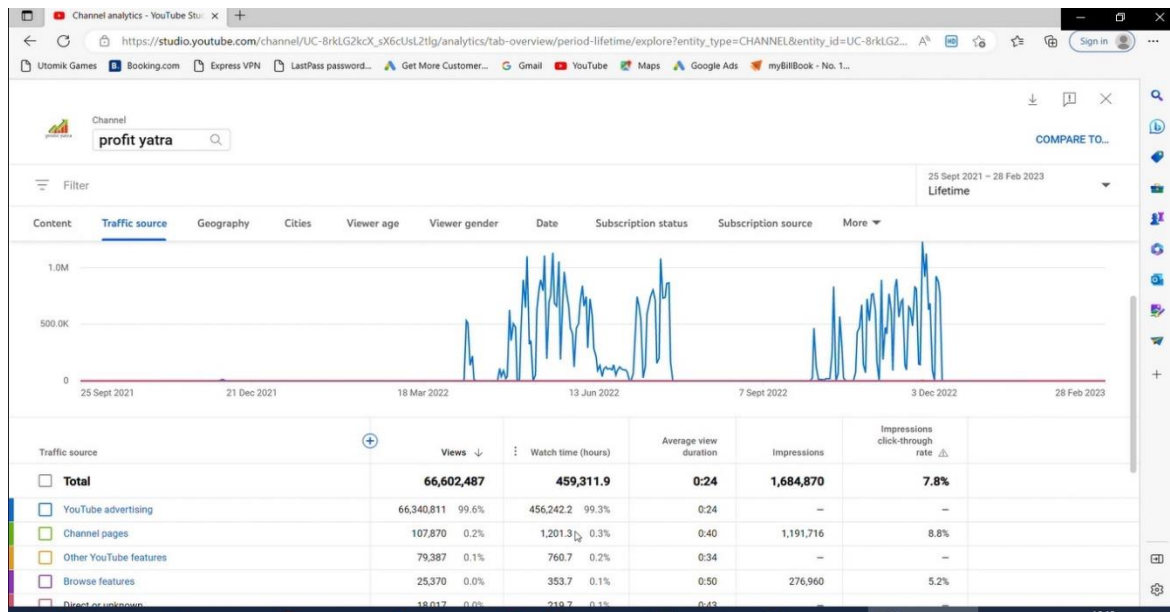
under Section 15HA of the SEBI Act should not be initiated against them for the aforesaid violations.

4. The SCN to the Noticees herein was based on the following observations of investigation:

- (a) An unsolicited YouTube video on two YouTube channels – MIDCAP CALLS (link <https://www.youtube.com/watch?v=T5HzsW3Bp74> and ‘profit yatra’ <https://www.youtube.com/watch?v=fZyryjhKHAE>– was uploaded on October 02, 2022.
- (b) The description of the YouTube video with the recommendation to buy in the scrip of Atlantaa, *inter alia*, stated as follows:
 - 4.b.1. The current price of the share is Rs. 18 and it will reach Rs. 130 within the next 2 months.
 - 4.b.2. The share price of the scrip was falling because of the court case of 2018 regarding a loan of around Rs 220 Crore. However, now the Company has settled the case with One-time settlement and that could be found /accessed from Google.
 - 4.b.3. Adani group is going to invest in the Company.
 - 4.b.4. The Company works in the field of construction and contracting and has successfully worked on National Projects.
 - 4.b.5. The Company is 37 years old and working with good profit margins. The company is debt free. The company is fundamentally and technically strong. The Relative Strength Index (RSI) and Moving Average Convergence/Divergence (MACD) are in bullish mode. The shares of the company are not pledged.
- (c) Noticee 1, was identified as the creator of the YouTube channel ‘*profit yatra*’ as his email featured in the recovery email for the said channel.
- (d) Noticee 1, *inter alia*, stated that he is a social media consultant for marketing/promotion through social media channels including YouTube and he had possibly uploaded the video regarding Atlantaa but he did not remember who had asked him to upload the video. He further stated that ‘profit yatra’ and MIDCAP CALLS are his YouTube channels. From the bank statement of Noticee 1, it was observed that payments were made by him to Google Ads during July-December 2022.
- (e) 99.6% of views on the ‘*profit yatra*’ channel were generated through YouTube ads as can be

seen from the snapshot below:

Image 1



- (f) On the evening of October 01, 2022, Noticee 1 had Whatsapp chats with Noticee 2 about the misleading message in the video regarding the scrip of the Company.
- (g) After the videos on YouTube channels were uploaded on October 02, 2022, there was an increase in the price and the volume of the scrip from October 12, 2022 to October 19, 2022.
- (h) Noticee 1 had telephone calls with Noticee 3, Noticee 4, Noticee 6, Noticee 7 and Monarch Network Capital Limited.
- (i) Noticee 3 is a partnership firm with its partners being indirectly connected / associated with promoters and partners of Noticee 4 and Monarch Network Capital Limited as they all are relatives and know each other.
- (j) Noticee 4 is a partnership firm with three partners, namely Monarch Infraparks Pvt. Ltd. (represented through its director Himanshu Jayantilal Shah), Monarch Comtrade Pvt. Ltd. (represented through its director Bankim Jayantilal Shah) and Ms. Anushree Himanshu Shah (daughter of Himanshu Jayantilal Shah), as partners. As per the Authorization letter of Krone Investments, Himanshu Jayantilal Shah and Bankim Jayantilal Shah were authorized to deal with Monarch Network Capital Limited on behalf of Krone Investments.

(k) Noticee 1, *inter alia*, stated that he knows Noticees 6 and 7 and that he used to work with Monarch Network Capital Limited as its employee. Monarch Network Capital Limited was also the stock broker of Noticees 3 and 4.

(l) Noticee 1 had several telephone calls with Noticee 5 during October 02-14, 2022.

Noticees 1, 3, 4 and 5 had traded in the scrip of the Company during October 12, 2022 to October 19, 2022 to make unlawful gains of Rs. 1,12,01,144.70.

5. After service of SCN on the Noticees, they all filed settlement applications under regulation 3(1) of SEBI (Settlement Proceedings) Regulations, 2018 proposing settlement of the present proceedings during August-September 2024. Subsequently, the applications for settlement by Noticees 1, 2, 3 and 5 were rejected on October 30, 2024 and the applications filed by Noticees 4, 6 and 7 were withdrawn by them on November 06, 2024. In the meanwhile, replies were received from the Noticees on different dates as under:

Table 2

Noticee	Noticee Name	Date of Replies
1.	Manish Mishra	August 08, 2024, December 10, 2024, December 11, 2024
2.	Vivek Chauhan	August 08, 2024, December 07, 2024, December 10, 2024
3.	M.T. Corporation	July 18, 2024, August 28, 2024, October 15, 2024, December 03, 2024
4.	Krone Investments	July 19, 2024, August 28, 2024, September 30, 2024
5.	Ankur Sharma	August 08, 2024, December 07, 2024, December 10, 2024
6.	Himanshu Jayantilal Shah	July 19, 2024, August 28, 2024, September 30, 2024
7.	Bankim Jayantilal Shah	July 19, 2024, August 28, 2024

6. The Noticees also inspected the records/documents (which are relevant and relied upon by SEBI while issuing the SCN) as follows:

Table 3

Noticee	Noticee Name	Date of inspection
1, 2 and 5	Manish Mishra, Vivek Chauhan, Ankur Sharma	September 20, 2024
3	M.T. Corporation	September 27, 2024
4 and 6	Krone Investments, Himashu Jayantilal Shah	August 08, 2024
7	Bankim Jayantilal Shah	October 14, 2024

7. Further, the Noticees availed the opportunity of hearings on different dates as follows:

Table 4

Noticee	Noticee Name	Date of hearing
1, 2 and 5	Manish Mishra, Vivek Chauhan and Ankur Sharma	December 11, 2024
3	M.T. Corporation	December 30, 2024
4, 6 and 7	Krone Investments, Himashu Jayantilal Shah and Bankim Jayantilal Shah	December 30, 2024

8. During hearing on December 11,2024, Mr Joby Mathew, Advocate appearing on behalf of Noticees No 1, 2 and 5 made common as well as specific submissions and also reiterated the replies filed by them. According to him allegation in para 20 of the SCN is personal view of the Noticee 1 and that Adani group about which the said view was expressed had not controverted the same. Further, Noticee 2 has not traded at all and hence he can not be blamed for the contents of the Video. During hearing on December 30,2024, Mr Vinay Chauhan, advocate appeared and made submissions on behalf of the Noticees 4, 6 and 7 and Mr Balbir Singh Chaudhary, Chartered Accountant appeared and made submissions of behalf of Noticee.3. He adopted all the submissions made by Noticees 4, 6 and 7 and added that Noticee 3 had made investment in the scrip of the Company during 2017. The transaction questioned in the SCN were done much before the alleged video upload and subsequent transactions were as per normal trading practice of these Noticees who trade regularly in shares of other companies as demonstrated in their replies. Referring to several paras of the investigation report and the SCN he valiantly argued that neither the investigation report nor the SCN make out any fraudulent acts on the part of these Noticees. He particularly referred to the charge against these Noticees in para 47 of the SCN and contended that the SCN fails to demonstrate any role of these Noticees in any alleged fraudulent act of any other Noticees as there is no reference of these Noticees at all in the activities mentioned in para 15 to 17 of the SCN. According to him even if seen in totality the allegation in para 21 of the SCN is not against these Noticees hence

charge in para 47 of the SCN is misplaced and is based on conjecture and surmises as far as Noticees 3,4 6 and 7 are concerned. Subsequently, Noticees 1, 2 and 5 made written submissions vide separate letters dated December 21, 2024 and Noticees 3, 4, 6 and 7 made written submissions vide separate letters dated January 16, 2025. Considering commonality of responses of Noticees 1,2 and 5 on one part and commonality of responses of Noticees 3,4,6 and 7 as other the replies and submissions are briefly summarised and grouped as follows:

Noticee 1, 2 and 5:

- 8.1 Investigation was conducted by SEBI on the basis of a reference received from NSE and that on October 03, 2022, NSE had received a complaint which was basis of reference from NSE. However, a copy of this complaint was not provided to him. Further, the authenticity of the complaints received in the matter should have been verified before acting on the said complaints.
- 8.2 The Whatsapp chats relied upon in investigation were obtained by SEBI from mobile phone and other devices belonging to Noticee 1 in the course of search and seizure conducted at his residential premises on March 02, 2023. The said search and seizure has been challenged before the Hon'ble High Court of Gujarat vide *Writ Petition Special Civil Application No. 11463 of 2023*. In the said matter, during the hearing on October 09, 2024 with respect to the said writ petition, it was categorically agreed by SEBI that it would not initiate any proceedings unless the matter is heard and reply is filed. Hence, the current proceedings be kept in abeyance until the Writ Petition is heard and disposed of.
- 8.3 Their email addresses, phone numbers and other personal information having been made available to third parties as the SCN had been addressed to several persons. They have stated that by doing so, SEBI had made available confidential and personal information relating to them to third parties who were not entitled to disclosure of such information in violation of their fundamental right to privacy under Article 21 of the Constitution of India, as affirmed in the Hon'ble Supreme Court's judgment in *K.S Puttaswamu (Retd.) & Anr v. Union of India* as well as provisions of Digital Personal Data Protection Act, 2023 ('**DPDP Act**') because SEBI as a data fiduciary should not have published their personal information to third parties. In view of the same, they had demanded withdrawal of the SCN dated June 27, 2024.

8.4 The YouTube video, its contents and its description cannot be relied upon as the video has not been authenticated as per procedure prescribed under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (or Section 65B of the Indian Evidence Act, 1872).

8.5 The videos were alleged to have been uploaded on January 23, 2022 and September 25, 2021 on MIDCAP CALLS and 'profit yatra' respectively, however, the screenshot in the SCN states that the 'profit yatra' video was uploaded on October 2, 2022 whereas screenshot of the description is of March 3, 2023.

8.6 Noticee 1 is a social media consultant who receives business revenue majorly from YouTube and he advises and assists individuals and corporates on marketing their products and services through social media including YouTube. He sometimes creates YouTube channels or uses channels made available to him by his clients/customers. He also makes payment to Google Inc. to take advantage of Google's own marketing on YouTube.

8.7 For Midcap Calls and 'profit yatra' channels, the primary email belonged to the customer and the backup emails and mobile numbers of Noticee 1 and that this is a normal business practice in Digital/Social media marketing. Further, campaigns through his YouTube channels were not limited to videos relating to the scrip of the Company and, therefore, the payments made through his wallet cannot be linked to the Google accounts linked to the alleged manipulative trades in scrip. The videos had excellent viewership because he has a proven ability to do successful social media marketing campaigns and mere hosting of such videos on his channels cannot lead to the inference that he disseminated false and misleading information to the public to induce purchases/trades in the scrip.

8.8 The said YouTube videos were alleged to have been uploaded on January 23, 2022 and September 25, 2021 on MIDCAP CALLS and 'profit yatra', respectively. However, the screenshot in the SCN states that the 'profit yatra' video was uploaded on October 02, 2022 whereas screenshot of the description is of March 03, 2023. Hence, there is date mismatch and the SCN is ambiguous in that respect.

8.9 'Misleading information' as alleged in Para 20 of the SCN is a mere expression of facts and opinion with respect to the price of the scrip of the Company. Moreover, the Company has not denied or controverted the said facts.

- 8.10 The charge against them is not definitive as SCN (in para 10.3), *inter alia*, states that “Noticee 1 had possibly uploaded and promoted the video on YouTube regarding the scrip of *Atlantaa*.” Thus, the allegation is a conjecture and surmise rather than evidence based. Further, he does not possess the videos uploaded on the aforesaid YouTube channels.
- 8.11 Additionally, he has denied that the videos provided by SEBI are the videos uploaded on the aforesaid YouTube Channels and he has said that the YouTube links mentioned in the SCN are not active. Also, the videos as alleged in the SCN have not been created by him.
- 8.12 Noticee 2 is one of the Directors in Laddu Gopal Ventures Limited along with his wife. Therefore, the calls between them cannot be the basis of any adverse observation in respect of trades in the scrip of *Atlantaa*.
- 8.13 SEBI has relied upon Whatsapp chats retrieved from his mobile phones, laptops and other devices seized in a search and seizure operation carried out on March 02, 2023. Upon receipt of his devices on March 27, 2023, Noticee 1 has noticed that his devices had been tampered with, passwords of his google accounts were changed and chats and messages on applications such as Whatsapp had been selectively deleted.
- 8.14 Noticee 1 had called Noticees 6 and 7 to seek investment in his wife's movie ventures and for Navratri functions.
- 8.15 The SCN does not establish that the alleged videos uploaded on the aforesaid YouTube Channels were the sole cause for the increase in the price and volume of the scrip of the Company. The price started rising since August 01, 2022 much before the alleged videos were uploaded (in October 2022) and that he traded in shares of the Company because he saw an uptrend in the price of the scrip.
- 8.16 The trades of Noticee 1 in the scrip of the Company during October 12-19, 2022 were insignificant compared to the average volume of 21 lakh shares on BSE. Noticee 5 had traded only in 52,000 shares of the Company. The reliable evidence on record does not support the allegation that he was involved in spreading a video containing misinformation and he took advantage of impact of the misinformation. SEBI has not proved how he is a beneficiary of such a scheme allegedly orchestrated by them.

8.17 Noticee 2 has also contended that the SCN has assumed the veracity of the chats on the phone belonging to and used by him and at no point of time he was called upon to produce his mobile phone so as to corroborate and establish the WhatsApp chat history between Noticee 1 and him. In the absence of such corroboration and in the absence of the required certification under the Information Technology Act, 2000 and the Indian Evidence Act, 1872 and/ or the Bharatiya Sakshya Adhiniyam, 2023, he has contended that the said WhatsApp chat history cannot be relied on as evidence. Extraction and publication of a private chat between him and Noticee 1 constitutes a breach of his fundamental right to privacy assured under Article 21 of the Constitution of India, as affirmed in the Hon'ble Supreme Court's judgment in *K.S. Puttaswamy (retd.) & Anr v. Union of India*, especially since the same has been done without his knowledge or consent.

8.18 The SCN does not establish that the alleged videos uploaded on the aforesaid YouTube Channels were the sole cause for the increase in the price and volume of the scrip of the Company. Further, the SCN nor any document on record establishes that he uploaded any video on any YouTube channel. The SCN only infers that Noticee 1 had possibly uploaded and promoted the video on YouTube regarding the scrip of the Company.

8.19 Noticee 2 has not created and does not own and has not operated/does not operate any YouTube Channel including the ones named 'Midcap Calls' and 'profit yatra'. There has been no complaint against him and Google Inc. too makes no reference to him in respect of the aforesaid 2 YouTube Channels. He is one of the Directors in Laddu Gopal Ventures Limited along with the wife of Noticee 1 and therefore, the calls between them cannot be the basis to drawn adverse inferences against him. He has not traded in the scrip of Atlantaa, neither has he made any profit from trading in the scrip during the relevant period, i.e., July 1, 2022 to November 23, 2022.

8.20 Noticee 1 has further contended that the price of the scrip started rising since August 01, 2022 much before the alleged videos were uploaded (in October 2022) and that he traded in Atlantaa shares because he saw an uptrend in the price of Atlantaa scrip. Further, Noticee 1 has stated that the trades of Noticee 1 in the Atlantaa scrip during October 12-19, 2022 were insignificant compared to the average volume of 21 lakh shares on BSE. Noticee 1 has further contended that the reliable evidence on record does not support the allegation that he was

involved in spreading a video containing misinformation and he took advantage of impact of the misinformation. Additionally, Noticee 1 has stated that SEBI has not proved how Noticee 1 is a beneficiary of such a scheme allegedly orchestrated by Noticee 1. Further, Noticee 2 has contended that he has not traded in the scrip of Atlantaa, neither has he made any profit from trading in the scrip during the relevant period, i.e., July 1, 2022 to November 23, 2022.

8.21 Noticee 5 is the brother-in law of Noticee 1 and, therefore, the calls between them not being unusual but normal and cannot be the basis for any adverse observation in respect of his trades in the scrip of the Company. In view of Hon'ble Securities Appellate Tribunal in the matter of *Arshad Hussain Warsi and Ors. v. SEBI, Appeal No. 284 of 2023* merely because of his relationship with Noticee 1, it cannot be concluded that he was a part of any coordinated scheme to induce unsuspected investors to trade in the scrip of the Company. His decision to trade in the scrip was an independent one and not under the instructions of Noticee 1 and that as his trades were in small number of shares, he cannot be accused of manipulating the share price or volume. Further, he has denied his involvement in creation or distribution of false and misleading videos of the Company.

8.22 The direction to disgorge can be made only against the person who has made such unlawful gains, i.e., in the absence of collusion, at worst, each person can be directed to disgorge only the alleged illegitimate profit made by him/her and not be jointly liable for alleged illegitimate profits.

Noticee 3, 4, 6 and 7:

8.23 Noticee 1 was an employee of Monarch Network Capital Limited and Noticees 3 and 4 have certain common promoters with Monarch Network Capital Limited.

8.24 In the ordinary course of business, employees are familiar with their company's owners but it is unreasonable to assume that owners of sizable organizations are acquainted with every employee. Hence, the calls by Noticee 1 to them cannot be the basis for any adverse observation against them in respect of trades in the scrip of the Company.

8.25 Complete documents have not been provided to them as per judgement of Hon'ble Apex Court in the matter of *T. Takano vs SEBI and Anr* but it has not specified the documents that have not been provided. Further, the Call Data Records provided by SEBI in excel sheet are inadmissible as evidence due to lack of their authentication.

8.26 Noticee 3 is in the business of investment in shares and securities, commodities, in cash and derivative segment and that their trading in the scrip of the Company as compared to their trading in all scrips during FY 2022-23 was miniscule. The announcement by the Company during September 2022 with respect to settlement with State Bank of India, Union Bank of India and Bank of Baroda established that the company was going to be a zero debt company which was a positive news and this fact has not been considered by the Investigating Officer.

8.27 If they were in collusion with Noticee 1 in the creation of video which would likely increase price of shares of the Company, it would not have sold shares before October 02, 2022, i.e, the date of uploading of videos but it has bought the shares during all the patches identified during investigation.

8.28 There is no connection between Noticee 3 and Noticee 1 except two calls received by its partner from Noticee 1 on August 18, 2022 and the said partner does not remember the context of these calls. There is no connection between these calls and subsequent orders placed by them. Further, SEBI has not provided exact particulars of orders which resulted in fraud.

8.29 On October 14, 2022, the Company had clarified that it is neither aware about various stock recommendations nor are in any discussion with Adani Group for investment in the Company, which was being circulated in the social media and that the Company does not have any undisclosed/potentially price sensitive information to be shared with stock exchanges. Hence, post October 14, 2022, the scrip price kept on increasing till October 18, 2022 and selection of patch from October 12-19, 2022 is erroneous. Further, the investigation should have been carried out from October 03, 2022–October 14, 2022 (after release of video and till issue of clarification by the Company) and the allegation that price of the scrip started rising on October 12, 2022 (i.e. 10 days after uploading of YouTube video) is out of context. Noticees 3 and 4 have stated that the announcement by the Company during September 2022 with respect to One Time Settlement with State Bank of India, Union Bank of India and Bank of Baroda established that the Company was going to be a zero debt company which was a positive news and this fact has not been considered by the Investigating Officer.

8.30 They have relied upon the orders passed by Hon'ble SAT in the matter of Karvy Stock Broking Ltd. (dated May 02, 2008, Appeal No. 6 of 2007), National Securities Depository Limited (dated November 22, 2007, Appeal No. 147 of 2007) and Ram Kishori Gupta & Anr. V. SEBI (dated August 02, 2019, Appeal No. 44 of 2019) to contend that persons who have made illegal gains alone could be asked to disgorge their ill gotten profits. Relying upon authorities ruled in S P J Stock Brokers Pvt. Ltd. v. SEBI and HB Stockholdings Limited v. SEBI, SEBI vs. Kishore Ajmera, R K Global V. SEBI, Narendra Ganatra v. SEBI, Sterlite Industries v. SEBI, Videocon International v. SEBI, Parsoli Corporation v. SEBI, Ram Sharan Yadav v. Thakur Muneshwar Nath Singh it has been contended that strict proof is required to charge someone for fraud. It has also relied on order of Hon'ble Supreme Court in the matter of Gorkha Security Services v. Govt. of NCT of Delhi & Ors. (August 04, 2014) and order of Hon'ble SAT in the matter of Royal Twinkle Star Club Pvt. Limited v. SEBI (February 03, 2016) that SEBI must clarify the exact measure it is contemplating for alleged violations. Additionally, it has relied on Blaram Garg v. SEBI, Rajiv maheshwari v. SEBI, Rajesh Patel v. SEBI and Nishith Shah v. SEBI that meeting of minds and intention to manipulate price must be proved.

8.31 These Noticees have relied on *Subhkam Securities (P) Ltd. v. SEBI*, *Bharat J Patel v. SEBI* and *Ashok Shivilal Rupani and Ors. v. SEBI* (Appeal No. 417 of 2018), *Ashlesh Gunvantbhai Shah & Ors. v. SEBI* (Appeal No. 169 of 2019) and *SEBI v. Bhavesh Pabari* (2019) SCC Online SC 294, *Aditi Dalal v. SEBI* to contend that it is regulator's duty to conduct proceedings in an expeditious manner and that the current proceedings are vitiated by delays.

8.32 Their trading in the scrip of the Company as compared to their trading in all scrips during FY 2022-23 was miniscule. The announcement by the Company during September 2022 with respect to settlement with State Bank of India, Union Bank of India and Bank of Baroda established that the company was going to be a zero debt company which was a positive news and this fact has not been considered by the Investigating Officer.

8.33 At the end of investigation period, it held substantial shares of the Company and if it were part of any fraudulent scheme, it would have sold the entire shareholding in the Company. However, it has bought Atlantaa shares during all the patches identified during investigation. It is not connected to Noticee 1 and calls were between Noticee 1 and Noticees 6 and 7 and that there was no connection of these calls with alleged video upload.

8.34 On October 14, 2022, Atlantaa had clarified that Atlantaa is neither aware about various stock recommendations nor are in any discussion with Adani Group for investment in the company, which was being circulated in the social media and that the company does not have any undisclosed/potentially price sensitive information to be shared with Stock Exchanges. Hence, these Noticees have contended that post October 14, 2022, the scrip price kept on increasing till October 18, 2022 and selection of patch from October 12-19, 2022 is erroneous. Further, these Noticees have contended that the investigation should have been carried out from October 03, 2022–October 14, 2022 (after release of video and till issue of clarification by Atlantaa) and the allegation that price of Atlantaa scrip started rising on October 12, 2022 (i.e. 10 days after uploading of YouTube video) is out of context.

8.35 The division of investigation period into patches based on price-volume movement lacks rationale as video uploaded on October 02, 2022 and subsequent rise in scrip price was from October 12, 2022.

9. I have carefully considered the allegations made in the SCN and replies and submissions of the Noticees. Noticees 1, 2 and 5 have contended that the Whatsapp chats relied upon in investigation were obtained by SEBI from mobile phone and other devices belonging to Noticee 1 in the course of search and seizure conducted at his residential premises on March 02, 2023. He has challenged the said search and seizure proceedings before the Hon'ble High Court of Gujarat vide *Writ Petition Special Civil Application No. 11463 of 2023*. They have also stated that during the hearing on October 09, 2024 with respect to the said writ petition, it was categorically agreed by SEBI that it would not initiate any proceedings unless the matter is heard and reply is filed. In view of the same, the present proceedings should be kept in abeyance until the Writ Petition is heard and disposed of. In this regard, it is matter of record that that no writ petition has been filed or pending before Hon'ble High Court of Gujrat with respect to the instant proceeding. Further, in the *Writ Petition Special Civil Application No. 11463 of 2023* filed by Noticee 1 un respect of another matter SEBI's counsel had never given any undertaking on the lines that SEBI will not proceed in matters related to the said search and seizure till the petition is disposed of by the Hon'ble High Court of Gujarat. Only a limited undertaking was given on October 09, 2024 that a hearing will not be conducted against Noticee 1 on that day, i.e., on October 09, 2024. As on date, there is no stay or restraint with regard to the present proceedings. Thus, there was no embargo put on the instant proceedings.

10. Further, the search and seizure proceedings have been conducted by Investigating Authority appointed by SEBI in exercise of power conferred by Section 11C of the SEBI Act. Sub-section (8) of Section 11C provides the manner in which an investigating authority can seize books, register and other records when there is reasonable ground to believe that the same may be destroyed/alterd. The provision states as follows:

“11(C) Investigation

...

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.

(8A) ...

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority

—

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation.”

11. By section 11C, SEBI has been armed with powers of investigation. If SEBI has reasonable grounds to believe that the transactions in securities are being dealt in a manner detrimental to the investors or the securities market or any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules or the regulations made or directions issued by SEBI thereunder, it can appoint a person as Investigating Authority to investigate the affairs of such intermediary or persons associated with the securities market. In order to provide required teeth to the Investigating Authority, it has been provided under section 11C(6) that any person failing to produce any document or information to the investigating authority or appear before the investigating authority or sign the notes of examination shall be punishable with imprisonment or with fine or with both.

12. Further, if the Investigating Authority has reasonable grounds to believe that the books, registers or documents or records of or relating any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered or falsified or secreted, he can obtain an authorisation from a Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government to (a) enter the place or places where such books or records are kept, (b) search the place or places and (c) seize the books or records, as considered necessary for investigation. Such authorisation would not be available to investigating authority in case of books or documents of any listed public company, which is not a registered intermediary, unless such company indulges in insider trading or market manipulation. Such search and seizure shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973. The investigating authority can keep such record and documents in his custody till the conclusion of the investigation. Section 11C(8A) permits requisition of services of any police officer or any officer of the Central Government, or of both, to assist the Investigating Authority for all or any of the purposes specified in sub-section (8) and it shall be the duty of every such officer to comply with such requisition. I note that the section 11C of the SEBI act is complete code with regard to power of the Investigating Authority and the only limitation is the provisions of that section itself. Thus, the Investigating Authority in this case was with due authorisation, within his power to search the premises and seize the books, registers, other documents and record of Noticee 1 to collect evidence. I note that the mobile phone of Noticee 1 was seized by the Investigating Authority and the data collected from the said device, viz., Whatsapp chats, etc. were, *inter alia*, relied upon by SEBI while framing the charges. I note that nothing has been placed on record to suggest that the Hon'ble Gujarat High Court has stayed the instant proceedings. Hence, the contention to keep the current proceedings in abeyance is rejected.

Natural Justice- supply of relevant documents

13. Noticee 1 has contended that authenticity of the complaints received in the matter should have been verified before acting on the said complaints. In this regard, I note that SEBI's investigation is an independent fact finding exercise which was concluded after ascertaining and examining various documents including the complaints received and the aforesaid NSE report. Noticees 1 and 2 have claimed that a copy of the complaint dated October 03, 2022 referred by NSE to SEBI which was basis of the investigation was not provided to them. Further, Noticee 2 has objected that while the contents of the video are a matter of record, the same have not been made available to him. Hence the instant proceedings are vitiated being in noncompliance of the principles of natural justice. In

this regard, I note that these Noticees were granted inspection of documents on September 20, 2024 and the Authorised Representative of Noticees 1, 2 and 5 had inspected all relied upon documents and never raised any objection of non-receipt of such materials as alleged. In fact, during hearing on December 11, 2024 they had raised objection with respect to non-receipt of certain other documents which were provided to the Noticees. Hence, I find that any objection by Noticees 1 and 2 for non-receipt of any document thereafter is not tenable. This apart, it is also relevant to mention that the instant SCN has been issued based on independent investigation and all findings and basis of inferences have been disclosed to these Noticees and there is no infirmity in the proceedings as alleged by them. Noticee 3 has also made a vague and general submission stating that the complete documents have not been provided to it. I note that inspection of documents as requested was provided to Noticee 3 and such roving and unsubstantiated claims cannot be accepted at this stage.

Delay in issuance of SCN

14. I note that the alleged misleading videos were uploaded on October 2022, the investigation was conducted during 2023 and 2024 and SCN was issued on June 27, 2024, i.e., in less than 2 years from the date of uploading of alleged videos. Given that the SCN was so issued within reasonable time, I do not agree with objections of the Noticees 3, 4, 6 and 7 on the ground of delay in issuance of SCN.

Admissibility of Electronic Evidence

15. Noticees 1 and 2 have contended that the YouTube video, its contents and its description cannot be relied upon as the video has not been authenticated as per procedure prescribed under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (or S.65B of the Indian Evidence Act, 1872). Similarly, Noticee 2 has stated that SEBI has assumed the veracity of the chats on the phone belonging to and used by Noticee 1 and at no point of time was Noticee 2 called upon to produce his mobile phone so as to corroborate and establish the WhatsApp chat history between Noticees 1 and 2. In the absence of such corroboration and in the absence of the required certification under the Information Technology Act, 2000 and the Indian Evidence Act, 1872 and/ or the Bharatiya Sakshya Adhiniyam, 2023. Similarly, Noticees 3 and 4 have contended that the Call Data Records provided by SEBI are inadmissible as evidence due to lack of authentication and required certification.
16. With regard to applying procedural intricacies of rules of evidence, I note that in the matter of *State of Haryana and Anr. v. Rattan Singh*, the Hon'ble Supreme Court held that: - *"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act*

may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.... The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny.” Further, in the case of Union of India & Anr.v. P.K.Roy & Ors. it was held that that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relating circumstances disclosed in a particular case".

17. In view of the above, I find that the downloaded YouTube videos, snapshots of their descriptions, chats of Noticee 1 with Noticee 2 extracted from mobile phone of Noticee 1 as well as Call Data records obtained from telephone service providers cannot be rejected merely because they do not conform to the strict standards of proof stated under the Indian Evidence Act, 1872 and/or the Bharatiya Sakshya Adhiniyam, 2023 and the attendant facts and circumstances of the case need to be considered before arriving at any conclusion.

Breach of fundamental right to privacy

18. Noticees 1, 2 and 5 have raised objection to Noticees’ 1, 2 and 5 email addresses, phone numbers and other personal information having been made available to third parties as the SCN had been addressed to several persons. Noticees 1, 2 and 5 have stated that by doing so, SEBI had made available confidential and personal information relating to Noticees 1, 2 and 5 to third parties who were not entitled to disclosure of such information in violation of Noticees’ 1, 2 and 5 fundamental right to privacy under Article 21 of the Constitution of India, as affirmed in the Hon'ble Supreme Court's judgment in *K.S Puttaswamu (Retd.) & Anr v. Union of India* as well as provisions of Digital Personal Data Protection Act, 2023 (‘DPDP Act’) because SEBI as a data fiduciary should not have published their personal information to third parties. In view of the same, Noticees 1, 2 and 5 have demanded withdrawal of the SCN dated June 27, 2024. Further, Noticee 2 has objected that extraction and publication of a private chat between Noticee 2 and Noticee 1 constitutes a breach of Noticee 2’s fundamental right to privacy assured under Article 21 of the Constitution of India, as affirmed in the Hon'ble Supreme Court's judgment in *K.S. Puttswamy (retld.) & Anr v. Union of India*, especially since the same has been done without the knowledge or consent of Noticee 2.

19. It is beyond dispute that right to privacy, including the control over one's mobile number, is a fundamental right as it is intrinsically linked to the right to life and personal liberty protected under Article 21 of the Constitution, as held by Hon'ble Supreme Court in the *Puttaswamy case* (supra). However, it is also settled position that this right is not absolute and can be limited by law in certain circumstances such as national security or investigation of offences. I note that the Hon'ble Supreme Court in its judgment in *Puttaswamy case* (Supra) held as follows:

“Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”

20. In *Puttaswamy case* (Supra) it was also held that Right to Privacy, recognised under Article 21 is not absolute and is subject to the same limitations as applicable to the said Article. In this regard, I find that the disclosure of details of mobile numbers and email addresses to all Noticees was not a public disclosure but was limited within a close group of Noticees who are alleged to be acting in league. Only these Noticees have the said details as the SCN was only served to the Noticees at their personal address or their personal email. Hence, the Noticees alone can access the information/data contained in the SCN. Further, the disclosure was in the context of investigation of alleged fraudulent activities and the details were already known to the concerned Noticee.

21. I also note that DPDP Act recognises certain exceptions to such right in section 17 which provides that :-

“17. Exemptions (1) The provisions of Chapter II, except sub-sections (1) and (5) of section 8, and those of Chapter III and section 16 shall not apply where—

(a) ...

(b) the processing of personal data by any court or tribunal or any other body in India which is entrusted by law with the performance of any judicial or quasi-judicial or regulatory or supervisory function, where such processing is necessary for the performance of such function;”

22. Therefore, in the facts and circumstances of this case no infirmity is caused by disclosures of mobile numbers and email ids of Noticees amongst themselves.

23. Having dealt with the preliminary objections, I now proceed to deal with the merits of the allegation. I deem it apposite to refer to the relevant provisions of law alleged to have been violated in the matter, extracts whereof are reproduced as follows:

SEBI Act, 1992

“Section 12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

SEBI (PFUTP) Regulations, 2003

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 manipulative, fraudulent or an unfair trade practice in securities markets.

(2) *Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following, namely: —*

(a) *knowingly indulging in an act which creates false or misleading appearance of trading in the securities market;*

.....

(d) *inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;*

.....

(k) *disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;*

.....

(r) *knowingly planting false or misleading news which may induce sale or purchase of securities.”*

24. It established and settled position that with regard to charge of violation of the PFUTP Regulations there must be convincing preponderance of probability to support the allegation of fraud and fraudulent practices. In the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjuncture or suspicion cannot sustain the finding of fault. Merely, probablising to prove the fact on the basis of preponderance of probability and incomplete circumstantial evidence is not sufficient to establish a serious charge of fraud and fraudulent act¹. Further, having regard to the gravity of the wrong doing higher must be the preponderance of probabilities in establishing such charges. Hon’ble Supreme Court in *Union of India vs. Chaturbhai M. Patel* (AIR 1976 SC 712) held that fraud, even in civil proceedings, must be established beyond reasonable doubt. According to the decision of Hon’ble SAT in *Parsoli Corporation vs. SEBI* (Appeal No. 146/2011 order dated 12th August 2011) held that :- *“...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same.”* In the matter of *Networth Stock braking Ltd vs. SEBI* (SAT Appeal No 5 of 2012) , vide order dated June 19, 2012 Hon’ble SAT held that :- *“This Tribunal has been consistently*

¹ *Sterlite Industries V.s. SEBI (2001) 34 SCN 485 (SAT)*].

holding that violation of PFUTP regulations involves commission of fraud which is indeed a serious market offence and a high degree of probability is required to establish such a charge.”

25. The allegations in this particular case, needs to be looked with utmost care and caution taking into above guiding principles. In this case, learned advocates have referring to many paras in the SCN valiantly and pithily contended that the investigation in this case is “lazy” according to them. According to Noticees 1, 2 and 5, the SCN itself shows conjectures and surmises as it only probablises that “Noticee 1 had **possibly** uploaded and promoted the video on YouTube regarding the scrip of Atlantaa.”. Further in Para 47, the SCN says that all the Noticees 1 to 7 had “*colluded and engaged in a coordinated scheme to induce investors to acquire securities in the scrip by uploading false and misleading videos.*” According to them, it is intriguing as to how Noticees 3, 4 6 and 7 could be said to be the part of a ‘*coordinated scheme*’ in uploading the alleged videos. In this regard, it is pertinent to mention that charges in SCN cannot be vague and ambiguous to make out a case. I note that in the matter of *Narendra Ganatra vs SEBI (Appeal No. 47 of 2011 decided on July 29, 2022)*, Hon’ble SAT observed as under:

“We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures.”

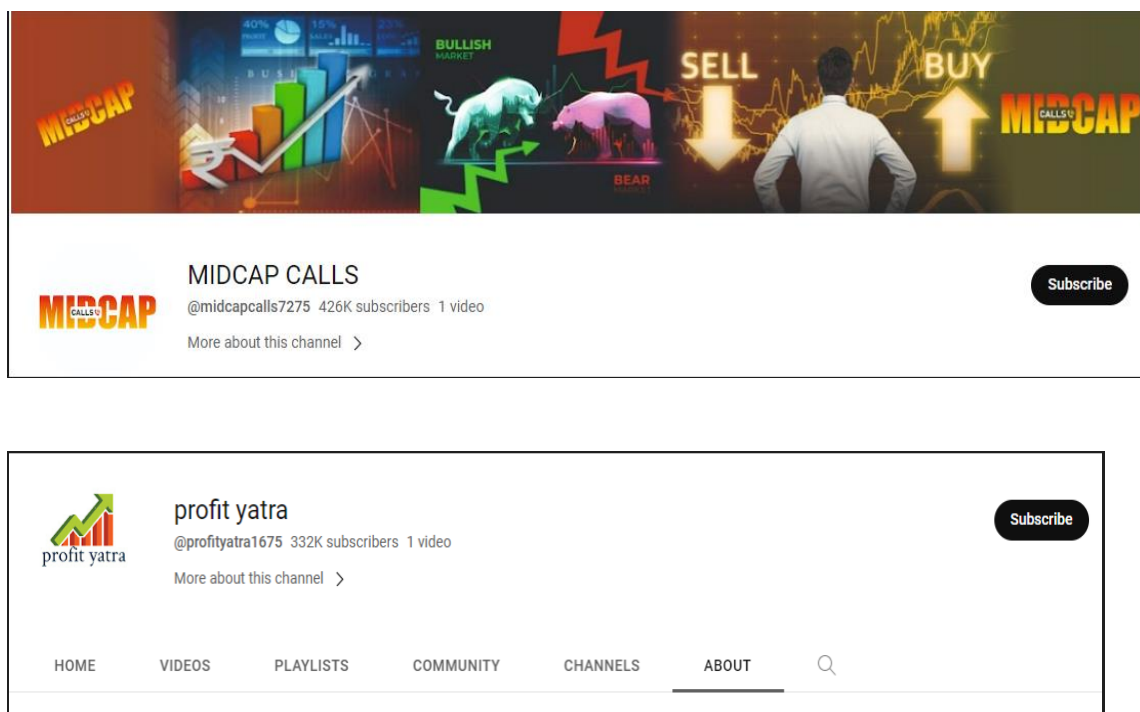
26. The SCN in its para 47 makes a cumulative and composite charge against all the Noticees 1 to 7 alleging that they all had colluded and engaged in a coordinated scheme to induce investors to acquire securities in the scrip of the Company by uploading false and misleading videos on two YouTube Channels. As a part of this scheme, Noticees 1, 3, 4 and 5 bought shares at a lower price and subsequently, sold a substantial portion of their holdings at inflated prices, thereby, making unlawful gains at the cost of the new investors. Hence, Noticees 1 to 7 are alleged to have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a), (d), (k) and (r) of the PFUTP Regulations.

27. It is settled position that allegation should not be vague and ambiguous but should be made with clarity and specific facts supported by law alleged to have been violated. In my view, in these proceedings, it would not be proper to brush aside the SCN on these preliminary and technical grounds alone. In my view, these submissions need to be seen while examining the entire gamut of facts and circumstances of the case holistically. I proceed accordingly.

28. In this case, the charge as concluded in para 47 of the SCN is – “that Noticees 1 to 7 had **colluded and engaged in a coordinated scheme to induce investors to acquire securities in the scrip of Atlanta by uploading false and misleading videos on the aforementioned YouTube Channels. It is alleged that as a part of this scheme, Noticees 1, 3, 4 and 5 bought shares at a lower price and subsequently, sold a substantial portion of their holdings at inflated prices, thereby, making unlawful gains at the cost of the new investors.** Hence, Noticees 1 to 7 are alleged to have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (a), (d) (k) and (r) of the PFUTP Regulations. In order to deal with this composite charge yet disconnected charge, it needs to be examined whether all the Noticees acted in league as part of a single scheme and coordinated the uploading of video and sale of shares by some of the Noticees as alleged above.

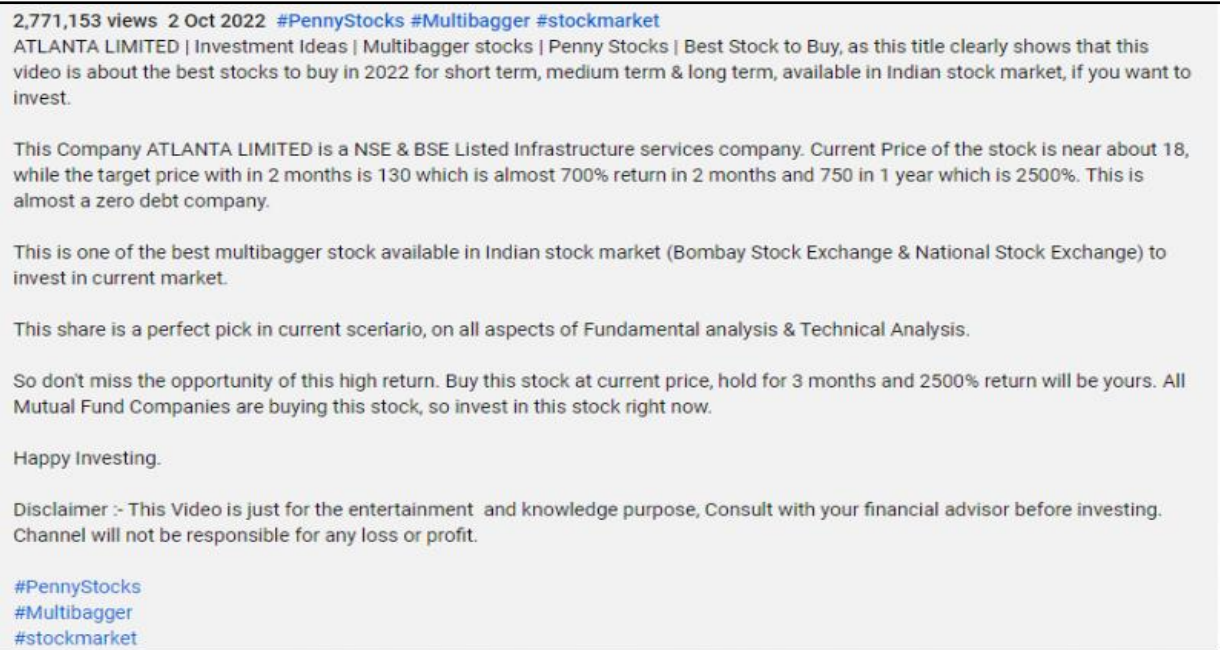
29. It is noted that the YouTube Channels — ‘MIDCAP CALLS’ and ‘profit yatra’, were created on January 23, 2022 and September 25, 2021, respectively. As on March 03, 2023, ‘MIDCAP CALLS’ had 4.26 lakh subscribers and ‘profit yatra’ had 3.32 lakh subscribers. Screenshot of the YouTube channels’ homepages is as following:

Image 1



30. The following screenshot (as on March 3, 2023) of the description of the video that was uploaded on October 2, 2022 shows the unequivocal statements with definite amount of recommendation to public at large to buy in the scrip of the Company:

Image 2



31. It is noted that the different dates as contended indicate the dates of creation of channels, date of upload of videos and date on which screenshot of description of video has been taken. Hence, I do not find any date mismatch with respect to the details of the YouTube channels stated in the SCN as contended by Noticees 1 and 2.
32. I further note that as per the information received from Google LLC, the YouTube channel 'profit yatra' had recovery email address that belonged to Noticee 1. In this context, Noticee 1 has acknowledged himself that as a social media consultant, he creates YouTube channels or uses channels made available to him by his clients/customers and also makes payment to Google Inc. to take advantage of Google's own marketing on YouTube. These facts indicate with reasonable amount of certainty that the Noticee 1. had uploaded the above videos. In fact, during the investigation, he himself stated that he had '*possibly*' uploaded the video regarding the scrip of the Company and promoted that video. In my view the above quoted narration in para 10.3 of the SCN has crept in due to such affirmation of the Noticee 1 himself. I note that on receipt of the SCN, subsequently, he has changed his stand and narrative and has denied that the videos provided by SEBI are the videos uploaded on the aforesaid YouTube Channels. When seen in perspective of recommendations as shown in above picture of the screenshot of the video and subsequent act and conduct of the Noticee 1, it is established that the basis of allegation against him is not based on any conjecture or surmises. This is more so because the allegation is supported by Whatsapp chats between Noticees 1 and 2 regarding the message in the video in the scrip of the Company. From

the said Whatsapp chats, it is observed that the following image was sent by Noticee 2 to Noticee 1 on the evening of October 01, 2022.

Image 3



33. I note that the above Image refers to the price of share of the Company which was Rs.18.50 on September 30, 2022 and the image claims that the price would reach Rs. 130 in two months. Further, the conversation between Noticees 1 and 2 on October 02, 2022 was as follows:

5:43:05 a.m. Noticee 1: “Bhai kaamna nahi kamaanaa hota hai”

5:47:12 a.m. Noticee 2: “Bhai Es Mai patti lagi hai”

5:47:26 a.m. Noticee 2: “Video different dhikhna ke liyea ek mai lagi thi”

5:47:41 a.m. Noticee 1: “Haan isme hai par bhai iska thumbnail galat hai”

5:47:52 a.m. Noticee 2: “Abhi ho jayega bhai”

5:55:59 a.m. Noticee 2: “Bhai loan deke company debt free hogi hai. Esliyea debt free bola hai”

5:56:28 a.m. Noticee 2: “Agar aap bolo to hatva deta hu video se?”

34. It is pertinent to mention that there is no scale to measure fraudulent, deceptive and manipulative device, plan and artifice or its impact and the findings in that regard always depend on inferences drawn from a mass of factual details. Findings in this regard can also be gleaned from patterns of transactions/dealings, conduct and behaviour of connected parties. It is settled position that when an inference is drawn that an act or omission is with reasonable expectation of in the know of things such expectation can only be based on reasonable inferences drawn from foundational facts². Also in **SEBI v. Kishore R. Ajmera, (2016) 6 SCC 368 at 383**, Hon’ble Supreme Court stated that: -

“26. It is a fundamental principle of law that proof of an allegation leveled 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 leveled. While direct evidence is

² Chintalapati Srinivasa Raju vs. SEBI (2018) 7 SCC 443, SC

*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.***”

35. The connection between Noticee 1 and 2 is admitted as Noticee 1’s wife and Noticee 2 are directors in Laddu Gopal Ventures. Noticees 1 and 2 with have failed to explain the veracity of above WhatsApp conversation. The proximity of time of exchange of image with the 2-month target price of the scrip, video upload with the positive announcement with emphatic recommendations in the video, above Whatsapp conversations coupled with connection between these two Noticees and claim that the declaration in video was personal opinion belie the claim of the Noticee 1 that the video relied upon is tampered and is different than that was uploaded. Thus, the charge of collusion and engagement in alleged coordinated scheme to induce investors to acquire securities in the scrip of Company by uploading false and misleading video is established in respect of Noticee 1 and 2 based on these foundational facts alone. I, therefore, reject the contentions of Noticee 1 and 2 that they were unaware of the content of the Video. It is a case of skilful ignorance when these Noticees have adopted a strategic choice to be deliberately unaware of the contents. Their claim put through in such a ruse contain tell-tale story of how the entire scheme was designed and structured on the building blocks of making misleading representation through video upload, enticing and inducing gullible investors to trade in the shares of the Company, buying the shares and promptly selling them at price inflated on account of such misleading representations, beguile the same as transactions with commercial sense masked as digital media marketer.

36. The contents of video were surely misleading and fraudulent. As held by Hon'ble Securities and Appellate Tribunal (‘SAT’) in matter of *V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal No. 104 of 2011)*, *inter alia*, as follows:

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities." (Emphasis supplied)

37. Further, with regard to the allegation of *fraud* and violation of the provisions of *PFUTP regulations*, I refer to the judgment of Hon'ble Supreme Court in *SEBI v. Shri Kanaiyalal Baldevbhai Patel [(2017) 15 SCC 1]*. In the judgment, it has been observed that fraud, as per the definition, even includes an act, expression, omission or concealment which, even though was not committed in a deceitful manner, but has (or had) the effect of inducing another person to deal in securities. The burden on SEBI in such a case will not be to prove that the person did the inducement dishonestly or in bad faith, but only to establish that the person so induced would not have acted the way he did if he was not induced. Hence, I find that the element of '*intention to commit fraud*' is not required to be proved. Further, *mens rea* is not an indispensable requirement to attract the rigour of Regulations 3 and 4 of PFUTP Regulations, and the correct test is one of preponderance of probabilities.

38. Coming to the assessment of circumstantial evidence of inference that other Noticees also were part of the above fraudulent plan of Noticees 1 and 2, I deem it appropriate refer to the guiding factors laid down by Hon'ble Supreme Court in the matter of *Balram Garg v. Securities and Exchange Board of India, 2022 SCC Online SC 472* as contended in this case also. It is to be noted that in this case, Hon'ble Supreme Court while deciding on the insufficiency of circumstantial evidence in the facts and circumstances of that case, emphasized that circumstantial evidence alone, such as trading patterns and timing, did not suffice to establish guilt. I note that subsequently, in the matter of *Ameen Khwaja Vs SEBI* Hon'ble SAT vide its judgement dated 15.06.2022 held that conduct of the connected parties showing otherwise abnormal behaviour such as no previous trading, trading in abnormal manner during suspected activities, no plausible explanation for trading during such period would show on preponderance of probabilities involvement of such connected entities in the coordinated scheme.

39. It is also pertinent to note that the following statements and recommendations relating to the Company were made in the video:

- The current price of the share is Rs. 18³ and it will reach Rs. 130 within the next 2 months.
- The share price of the scrip was falling because of the court case of 2018 regarding a loan of around Rs 220 crore. However, now company has settled the case with One-time settlement and that could be found /accessed from Google.
- Adani group is going to invest in the company.
- The company works in the field of construction and contracting and has successfully worked on National Projects.
- The company is 37 years old and working with good profit margins. The company is debt free. The company is fundamentally and technically strong. The Relative Strength Index (RSI) and Moving Average Convergence/Divergence (MACD) are in bullish mode. The shares of the Company are not pledged.

40. The SCN alleges that the following statements made in the video regarding scrip of the Company (uploaded on October 2, 2022) were false and misleading:

- (a) The price of the share would reach Rs. 130 from the current price of Rs.18 within next 2 months.
- (b) Adani group would invest in the company.

41. According to the Noticees No 1 ,2 the above statements are in nature of personal view and not misleading. Further, Adani group has not controverted the content of the video. . In this regard, I note that after-market hours on October 14, 2022, the Company had informed the exchange/s about false news spread in the social media about the proposed investment in the company by Adani Group. Hence, based on this clarification from the Company alone, it is established that the contents of the YouTube video were false and misleading. The statements announced in the above video as shown in above image 2 clearly show that the statements were not in the nature of any personal opinion but were clearly in the nature of recommendations based on misleading information dissemination and not merely a personal opinion as claimed. The claim made in the video that the price of the share will increase to Rs. 130 in two months is clearly in the nature of inducement for potential investors to invest in the scrip of the company to follow the recommendation on the alleged YouTube video to earn quick profits. The following specific statements strongly show the

³ Rs. 36.74 as at the close of February 25, 2025

design and purpose apart from inducing the investors to buy the scrip of the Company immediately based on such misstatements and misrepresentations: -

- *This is one of the best multibagger stock available on Indian stock market(Bombay Stock Exchange and National Stock Exchange) to invest in current market.*
- *This is a perfect pick in current scenario , on all aspects of Fundamental analysis and Technical Analysis.*
- *So don't miss the opportunity of this high return . Buy this stock at current price , hold for 3 months and 2500% return will be yours. All Mutual Fund Companies are buying this stock , so invest in this stock right now.*
- *Happy investing.*

42. The 'profit yatra' channel attracted around 28 lakh view counts and 'MIDCAP CALLS' channel attracted around 38 lakh view counts during October 02, 2022 to March 03, 2023. Noticee 1 paid substantial amount of money to Google Ads during July-December 2022 for promotion of videos on YouTube channel. Thus, it is reasonably inferred that promotion of the videos in the scrip of the Company was done to increase the view counts so that gullible investors are allured and induced to trade in the scrip.

43. I note that while Noticees 1 has, on one hand, claimed contents of the Video as personal opinion, on the other hand it has disclaimed the video itself making evasive claims that the video is tampered and provisions of section 65B of the Indian Evidence Act have not been followed. In my view the entire gamut of facts and circumstances as described in the SCN remain uncontroverted on merits. It shows deceptive machinations employed to achieve the designed purpose. Any claim of touch-me-not distancing through technical objections but culminating in the final denouement wherein the connected parties (Noticee 1 and 2) with all their manipulative assemblage came to the fore setting a seal on their machinations of fraudulent, manipulative and deceptive device cannot be permitted based on technicalities.

44. It is undisputed fact that the aforesaid videos impacted the trading in the scrip of the Company. The misleading video published to public made the scrip of the Company attractive, due to the fake positive claims in the said videos, and, thus, the new investors started pouring in to trade in the scrip which led to increase in the price of the scrip and created interest in it.

45. Considering the above, the strong preponderance of probability has emerged that the contents of the said video were prepared by Noticee 1 in collusion with Noticee 2 and the said YouTube video

was uploaded/promoted by Noticee 1. I, therefore, agree with observations of the investigation that Noticee 1 disseminated false and misleading information to public through video on YouTube channels to induce trades or purchase of shares in the scrip of the Company and both Noticee 1 and 2 connived and collaborated with each other for creation and dissemination of misleading information to public through videos on YouTube channels.

46. It is noted that after upload and promotion of the video as aforesaid, there was an increase in the price and the volume of the scrip from October 12, 2022 to October 19, 2022. There were only six trading days in between the uploading of the video and impact seen in the scrip (October 02, 2022 was Sunday, October 5, 2022 was a trading holiday on account of Dussehra and October 8, 2022 and October 9, 2022 were Saturday and Sunday). The price movement in the scrip during October 12, 2022 to October 19, 2022 and the period prior and post the price rise in the scrip at NSE and BSE was as follows:

Table 5

NSE						
Period	Price at start of period (in Rs.)	Price at end of period (in Rs.)	% Price movement	Average Daily Volume	Number of entities traded for the period	
					Buy	Sell
October 03, 2022 to October 11, 2022 (6 days before impact)	18.9	18.5	-2.12%	1,73,096	2,868	1,827
October 12, 2022, to October 19, 2022 (6 days of impact)	18.4	27.45	49.18%	20,93,183	7,505	4,867
October 20, 2022, to October 28, 2022 (6 days after the scrip shifted to Trade to Trade segment)	27	22.75	-15.74%	1,39,218	1,145	1,322
October 31, 2022 to November 23, 2022 (End of Investigation Period)	22.75	17.15	-32.65%	12,053	453	244
BSE						

Period	Price at start of period (in Rs.)	Price at end of period (in Rs.)	% Price movement	Average Daily Volume	Number of entities traded for the period	
					Buy	Sell
October 03, 2022 to October 11, 2022 (6 days before impact)	19.5	18.55	-4.87%	31,975	383	211
October 12, 2022, to October 19, 2022 (6 days of impact)	18.35	27.2	48.23%	3,00,181	1,117	1020
October 20, 2022, to October 28, 2022 (6 days after the scrip shifted to Trade to Trade segment)	26.5	22.45	-15.28%	30,667	282	309
October 31, 2022 to November 23, 2022 (End of Investigation Period)	22.3	16.9	-31.95%	8,045	194	177

47. From the above it is seen that there has been a significant increase in price and volume of the scrip during October 12-19, 2022. The said increase in price and volume has been observed in the investigation in light of the chronology of events of the case, which is as follows:

Table 6

Date	Details of event
September 29, 2022	The Company informed the Exchange about One Time Settlement with lenders of the company.
October 02, 2022	Uploading of alleged videos on YouTube.
October 12, 2022 –	Price and volume rise in the scrip of Atlantaa
October 14, 2022 (after market hours)	Clarification by the Company on stock recommendation of the Company along with news of proposed investment by Adani Group stating that the news regarding investment in the Company by Adani Group is baseless.

48. It is observed that the price of the scrip had remained stagnant during the period of one week before the video upload and it had moved from Rs. 18.9 to Rs. 18.5 (decrease of 2.12%). However, the price had substantially increased from Rs. 18.4 to Rs. 27.45 (an increase of 49.18%) from October 12, 2022 to October 19, 2022. In the subsequent week, the price fell down from Rs. 27 to Rs. 22.75 (a decrease of 15.74%). Further, the average daily volume in the trading of scrip increased from 1,73,096 to 20,93,183 (12 times increase) during the period October 12, 2022 to October 19, 2022 from the previous week. Similarly, the total number of entities traded increased from 2,868 to 7,505 (2.61 times increase) for buy clients and 1,827 to 4,867 (2.66 times increase) for sell clients during the period October 12, 2022 to October 19, 2022 from the previous week. The SCN details that during October 12, 2022 to October 19, 2022 the trading price and volume in the scrip had witnessed huge spurt.

49. It is also an admitted fact which has been noted in the SCN that the Company during September 2022 the Company had made announcement with respect to One Time Settlement with State Bank of India, Union Bank of India and Bank of Baroda and it was going to be a zero debt company which was a positive news. While this factor could also be a reason for positive impact on price and volume, the fact remains that the above misleading statements and recommendations made through video uploaded by Noticee 1 and 2 on YouTube channels was fraudulent, deceptive and manipulative.

50. The SCN in para 25 refers to 'period of manipulation' and makes an attempt to suggest the manipulation in price when it describes price movement in scrip from Rs. 18.4 to Rs. 27.45 (an increase of 49.18%) from October 12, 2022 to October 19, 2022 and then fall in price in the subsequent week, from Rs. 27 to Rs. 22.75 (a decrease of 15.74%). I note that this is not case of price manipulation due to trading in the scrip or any synchronised transactions amongst the Noticees. The allegation of price manipulation is solely based on misleading recommendations by Noticee 1 with active and concerted acts of Noticees 1 and 2. The SCN proceeds to connect the other Noticees based on connection *inter se*, telephone calls and trading by them as alleged in the SCN. The connections have been admitted by the Noticees.

51. The connection amongst the Noticees have been alleged based on the following: -

- (a) Noticee 1, had stated that he knows Noticee 6 and Noticee 7 and that he used to work with Noticee 3 as their employee.

- (b) Noticee 3 is stock broker of Noticee 4. One Mr. Ashish Shah , one of the partners of Noticee 3 has stated that promoters of Noticee3 are relatives of partners of Noticee 3.
- (c) Noticee 4 is sister concern of Noticee 3.
- (d) On August 18, 2022 Noticee 1 had two call communications for a duration of 39 seconds and 12 seconds, respectively Mr. Ashish Shah, one of the partners of Noticee 3.
- (e) On August 20,2022, Noticee 1 had one telephone call with Noticee 6 (who is a promoter & Director of partners of Noticee 4) for a duration of 12 seconds.
- (f) On October 13, 2022, Noticee 1 had one call to the MD of Noticee 3 for a duration of 64 seconds and another call on November 12, 2022 for a duration of 148 seconds.
- (g) Noticee7 (who is another promoter and director of Noticee 4 and brother of Noticee 6) had calls with Noticee 1 (on October 27, 2022 for a duration of 63 seconds, on October 28, 2022 for a duration of 38 seconds and on November 12, 2022 for a duration of 152 seconds).
- (a) Noticee 1 had 42 phone calls with Noticee 5 during the investigation period.

52. While all the Noticees have contended that the calls were not at all with regard to above video upload, it is matter alleged collusion and this fact cannot be ignored altogether. If any fraudulent design can be inferred based on abnormal trading during the time when video was uploaded in while acting in corer by Noticee 1 and 2, such connection becomes relevant. It is admitted position that Noticee 5 is the brother-in law of Noticee 1 and has claimed that calls between them was not unusual and was not in connection with his trades in the scrip of the Company. He has relied on observations by Hon'ble Securities Appellate Tribunal in the matter of *Arshad Hussain Warsi and Ors. v. SEBI, Appeal No. 284 of 2023* to contend that merely because of his relationship with Noticee 1, it cannot be concluded that he was a part of any coordinated scheme to induce unsuspected investors to trade in the scrip. While, I agree with this contention, yet the relation could also be relevant if attendant facts and circumstances indicate a concerted act.

53. From the trading pattern as described in the SCN it is noted that Noticees 1 and 5, had traded in shares of the Company only after the uploading of YouTube video. Both bought and sold the shares of the Company during the price rise patch after the uploading of the YouTube video. The SCN makes following trades, during August 01, 2022 to October 11, 2022, during October 12, 2022 to October 19, 2022 and during October 20, 2022 to November 23, 2022 as basis for making the allegations/charge in para 47 of the SCN: -

Table 7

	August 01, 2022 - October 11, 2022				October 12-October 19, 2022				October 20, 2022 - November 23, 2022			
Noti cee	Buy	Buy Value (Rs.)	Sell	Sell Value (Rs.)	Buy	Buy Value (Rs.)	Sell	Sell Value (Rs.)	Buy	Buy Value (Rs.)	Se ll	Sell Val ue (Rs.)
1	-	-	-	-	1,08, 405	24,02, 626	1,08, 505	28,41,4 49	-	-	-	-
3	-	-	7,00, 000	1,17,26, 826	64,50 6	15,17, 632	2,88, 756	85,01,1 20	3,76, 540	85,92, 684	-	-
4	1,70, 842	32,34, 189	4,14, 989	81,08,4 55	2,61, 087	71,32, 959	6,32, 547	1,90,38, 987	50,00 0	12,50, 000	-	-
5	-	-	-	-	52,14 9	11,22, 352	52,14 9	17,23,7 74	-	-	-	-

54. The date wise trading of the 4 Noticees who have traded in the scrip and which are basis of allegations are as per para 13.4 of the investigation report as following:

Date	Noticee	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Trd Vol	Gr Buy Value (Rs)	Gr Sell Value (Rs)
12/10/2022	Noticee1	4465	0	4465	4465	91533	0
12/10/2022	Noticee1	55535	0	55535	55535	1138584	0
13/10/2022	Noticee1	14770	6908	7862	21678	310219	145060
13/10/2022	Noticee1	12000	3093	8907	15093	253009	65417
14/10/2022	Noticee1	0	76769	-76769	76769	0	1965286
14/10/2022	Noticee1	0	100	-100	100	0	2432
17/10/2022	Noticee1	21635	21635	0	43270	609281	663254
Total		108405	108505	-100	216910	2402626	2841449
13/10/2022	Noticee5	2149	2149	0	4298	45897	45774
13/10/2022	Noticee5	50000	0	50000	50000	1076456	0
18/10/2022	Noticee5	0	50000	-50000	50000	0	1678000
Total		52149	52149	0	104298	1122352	1723774
12/10/2022	Noticee3	1918	56663	-54745	58581	36442	1041954
13/10/2022	Noticee3	17708	17708	0	35416	378160	371536
13/10/2022	Noticee3	6700	6700	0	13400	142608	142524
14/10/2022	Noticee3	59761	59761	0	119522	1478476	1493325

17/10/2022	Noticee3	40000	40000	0	80000	1213366	1192463
18/10/2022	Noticee3	0	367032	-367032	367032	0	12386280
19/10/2022	Noticee3	135000	84683	50317	219683	3883907	2410904
Total		261087	632547	-371460	893634	7132959	19038987
12/10/2022	Noticee4	12480	1688	10792	14168	261674	35279
12/10/2022	Noticee4	2136	2136	0	4272	43788	44642
13/10/2022	Noticee4	25124	15383	9741	40507	538459	328027
13/10/2022	Noticee4	0	2351	-2351	2351	0	50194
17/10/2022	Noticee4	0	214132	-214132	214132	0	6267544
17/10/2022	Noticee4	0	50	-50	50	0	1375
18/10/2022	Noticee4	0	50000	-50000	50000	0	1687500
19/10/2022	Noticee4	24766	3016	21750	27782	673711	86559
Total		64506	288756	-224250	353262	1517632	8501120

55. It is seen that Noticee 1 bought 60,000 shares of the Company on October 12,2022 that is the day on which the impact of YouTube video uploaded by him began on the price movement of the scrip. He bought additional 26700 shares on October 13, 2022 and sold 10001 shares at profit on account of sale at inflated price due to fraudulent video uploaded by him. Again on October 14,2022 he sold at gain remaining balance shares out of those he had bought on October 12th and 13th, 2022. He again bought 21635 shares and also sold them all on October 17, 2022. Thus, he had benefited on account of his fraudulent activity of video uploading and making misrepresentation with positive recommendation inducing other investors to buy shares of the Company and when prices increased on account of such manipulative and fraudulent scheme he sold his shares and made illegal gain at the cost of gullible investors. He bought and then sold total 108405 shares of the company during the investigation period and made illegal profit of Rs. 4,37,358.75.

56. Noticee 5 is the brother-in-law of Noticee 1 and it is undisputed fact that there were 42 calls between Noticees 1 and 5 before, during and after the investigation period. The investigation report (para 11.8) finds proximity of following 4 calls relevant for concerted act and alleged involvement of Noticee 5 during the period of video upload and price rise:-

S. No	Noticee	Noticee	Call Date	Call Time	Call Duration (Seconds)
1	Noticee 5	Noticee 1	02/10/2022	14:19:07	177
2	Noticee1	Noticee 5	12/10/2022	10:03:42	12
3	Noticee5	Noticee 1	14/10/2022	08:50:00	8
4	Noticee5	Noticee1	14/10/2022	08:50:18	48

57. As per the investigation report (para 11.9), from the above 4 calls, two calls i.e. one on October 02, 2022 and the other on October 12, 2022 are the reasons for inference that *merely based on Noticee1's instructions, Noticee 5 had traded in the scrip and made unlawful gains*. In these

proceedings, Noticee 5 has failed to give any plausible and cogent reason of such long duration (177 seconds) call on October 02, 2022 i.e. the date on which the video was uploaded on YouTube channels. Both Noticee 1 and 5 have failed to give any plausible and cogent reason for call by Noticee 1 to Noticee 5 on October 12, 2022, the day on which the impact of YouTube video began on the price movement of the scrip. Noticee 5 bought 52,149 shares of the Company on October 13, 2022, that is the next date when as per the investigation report the impact of YouTube video began on the price movement of the scrip. He then sold all that bought shares within short period on October 18, 2022, thereby made a profit of Rs. 6,01,421.25.

58. When seen in totality of circumstances as brought out in the SCN and unexplained by Noticee 5, it is established that Noticee 5 was an active party and colluded and engaged in a coordinated scheme to induce investors to acquire securities in the scrip of the Company by uploading false and misleading videos on the YouTube Channels. As a part of this scheme, he bought shares at a lower price and subsequently, sold entire shares so bought at inflated prices, thereby, making unlawful gains at the cost of the new investors.

59. I note that Noticee 1 made 2 calls to a partner of Noticee 3 on August 18, 2022 and call duration was 39 seconds and 12 seconds. Further, Noticee 1 had called Noticee 6 once on August 20, 2022 and the call lasted for 12 seconds only. These calls were much before the aforesaid Video upload by Noticee 1 acting in league with Noticee 2 and almost 2 months before the trades in question. I note that no call was exchanged by Noticee 1 with Noticee 4, 6 and 7 at the time of uploading of the alleged YouTube video or during the price rise patch of October 12-19, 2022. One solitary call on October 13, 2022 between Noticee 1 and MD of Noticee 3 for a duration of 64 seconds is not significant enough to draw a reasonable inference of fraud on the part of all the Noticees viz; Noticee 3, 4, 6 and 7 as SCN does not bring any material or the foundational facts that this call between Noticee 1 and Noticee 3 could lead to inference that the Noticees 3, 4, 6 and 7 colluded with fraudulent act of Noticee 1 and 2 in uploading the videos or in fraudulent trading of Noticee 5. The calls between Noticee 1 and Noticee 7 were on October 27, 2022, October 28, 2022 and November 12, 2022, i.e., much later from the date of upload of alleged YouTube videos and patch 2 of the investigation period which alleges fraudulent trading period. Similarly, the call between Noticee 1 and the MD of Noticee 3 on November 12, 2022 was also much after the said patch 2. This by itself does not lead to inference that Noticee 1 called said MD to influence trading by Noticee 3 and 4 both on October 13, 2022.

60. It is undisputed fact that Noticees 3, 4 6 and 7 are apparently connected entities based on the relation, directorship in partner of Noticee 3, etc. as alleged in the SCN. From the above trading pattern of Noticee 3 and 4 it is noted that they bought shares of the Company and sold also on different dates from October 12, 2022 to October 17, 2022. Thus, it cannot be inferred that the trades of Noticee 3 and 4 were influenced by call of Noticee 1 as is the inference in case of Noticee 5. The SCN nowhere alleges same as it does in case of Noticee 5 that he traded merely on instruction of Noticee 1 although the allegation against Noticee 5 and Noticee 3 and 4 are based on same set of facts and circumstances i.e. calls/connection and trading during October 12 -19, 2022. I, thus, note that the connection though exists between Noticee 1 and Noticee 3, 4, 6 and 7 but SCN does not show any nexus with the design behind the above misleading statements and recommendations of Noticee 1 and 2. In the peculiar facts and circumstances as alleged in the SCN, the connection amongst these four Noticees *per se* cannot lead to conclusions that they had colluded and engaged in a coordinated scheme to induce investors to acquire securities of the Company. The trading pattern of Noticee 3 and 4 as relied upon in this particular case, shows that they were holding shares of the Company earlier, they bought as well as sold shares during October 12, 2022 and further bought shares (total 4,26,540) of the Company during October 20, 2022 to November 23, 2022.

61. I also note that Noticees 3 and 4 had traded in several scrips (around 35 scrips by Noticee 3 and over 100 scrips by Noticee 4) during 2022-23 and have traded in scrip of the Company regularly during 2022-23. Further, the total trade value of shares of the Company by Noticees 3 and 4 as a percentage of their total trade value was around 0.22% and 0.02%, respectively. They have continued to buy shares of the Company post October 20, 2022 as is evident from the SCN itself. I also note that the NSE being first level regulator has, in its report, concluded that *“from the data available with the exchange, any apparent relation between the promoter, seller and the person behind the video could not be established”*. Further, name of Noticees 3 and 4 do not figure in the top 5 profit makers as per said NSE report.

62. It is also noted that the investigation report in para 13.8 says that during patch-2 (i.e. During October 12, 2022 to October 19, 2022) Noticee 3 and 4, had manipulated the scrip price and sold the shares at inflated prices, thereby made profit but the SCN does not make any allegation like that at all. In fact, the investigation report itself has not been able to bring home as to how Noticee 3 and 4 colluded with Noticee 1 and 2 in manipulating the price by making false and misleading representation in the videos uploaded by Noticee 1 acting in concert with Noticee 2. The matter, thus, cannot be decided based on merely, probablising to prove the allegation in this case on the

basis of preponderance of probability and incomplete circumstantial evidence. I also note that the facts of this case are different from those in similar matters. For example, in the matter of *Pressure Sensitive Systems (India) Limited (PSSIL)*, it was brought out in that the traders first acquired shares at low prices as part of plan of as part of the misleading plan of the Misleading Message Disseminators. However, in this case, there is no such allegation. The SCN directly assumes and says that Noticees 3 and 4 “*had taken advantage of the misinformation spread through YouTube videos uploaded by Noticee 1 and sold the shares in the scrip ..*” I am inclined to agree with contention in this regard. This is a peculiar case in itself where the charge is not clearly made out and involvement of Noticees other than Noticee 1, 2 and 5 is alleged based on possibilities and assumptions. Further, in this case, the Company had made positive announcement in close proximity of the trading of Noticee 3 and 4 and it cannot be assumed that they traded mainly on the basis of misleading video uploaded by Noticee 1 and 2. It is noted that NSE also did not find any collusion of these Noticees in the plan of Noticee 1 and 2. The material before NSE and investigating officer of SEBI were same. The SCN, in this case does not allege artificial increase in volume by Noticee 3 and 4 like Volume Creators in other such cases.

63. It is also admitted fact that Noticees 6 and 7 have not traded at all in the scrip of the Company and the allegations against them are also not based on any trades by them. The allegations against them are solely on account of they being connected persons and also as directors in Monarch Network Capital Ltd. Who was arrayed as Noticee 8 in the SCN. Their role, as connected entities, in the fraudulent scheme of Noticee 1, 2 and 5 has not been established. Further, the SCN in respect of Monarch Network Capital Ltd. has been disposed of by way of Settlement order dated February 21, 2025. The allegations against Monarch Network Capital Ltd., thus, stand disposed of without admission or denial of allegations on the part of said Monarch Network Capital Ltd. Thus, said Noticees 6 and 7 cannot be now penalised for any act or omission, which do not survive, on the part of Monarch Network Capital Ltd. Hence, considering the lack of circumstantial evidence, vague and ambiguous allegations in respect of these Noticees, I am inclined to give benefit of doubt to Noticees 3 and 4 as well as their connected entities Noticees 6 and 7. As observed by the Hon’ble Supreme Court in the matter of *Digamber Vaishnav and Ors. V. State of Chhattisgarh (05.03.2019)*, strong suspicion, strong coincidences and grave doubt cannot take the place of legal proof.

64. In view of the above, I find that Noticees 1, 2 and 5 have colluded and engaged in a coordinated scheme to upload misleading videos to induce investors to trade in shares of the Company and in

doing so, they have violated Section 12A(a), (b), (c) of the SEBI Act and regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(d), (k) and (r) of the PFUTP Regulations as alleged.

65. Considering the above facts and circumstances of this case, I deem it appropriate to issue directions to the Noticees 1, 2 and 5 under section 11B(1), 11(4) read with Section 11(1) of the SEBI Act the apart from the disgorgement of unlawful gains as contemplated in the SCN. In this case, as found hereinabove, Noticee 1 had made illegal profit of Rs. 4,37,358.75 and Noticee 5 had made illegal profit of Rs. 6,01,421.25. Noticee 2 has not traded at all. Noticee 1 and 5 have contended that the direction to disgorge must be in relation to the alleged illegitimate profit made by the concerned Noticee and there should not be joint liability. Although these Noticees have been found to be acting in league and concert, I note that in similar matters such as in the case of *Pressure Sensitive Systems (India) Limited*, vide order dated January 31, 2025, the concerned Noticees were directed to disgorge their respective unlawful gains individually. As a matter of consistency, I permit this request of Noticees 1 and 5.

66. The SCN also contemplates imposition of monetary penalty on the Noticees 1, 2 and 5 under Sections 11B (2) and 11(4A) read with Section 15HA of the SEBI Act for the aforesaid violations. Considering the contumacious conduct, false representation misleading recommendations, inducing entrapping gullible investors using deceptive or manipulative tactics as found in this case this case deserves stern actions of not only directions but also for inflicting monetary penalty under section 15HA by exercising power under Sections 11(4A) and 11B (2) of the SEBI Act. This is a classic case where persons with fraudulent tactics induced those who could be naïve, vulnerable or easily persuaded, to trade in the scrip likely to result in financial losses when the perpetrators sell their holding to them at inflated prices. The relevant provisions of Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2), 15HA of the SEBI Act are reproduced below:

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply: Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached];

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]

(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

11B. (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary, —

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. —For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

67. I also note that the power under section 11B is *pari materia* the power under section 11(4A). In fact, the power under the both sections are nothing but a replica of each other in two different sections. This power is not intended for inflicting same monetary penalty twice under the charging sections referred in suction 11(4A) and replicated under section 11B (2).

68. Having considered the above facts and circumstances, while adjudging the quantum of penalty under above section 15HA, I have also given due regard to the factors provided in section 15J of the SEBI Act which provides as follows:

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

69. In this case, the Noticees 1 and 2 have made unlawful gains which has been duly quantified for the purpose of disgorgement as found hereinabove, Noticee 1 and 2 are noted to be repeated defaulters and have acted against the spirit of fair play of the market and sound trading principles in the past also. I note that following orders have been passed against the Noticees 1 and 2 by SEBI in the past:

Sl. No.	Name of the Noticee	Case Name	Directions
1	1 and 2	Order dated January 31, 2025 in the matter of Pressure Sensitive Systems (India) Limited	(a) Disgorgement of unlawful gains (b) Restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the

Sl. No.	Name of the Noticee	Case Name	Directions
			securities market in any manner, whatsoever, for the period of 5 years and 3 years respectively (c) Monetary penalty of Rs. One crore and Rs. 50,00.000, respectively.
2	1	Order dated October 31, 2023 In the matter of Sadhna Broadcast Ltd	Restraint order
3	1	Order dated November 01, 2023 In the matter of Sharpline Broadcast Limited	Restraint order

70. For exercising the choice to issue directions and monetary penalties in the peculiar facts and circumstances of this case, I have also been guided by the principles of consistency and proportionality. The current proceedings do not entail restorative justice practice as no victim restitution is contemplated. Thus, the trade-off tends to be made more in favour of consistency and proportionality. While proportionality demands a penalty should be proportionate with the mischief it seeks to address and penalties cannot be disproportionate to the magnitude of default. No arithmetical formula can be devised to impose a fixed penalty on each case. Thus, consistency comes into play. However, given a set of alternatives, pairwise comparison matrices also come into play and different matrices may apply to a similar case if magnitude of both cases materially differ with regard to different matrices. Here again, no mathematical formula could be possible. I note that in, similar matters such as the matter of *Pressure Sensitive Systems (India) Limited* (PSSIL) the above mentioned penalties were imposed due to fraudulent act of Noticee 1 and 2. Thus, the instant case is a classic case of repeated violation. The violations in both cases are closely contemporaneous and Noticees 1 and 2 have acted in tandem. While the *Pressure Sensitive* case related to the period April 27, 2022 to December 06, 2022 the instant case relates to the period August 01, 2022 to November 23, 2022. Thus, the Noticee 1,2 have repeatedly devised fraudulent

machinations to defraud the investors in respective scrips on multiple occasions. The facts in both cases are common to some extent e.g. in both cases Noticees 1 and 2 have been found to have uploaded the false and misleading videos on YouTube channels that have impacted the price and volume of the scrip and attracted/ induced new investors in the concerned scrips. In both the case, Noticee 1 bought shares at low prices and sold them at inflated prices and made unlawful gains.

71. However, on examination of pairwise comparison matrices, it is noted that both cases differ in few matrices some of them are listed as following: -

- (a) In the *Pressure Sensitive* case Noticee 1 was connected with the company also being its chief financial officer and was, thus, privy to most of the key information about that company. However, in the instant case, there is no such allegation.
- (b) In the *Pressure Sensitive* case Noticee 2 had different role than that in the instant case. Both, Noticees 1 and 2 were the creator of YouTube Channels, and were classified as a Misleading Message Disseminators. While, in the former case, Noticee 2 was also a trader and part of the group artificially increasing the volumes of trading, in the instant case, he is not found to have traded in the scrip of the Company. Further, Noticee 5, in the instant case, is closely connected with Noticee 1 and part of his scheme and has also traded in the scrip of the Company and made unlawful gains.
- (c) In *Pressure Sensitive* case Noticee 1 also cornered the shares of PSSIL before publishing the misleading videos on YouTube Channels. However, in the instant case, there is no such allegations.
- (d) In *Pressure Sensitive* case the SCN level charge of artificially increasing the volume and price, in the instant case the SCN though recognises impact of videos on increase of price and volume of the scrip, it does not make any allegation of artificial increase in volume. The SCN in this case, accepts the 10 days' gap (involving six trading days) between uploading of video and impact evidenced on the scrip.

72. Considering above material difference in approach adopted and facts relied upon in both the above cases, I am not in position to adopt the same penalty as imposed in the order dated January 31, 2015 in *Pressure Sensitive* case.

73. In view of the above, I, in exercise of powers conferred upon me under sections 11(1), 11(4), 11B (1) read with section 19 of the SEBI Act, do hereby pass the following directions, in the interest of investors and market integrity:

- (a) Noticee 1 and 2 and 5 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the following period, from the date of this order: -

S. No	Noticee No.	Name of the Noticee	PAN	Period of debarment
1	1	Manish Mishra	AMPPM6823L	5 years
2.	2	Vivek Chauhan	AHPPC9620A	5 years
3.	5	Ankur Sharma	BMIPS3640D	5 years

- (b) If the above Notices have any open position in any exchange traded derivative contracts, as on the date of the order pursuant to any valid transaction, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay-in and pay-out obligations in respect of any valid transaction transactions, if any, which have taken place before the close of trading on the date of this order.
- (c) Noticee 1 and 5 are directed to disgorge the following unlawful gains within 45 days from the date of this order and the same shall be credited into the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, within 45 days from the date of this order: -

S. No	Noticee No.	Noticee/s liable to disgorge the wrongful gain	Amount of unlawful gain to be disgorged
1	1	Manish Mishra	Rs. 4,37,358.75
2.	5	Ankur Sharma	Rs. 6,01,421.25.

- (d) Noticee 1, 2 and 5 are prohibited from selling their assets, properties including mutual funds/shares/securities held by them in demat and physical form except for the purpose of effecting disgorgement as directed in point (c) above.
- (e) Further, the banks are directed to allow debit from the bank accounts of the Noticees 1, 2 and 5, only for the purpose mentioned in point (c) above and/or for payment of penalty as ordered hereinafter. This direction shall cease to operate upon the payment of respective disgorgement and penalty amount.

74. In addition to above directions, I in exercise of the powers conferred upon me under sections 11(4A)/ 11B (2) read with Section 19 of the SEBI Act and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules,1995 hereby imposed with the following monetary penalties on the Noticees 1, 2 and 5 under section 15HA of the SEBI Act: -

S. No	Noticee No.	Name of the Noticee	Amount of penalty(Rs.)
1.	1	Manish Mishra	50,00,000/-(FiftyLakhs)
2.	2	Vivek Chauhan	10,00,000/-(Ten Lakhs)
3.	5	Ankur Sharma	10,00,000/-(Ten Lakhs)

75. The Noticees 1, 2 and 5 shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee (s) may contact the support at portalhelp@sebi.gov.in.

76. The Noticees 1, 2 and 5 shall forward details of the online payment made in compliance with the directions contained in this Order to the Division Chief, IVD-ID-12, SEBI, SEBI Bhavan II, Plot no. C -7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051 and also to e - mail id: tad@sebi.gov.in in the format as given in table:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

77. This Order shall come into force with immediate effect.

78. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of

the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee 1, 2 and 5.

79. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to all the Noticees and also to SEBI. This Order shall also be served on Recognised Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.

Date: April 30, 2025

Place: Mumbai

**SANTOSH SHUKLA
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA**