BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-NK/AO/22/2018-19]

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

In respect of

Sunil Purohit

(PAN: AHSPP9704F)

In the matter of

Trading in the Shares of K. Sera Sera Productions Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the alleged irregularity in trading in the shares of M/s. K. Sera Sera Productions Limited (hereinafter referred to as 'K Sera Sera/Company'), and into the possible violation of provisions of the SEBI Act, and various Rules and Regulations made there-under, for the period from May 2, 2005 to July 1, 2005 (hereinafter referred to as the investigation period). During the period under investigation, the scrip was traded on BSE Limited (BSE) and saw volatility in volume and price. At the BSE, the scrip opened at Rs.74.35 on May 2, 2005, reached a high of Rs.97.50 on May 24, 2005 and low of Rs. 67.50 on May 10, 2005 and closed at Rs.89.25 on July 1, 2005.

2. Investigation observed that some of the clients including the Noticee and some of the trading members trading in proprietary accounts and on behalf of certain clients indulged into circular/reversal trades to create artificial appearance of trades thereby

creating artificial volume in the scrip, which also adversely impacted the price of the scrip.

3. SEBI, therefore, initiated adjudication proceedings under the SEBI Act, 1992 against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 'SEBI (PFUTP) Regulations 2003').

4. Subsequently, Show Cause Notice No. A&E/DRK/ASG/153888/2009 dated February 10, 2009 was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring him to show cause as to why an inquiry should not be held against him for the alleged violations. The SCN alleged that a group of clients including the Noticee along with some stock brokers, had entered into synchronized trades among themselves on majority of the days they traded on BSE. Such synchronized trades constituted approximately 92.74% of the total quantity traded by these clients and 43.63% of the total market volume in the scrip of K. Sera Sera. The Noticee is also alleged to have indulged in circular trading, reversal of trades and synchronized & structured trades in connivance with other clients and stock brokers.

5. The SCN was sent to the Noticee by Registered Post Acknowledgment Due and the same was delivered to the Noticee. The Noticee failed to reply to the SCN. Subsequently, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, the undersigned vide letter dated August 27, 2009 granted an opportunity of personal hearing to the Noticee on September 16, 2009. The hearing notice returned undelivered with the comment "person not staying there'". Therefore, affixture was not attempted. Considering the facts and circumstance of the case a notice was published in English (The Hindustan Times, Mumbai Edition, 10th April) and Marathi (Sakal, Mumbai Edition, 10th April) newspapers informing that SCN was issued against the Noticee in the matter of K Sera Sera and the same is made available on the SEBI Website i.e. www.sebi.gov.in under the heading "Unserved Summons/Notices" and Noticee can

also collect a copy of the SCN from the office of the Adjudicating officer. Further another notice was also published in English (The Hindustan Times, Mumbai edition) newspaper stating that the Noticee or authorized representative may appear for Personal hearing on April 15, 2010 at 5:00 P.M at SEBI Head Office, Mumbai. From the records it is observed that the Noticee neither collected a copy of SCN nor attended the personal hearing without furnishing any reasons. In view of the above attempts made to serve the SCN and personal hearing notices through Speed Post Acknowledgement Due and Hand Delivery Acknowledgment Due as prescribed in the Adjudication Rules and further publication of notices in newspapers, and therefore the Principles of Natural Justice was complied with. In view of the above steps taken to deliver the SCN and personal hearing notices and in absence of any response from the Noticee, the Adjudicating Officer was compelled to pass an ex-parte order against the Noticee based on material available on record.

6. Subsequently the Adjudicating Officer in the Adjudication Order dated May 31, 2010 held that:

"It is noted from the facts available on record that the Noticee had carried out circular trades wherein the majority of the trades among the group were through synchronized orders which resulted in the creation of false or misleading appearance of trading in the scrip and manipulation of the price of the scrip of K SERA and indulged in non-genuine/ fraudulent transactions during the investigation period, in violation of the above-mentioned provisions of the PFUTP Regulations. Further, it can also be concluded that the Noticee indulged in the creation of artificial volume in the scrip of K SERA. It is also to be noted that the Investigation Report has not quantified the profit/ loss for the nature of violations / transactions carried out by the Noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the fraudulent practices and non-genuine transactions.

From the traded volume of the Noticee it is seen that the Noticee trading through Vijay Bhagwandas & Co. traded for 15 days for 245950 shares (gross) in which 219337 shares were traded through circular trading. This accounted for 10.15% of the total market volume (gross) and 89.18% of the total trading (gross) of the stock broker during the period under investigation which is more than sufficient to influence the price/ volume of the scrip as well as affect the market equilibrium. In fact, the objective of such non genuine/ circular/ synchronized trades, as has been undertaken by the group, is to create a false impression about the value of the scrip/ demand for the scrip and then take advantage of it, since the common investors will be vulnerable to be misled by the falsely created high volume. In this case the group indulged in this fraudulent activity and the Noticee was an active member of the group.

In view of the above and in exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of Rs. 4,00,000/- (Rupees Four Lakhs Only) on the Noticee in terms of the provisions of Section 15HA of the Securities and Exchange Board of India Act,1992 for the violation of the provisions of Regulations 4(1) & 4(2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee".

7. The Noticee challenged the said order before the Hon'ble Securities Appellate Tribunal (**SAT**) and vide order dated March 7, 2016 in Appeal no. 143 of 2015 the Hon'ble SAT set aside the order with the following observations:

"In the light of judgment of the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 ***Comp. Cas. 186*** *(S.C.) counsel for the parties' state that*

the orders impugned in the respective appeals be quashed and set aside and the matters be restored to the file of the adjudicating officer for passing fresh order on merits and in accordance with law. Accordingly, orders impugned in the respective appeals are quashed and set aside by restoring the matters to the file of the adjudicating officer so as to pass fresh order on merits and in accordance with law. All contentions of both the parties are kept open".

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to the above direction of the Hon'ble SAT the undersigned was appointed as the Adjudicating Officer vide order dated August 11, 2017, under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15HA of the SEBI Act, 1992, the alleged violations of the provisions of Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. Show Cause Notice No. EAD/AO-PM/NK/30927/2017 dated December 11, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HA of the SEBI Act, 1992, for the alleged violations specified in the SCN.

10. The Noticee replied to the said SCN vide letter dated February 12, 2018. The reply of the Noticee is summarised as below:

    - The Noticee stated that he was surprised to receive a fresh SCN in the above said matter. The Hon'ble Tribunal while remanding back the matter to SEBI passed common Order dated 07-03-2016 and held that:

- *"In the light of judgment of the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194* ***Comp. Cas. 186*** *(S.C.) counsel for the parties' state that the orders impugned in the respective appeals be quashed and set aside and the matters be restored to the file of the adjudicating officer for passing fresh order on merits and in accordance with law. Accordingly, orders impugned in the respective appeals are quashed and set aside by restoring the matters to the file of the adjudicating officer so as to pass fresh order on merits and in accordance with law. All contentions of both the parties are kept open.*
- The Noticee stated that the Hon'ble Tribunal in its Order dated 07-03-2016 had not directed SEBI to issue fresh SCN in any matter including the above said matter and in view of no specific direction from the Hon'ble SAT, SEBI in the matters of SKS Logistic Limited and Parsoli Corporation Limited had issued the original SCN's dated 16-02-2010 and 02-12-2009 respectively.
- Further, the Noticee refuted and denied the allegations in the above referred SCN dated 06-12-2017. Further, the Noticee stated that it refutes and denies that it has any trading account with the Trading Member Southern Shares & Stock Limited as alleged in the SCN. The Noticee further, refuted and denied that of having executed any trade in the scrip of K. Sera Sera.
- The Noticee requested for inspection of documents in the matter which was acceded to.

11. I find that when a matter is restored to the file of the Adjudicating Officer, it is at the discretion of the Adjudicating Officer to issue a fresh SCN or to continue with the original SCN unless specifically told not to issue a fresh SCN in the matter. Therefore, I find the Noticee's submission with respect to the issue of fresh SCN is devoid of merit and uncalled for.

12. Thereafter, the Noticee was granted an opportunity of personal hearing before me on February 28, 2018. The Noticee was represented by his Authorised Representative, Mr. Vikas Bengani and submitted reply dated February 27, 2018

during the hearing, which was taken on record. Further, the Authorised Representative requested for time to submit additional replies which was also acceded to. The Noticee submitted additional reply vide letter dated March 05, 2018. Replies of the Noticee vide letters dated February 27, 2018 and March 05, 2018 are as below:

- *Sir, I have made request for inspection of the documents. However, my request for inspection have not been acceded till date. Since I am objecting the trades allegedly executed in my name in the scrip of K SERA SERA, I should have been allowed inspection of the documents for my detailed written submission. I humbly request you to consider my request.*
- *It is further submitted that the details provided in the SCN were compiled from the Original Trade and Order Log and the complete details of trades allegedly executed by me have not been provided. It is also obvious that several mistakes occurs during compilation of the data. In all these circumstance I should be given a fair opportunity to defend my case. It is only possible when I am being provided the above said data/documents.*
- *It is further submitted that I had manipulated the price of the scrip. However, no details about manipulation of the price in the scrip is given in the SCN.*
- *Without prejudice to my right and contention I am making my submission to the SCN as follows:-*
    - *It is alleged in the SCN that I through the Member Broker Vijay Bhagwandas & Company have executed certain circular trades in the scrip of K SERA SERA. It is further alleged that I had executed circular trades for 1,11,250 shares on buy side and 108087 shares on sell side in the scrip of K SERA SERA during the period of Investigation i.e. 05-05-2005 to 01-07-2005.*
    - *It is further alleged that out of the I have been indulged into circular/reversal trades to create artificial volume in the above scrip of K SERA SERA and also*

adversely impacted the price of the scrip. Thus it is alleged that I have violated provisions of the PFUTP Regulations.

- *I deny and refute that I have violated the Provision of PFUTP Regulations. I further deny that I have executed trades in the scrip of K SERA SERA. I am confident that someone had misused my name for the trading in several scrips including K SERA SERA.*
- *Sir, I have no case, if I would have executed trades in the scrip of K SERA SERA during the Investigation Period. I say and submit that the trades executed in the said scrip by all alleged entities/persons are perfect circular/reversal trades and almost all trades were executed with intention to create artificial volume in the said scrip of K SERA SERA.*
- *I am very much sure that someone had misused my name and executed trades in the said scrip of K SERA SERA by opening illegal trading account with the said Member Broker which was not difficult at that time. In 2003-2005 there were not much strict compliances of KYC. I am also sure that without the connivance of the said Broker, opening of the trading account is not possible.*
- *You are well aware that I must have to contact a broker on phone to execute trades in the securities market. On perusal of data provided in the SCN, it is revealed that there were perfect matching of trades in the scrip of K SERA SERA during the Investigation Period. It could only be possible if a person who execute trade must have direct contact with another side of broker. Otherwise, the trades executed in the said scrip within a span of zero second to one minutes between buy and sell order time is not possible. These trades are perfect example of synchronized trades where time, rate and quantity differences are negligible. I humbly submit that my name/documents/photo were misused in opening the trading account with the said broker and some*

unknown person had executed trades in the said scrips without my consent and knowledge.

- *Sir, I am living a very poor life from last couple of years. I even could not have enough money to meet my day to day expenses. I lost my mother due to my poor condition. I could not arrange more money to pay her increasing hospital bills and due to this I discharged her from hospital and brought at home where she died. I am not using any bank and/or demat account from last couple of years. You may understand that how a person can live without a bank account otherwise he don't have money to deposit. I made aware about my earlier demat account when I had appeared before the Ld. Recovery Officer in 2015-2016. I was having some petty shares in the said demat account which I recently sold through off market and paid loan taken for my mother's treatment.*
- *I am enclosing herewith a copy of the Police Complaint filed by me regarding illegal trades executed in my name through several brokers. However, Police also could not help me as the matters belongs to 10-12 years before.*
- *I could have filed better submissions if my request for providing the above stated documents/data have been acceded. I reserve my right to file additional written submissions in case I am allowed to access the above said requisite documents/data.*

- *My Authorized Representative had appeared before your good self and submitted my written submissions dated 27-02-2018 to the Show Cause Notice dated 11-12-2017 for alleged violation of SEBI PFUTP Regulations into alleged irregularity in trading in the shares of M/s K Sera Sera Productions Limited (K SERA SERA).*
- *I through my Authorized Representative was allowed to file additional written submission. In continuation to my earlier submissions I am filing herewith my additional submissions as follows:-*

- *Since my request for providing the documents have not been acceded, I rely several Order passed by the Hon'ble Securities Appellate Tribunal for providing the copy of the Investigation Report and Original Trade and Order Log.*

  - *Jitesh Pranlal Sheth v/s SEBI, Order dated 01-12-2010 in Appeal No. 137 of 2010.*

    "A large number of buy and sell orders are shown to have matched after a gap of a few seconds. It is difficult for the traders to match the trades in a liquid scrip but at the same time we find that a number of trades were executed between the same parties one of whom is the appellant which is also highly suspicious. The adjudicating officer finds in the impugned order that there is no material on the record to hold that the parties who were trading were linked to each other. In the light of all this, it is difficult to hold that the charge stands established. Since the original trade and order logs had not been furnished to the appellant at any stage of the proceeding, we are of the view that he was deprived of his right to furnish his explanation. In the circumstances, we set aside the impugned order and remand the case to the adjudicating officer with a direction to furnish to the appellant the relevant trade and order logs and then, after giving him an opportunity of hearing, pass a fresh order in accordance with law."

  - *In the matter of Vikas Gourihar Narnavar v/s SEBI, Order dated 15-06-2010 in Appeal No. 281 of 2009*

    "We have heard the learned authorised representative of the appellant and the learned counsel appearing for the Board and it is their common case that relevant portions of the investigation report and the trade logs as referred to in the show cause notice which depicted the role played by the appellant had not been furnished to him along with the show cause notice. This being so, we are satisfied that the principles of natural justice had been violated and that the appellant was not afforded proper opportunity to file his reply. It was

necessary that he should have been made aware of the details of the role that he played in the manipulation of the scrip of the company which was said to have been described in the investigation report. Without going into the issues sought to the raised in this appeal, we set aside the impugned order and remit the case to the adjudicating officer for a fresh enquiry in accordance with law."

- *In the matter K Sera Sera the Appeal filed by Adolf Pinto against the Order of the Adjudicating Officer, SEBI. The Hon'ble Tribunal by its Order dated 23-03-2010 set aside the Order and remanded back the matter to SEBI.*

  "Having heard Dr. S.K. Jain and other learned counsel for the appellants and taking note of some of the glaring errors that were pointed out from the basic data from which the charts had been prepared, we do not think it is safe to base our decision on that material alone. We are of the considered view that the cases need to be sent back to the adjudicating officer for a fresh decision in accordance with law. We, therefore, set aside the impugned orders and remand the cases to the adjudicating officer with a direction that he should furnish to each of the appellants the relevant order logs and trade logs pertaining to the trades on the basis of which it is alleged that they all executed circular/reverse/manipulative trades. It will be open to the adjudicating officer to issue a fresh or a supplementary show cause notice to the appellants and then proceed to pass fresh order(s) expeditiously in accordance with law."

- *For the allegation of price manipulation, I rely the Order passed in the matter of Vikas Ganeshmal Bengani v/s Whole Time Member, SEBI dated 25-02-2010 in Appeal no. 225 of 2009*

  "It is, thus clear, that in order to establish the charge of price manipulation, collusion between the buyer and the seller is necessary. In the case before us it has not been alleged that the appellant was colluding with the counterparty (seller) or with his broker. In the absence of such an allegation it cannot be

held that the appellant was manipulating the price of the scrip of the company upwards. It is interesting to note that during the second period of investigation from February 3, 2004 to July 14, 2004 the price of the scrip of the company was falling despite the appellant buying the shares. Was he still rigging the price upwards? This apart, we have perused some of the charts that were produced before us during the course of the hearing by the learned counsel for the respondent Board and this would clearly show that the appellant was not responsible for manipulating the price. For instance, Annexure III to the show cause notice had furnished to the appellant some of the trades which he executed from January 1, 2002 to March 22, 2002. This Annexure to the show cause notice does not contain the complete data. It does not contain the trades executed in between the dates on which the appellant had traded in the scrip of the company. On January 1, 2002 the appellant purchased 1000 shares at Rs. 42.70 per share when the last traded price was Rs. 41.1. From this it is inferred that the appellant had raised the price from the Rs. 41.10 to Rs. 42.70. This is so but when we look at the trades executed on days when the appellant did not trade, the price of the scrip had similarly gone up and buy orders had been put into the system which were higher than the last traded price. Admittedly, the appellant did not trade in the scrip of the company on January 14, 2002 on which date a number of trades in the scrip were executed. In all those trades the buy order is higher than the last traded price. This clearly shows that not only the appellant but there were others as well who were trading in the scrip at rates higher than the last traded price. There is nothing on the record to show that the Board had proceeded against them. Be that as it may, the trades on January 14, 2002 clearly establish the fact that the price of the scrip was generally going up and it was not the appellant who was responsible. In this view of the matter, the charge of manipulation must fail."

- *I further rely the Order dated 17-06-2015 passed by the Ld. Whole Time Member in favour of Spectrum Chemical in the matter of Crazy Infotech Limited. I specifically rely Para 3.12 of the said Order. No transaction have been executed through my Demat Account.*
- *No connection and relation had been established in between me and other purported entities in the entire SCN.*
- ***Without prejudice to whatever stated hereinabove, if your goodself found me guilty of the violation of the provisions of PFUTP Regulations, I humbly request to your goodself to take a lenient view while deciding the quantum of the penalty.*** *I have nothing to conceal about my financial position. I have no active bank account from last 10 years. I am almost unemployed from last couple of years and are dependent on my friends and relative to meet my day to day expenses. You can assume about my worst financial condition from the fact that I could not arrange much money for treatment of my mother who was seriously ill and I compel to get her discharged from the Hospital. Finally she was died. My father is also ill from last several years and have no source of income. I am ready to provide all the Medical Report, if your goodself may so require. I further rely the Order passed by the Ld. Adjudicating Officers who had taken lenient view while passing the Orders for the similar violations*
    - *Order passed against Mr. Vikas G Narnavar dated 30-03-2012 in the matter of E Star Infotech Limited.*
    - *Order passed against Mr. Vikas G Narnavar dated 10-06-2010 in the matter of Genus Commu Trade Limited and considered the financial condition of the Noticee while considering the quantum of the penalty to be imposed. While passing the said Order, the Ld. Adjudicating Officer observed that "I have also taken into account the submissions made by the notice regarding his sources of income."*

- *Order dated 22-03-2012 passed by the Ld. Adjudicating Officer, SEBI in the matter of E Star Infotech Limited against Mr. Ramesh K Jain and imposed a Penalty of Rs. 50,000/- for the alleged violation of PFUTP Regulations.*
- *By Order dated 17-06-2011, the Ld. Adjudicating Officer had imposed penalty of Rs. 75000/- each to Mr. Adolf Pinto, Gillian Pinto and Kenath Pinto in the matter of K Sera Sera for the alleged violation of PFUTP Regulations.*
- *By Order dated 29-04-2011, the Ld. Adjudicating Officer had imposed penalty of Rs. 75000/- each to Galaxy Broking Ltd. and Mr. Kapil Bhuptani in the matter of K Sera Sera for the alleged violation of PFUTP Regulations.*
- *Several Orders were passed by the Ld. Adjudicating Officer in the matter of K Sera Sera and imposed a penalty of Rs. 75,000/- each to the respective entity.*

➢ *Therefore, I request you to take a lenient view while imposing the penalty.*

13. The Noticee has also filed additional reply vide letter dated August 14, 2018. Relevant portion of the aforesaid reply is reproduced as below:

➢ In continuation to my earlier written submissions, I am making my additional written submissions to the Show Cause Notice dated 11-12-2017.

➢ It is humbly submitted it is a normal practice followed during the Investigation carried out by the SEBI that SEBI calls the record of the suspicious clients from the Stock Exchange and the concerned Member Broker. The records include KYC, Ledger, Trade and Order details etc. By analyzing and compiling the records, the Investigation Department prepare the Investigation Report and make out the prime facie case against the suspected entities/person. In my case except the Trade and Order Log, SEBI has not shared any other information with me. Since there is no mention of such records, I am sure the said details or records was not gathered at that time in my case. It further strengthen the fact the SEBI never went into details whether I executed trades or not with the Member Broker.

- It is further submitted that the allegation in the SCN have been made on the basis of 'circumstantial evidence' (Para 11 of the SCN) and not on the basis of direct evidence. Since there is no available evidence to show that I had transferred/provided fund to the Member Broker, no allegation of execution of trades should be alleged against me. I had not transferred a single penny and the same is evident from my bank account. In the matter of Crazy Infotech Limited (entity name Spectrum Chemicals Pvt. Limited) and Gemstone Investment Limited (entity name Rajesh Bhanushali) the Ld. Whole Time Member had directed to investigate the matter after issuing the SCN and later found that the entities/person name have been misused and the trades were not executed by them. In my case also the Trade and Order Log is the only basis of allegation and not any other concreate evidence has been provided by the SEBI about the alleged trades executed in my name.
- Without prejudice whatever stated herein above, I am making submissions to the Trade and Order Log provided to me:-
  - I have not executed a single trade in the scrip of K Sera Sera. I have not authorized anyone to execute any trade in the scrip of K Sera Sera in my name. The said alleged trades were executed without my consent, approval and acceptance.
  - I have not received any trade confirmation.
  - However, I have not executed any trades but some facts revealed from the Trade and Order Log. No mention about the huge volume generated by Sonata Investment Limited and Maruti Securities Limited. Both the entities have executed huge volume in the span of short period and their volume is greaten then the alleged volume mentioned in the para 4 of the SCN allegedly generated by the alleged entities. It is very pertinent to mention that the Sonata Investment Limited was part of Reliance Anil Dhirubhai Ambani Group and its name has come in well-known 2G Scam.

- The Investigation has not brought out any case against the entities who had generated huge volume during the Investigation Period.
- Admittedly, I have no connection or relation with the counterparties to the alleged trades. I have no fund transfer, shares transfer, KYC relation with the counterparties to the alleged trades.
- No case has been made against me that how I have manipulated the price of the scrip except a bald allegation in the SCN. I am not accepting both the allegation of creation of artificial volume and price volume in the scrip of K Sera Sera.

➢ The allegations made in the SCN must have to be proved beyond reasonable doubt. Merely, my name has been mentioned in the Trade and Order Log does not make a ground to pass any order against me. The same should be match with other evidence available on record. The circumstances warranted a detailed investigation which was not done earlier. There is no prime facie case against me that I allowed my name to be misused for creating artificial volume in the market in the scrip of K Sera Sera. As a citizen of this Country I have every right of getting fair justice.

➢ Despite the fact that I had not executed any trade in the scrip of K Sera Sera, if your good self still find me guilty of execution of alleged trades, I would like to mention several similar types of cases where lesser penalties have been imposed by the then Ld. Adjudicating Officer.

Order Date	Entities/Person Name	Scrip Name	Penalty Amount
28-10-2011	Sanchay Fincom Limited	K Sera Sera	Rs. 50,000/- For PFUTP And Rs. 25000/- For Code Of Conduct
17-06-2011	Adolf Pinto	K Sera Sera	Rs. 50,000/- For PFUTP And Rs. 25000/- For Code Of Conduct
17-06-2011	Gillian Pinto	K Sera Sera	Rs. 75,000/- For PFUTP
17-06-2011	Kenneth Pinto	K Sera Sera	Rs. 75,000/- For PFUTP
29-04-2011	Kapil Bhuptani	K Sera Sera	Rs. 75,000/- For PFUTP

14-12-2010	Victory Trading Corporation	K Sera Sera	Rs. 1,00,000/- For PFUTP
29-04-2011	Galaxy Broking Ltd	K Sera Sera	Rs. 50,000/- For PFUTP And Rs. 25000/- For Code Of Conduct

- I would like to quote the order of the Hon'ble SAT dated 10.01.2011 in the case of Mansukh Stock Brokers Ltd. Vs. SEBI (Appeal No. 194 of 2010) in the same scrip wherein the Hon'ble SAT has observed that:

  "The appellant as well as S. P. J. Stock Brokers Pvt. Ltd. were a part of the same manipulative trading and there being no difference in their conduct, they cannot be treated differently in the matter of imposition of penalty. .... In these circumstances we cannot but reduce the penalty to Rs.75,000/- on the appellant as was imposed on S.P. J. Stock Brokers Pvt. Ltd."

- In the light of the aforesaid submissions I request to your good self to dispose-off the SCN issued against me without passing any adverse Order against me

14. For the reasons mentioned above, I am of the opinion that the Noticee was provided with adequate opportunities of replying to the SCN and of being heard in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

15. I have perused the documents available on record. The issues that arise for consideration in the present matter are:

   i. *Whether the Noticee, by indulging into circular trading has violated the provisions of Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.*
   ii. *Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act, 1992?*
   iii. *If so, what would be the monetary penalty, duly considering the factors mentioned in Section 15J of SEBI Act read with Rule 5(2) of the AO Rules?*

Issue I – Whether the Noticee has violated provisions *Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.*

16. The first issue for consideration is whether the Noticee by indulging into circular trading has violated the provisions of Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. I find from material available on record that a group of clients including the Noticee and certain stock brokers trading in proprietary account, indulged into synchronized/circular/reversal trades amongst themselves on majority of the days they traded on BSE. I find a circular trading pattern between members SPJ Stock Brokers Private Limited (SPJ) trading on own account, M/s Vijay Bhagwandas & Co. trading on behalf of Mr. Sunil Purohit, Peninsular Capital Market Limited (Peninsular) trading on behalf of Mr. Haresh Posnak, Galaxy Broking Limited (Galaxy) trading on behalf of Mr. Santosh Gade and Vijay J Thakkar a sub-broker of VSE Stock Services Limited, trading on behalf of Mr. Mehul A Shah during the period May 2, 2005 to May 23, 2005 (16 trading days). The above entities including the Noticee traded for 4,71,205 shares (circular trading quantity), which constituted 43.63% of total traded volume (10,80,065 shares) during this period. There were 534 buy orders and 382 sell orders which resulted in 538 trades. Further, of the above 471205 shares, 437011 shares (92.74%) were traded with time difference less than 1 minute hence through synchronized orders and their day wise contribution was ranging from 4.20% to 77.31%.

17. I find that trading member Vijay Bhagwandas & Company traded on 15 days on behalf of its client Mr. Sunil Purohit and executed trades for 245950 shares (gross) of which 219337 shares (111250 shares from 101 buy orders and 108087 shares from 76 sell orders) were traded through circular trading and accounted for 10.15% of market volume (gross) and 89.18% of his total trading (gross) during this period. There were 94 buy trades and 110 sell trades (that resulted in circular trades) arising out of 76 buy orders and 101 sell orders. The counterparty to majority of these

trades were members SPJ Stock Brokers Private Limited (own account), Peninsular Capital Market Limited (Haresh Posnak), Galaxy Broking Limited (Santosh Gade) and Vijay J Thakkar (Mehul A Shah).

18. I find from the material available on record that from the analysis of the circular/ reversal trades of these stock brokers /sub brokers on behalf their clients (i.e. time-trade wise) for each day, a clear pattern of circular trading as A>B>C>D>E>A, emerges. The table below displays the circular trading pattern by the entities including the Noticee.

Circular Trade Pattern: A > B > C > D > E > A; **02/05/2005**

Time	**Buy Trade Member**	**Buy Client**	**Sell Trade Member**	**Sell Client**	**Quantity Traded**
10:25:16 10:25:20	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1500
10:25:46 10:25:51	Peninsural Capital Market Limited	Haresh Posnak	Bijay Bhagwandas & Company	Sunil Purohit	1500
10:35:44 10:35:48	Galaxy Broking Limited	Santosh Gade	Peninsural Capital Market Limited	Haresh Posnak	1500
10:48:07 10:48:13 10:48:17	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	1500
			Total Shares Traded		**6000**

19. Further, in most of the trades, one party in the first leg of the transaction cycle was SPJ Stock Brokers Private Limited. Further, the last leg of each transaction cycle became first leg of the next transaction cycle of the circular trades with minimal or no change in the quantity circulated in each cycle. In the aforesaid manner, the last transaction/trade of the day neutralized the first transaction/trade of the day and the entire trading positions were squared off. On perusal of the investigation report I find that the above pattern of trading continued throughout the period May 2, 2005 to May 23, 2005.

20. I note that similar quantity (same or with minimal change in quantity) of shares were circulated amongst the clients including the Noticee through a series of transactions

negating the entire delivery obligation and ending the day with trades having no delivery obligation. I also note that the execution of circular trades repeatedly for several days by the clients as a group is an evidence of their having close nexus with each other. The circular/reversal trades executed by the clients including the Noticee was part of a predetermined plan to match their trades which were not genuine. These trades did not result into transfer of beneficial ownership of the shares and created artificial volume in the shares which also impacted the price. Investigation further observed that the trading pattern clearly indicates the manipulative pattern of the group including the Noticee. Therefore, I am of considered view that no further evidence of nexus amongst the entities to the trades needs to be displayed. A tabular presentation of the circular trading for two dates (02/05/2005 and 03/05/2005) of the 16 circular trading days as provided in Annexure 1 to the SCN is shown as below:

02/05/2005

Time	Buy Trade Member	Buy Client	Sell Trade Member	Sell Client	Quantity Traded
10:25:16 10:25:20	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1500
10:25:46 10:25:51	Peninsural Capital Market Limited	Haresh Posnak	Bijay Bhagwandas & Company	Sunil Purohit	1500
10:35:44 10:35:48	Galaxy Broking Limited	Santosh Gade	Peninsural Capital Market Limited	Haresh Posnak	1500
10:48:07 10:48:13 10:48:17	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	1500
11:13:48 11:13:50 11:13:52	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1050
11:33:10 11:33:12	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	1100
11:46:54	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	1100
11:51:40 11:41:44	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	1100
12:22:18 12:22:22 12:22:25	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1200
12:33:39	VSE Stock Services Limited	Mehul A Shah	Bijay Bhagwandas & Company	Sunil Purohit	1200

12:36:31 12:36:37 12:36:41	Peninsural Capital Market Limited	Haresh Posnak	VSE Stock Services Limited	Mehul A Shah	2100
12:45:21 12:45:26	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	1200
13:24:49 13:24:51 13:24:55	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1100
13:32:36	Peninsural Capital Market Limited	Haresh Posnak	Bijay Bhagwandas & Company	Sunil Purohit	1100
13:46:19 13:46:31	Galaxy Broking Limited	Santosh Gade	Peninsural Capital Market Limited	Haresh Posnak	1100
13:53:31 13:53:35	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	949
14:18:08 14:18:08	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1200
14:25:33 14:25:37	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	1200
14:32:19 14:32:23	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	1200
14:41:12 14:41:14	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	1200
15:09:53	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1200
15:10:06 15:10:08	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	1200
15:10:32	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	1100
15:10:45	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	900
15:10:45	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	100
15:10:49	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	200
			Total Shares Traded		**29799**

03/05/2005

Time	**Buy Trade Member**	**Buy Client**	**Sell Trade Member**	**Sell Client**	**Quantity Traded**
09:58:05 09:58:08	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1887
10:19:45 10:19:50	Peninsural Capital Market Limited	Haresh Posnak	Bijay Bhagwandas & Company	Sunil Purohit	2000
10:40:59 10:41:01	Galaxy Broking Limited	Santosh Gade	Peninsural Capital Market Limited	Haresh Posnak	2000
10:52:54	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	1775
11:17;32 11:17:36	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	2000
11:41:26	Galaxy Broking	Santosh	Bijay Bhagwandas &	Sunil Purohit	2000

11:41:32 11:41:35 11:41:41 11:41:46	Limited	Gade	Company		
11:45:24 11:45:31	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	2000
11:57:31 11:57:34 11:57:36	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	2000
12:18:44	VSE Stock Services Limited	Mehul A Shah	SPJ Stock Broker Private Limited	Own Account	2000
12:34:06 12:34:10	Peninsural Capital Market Limited	Haresh Posnak	VSE Stock Services Limited	Mehul A Shah	2000
12:41:33 12:41:40 12:41:44	Bijay Bhagwandas & Company	Sunil Purohit	Peninsural Capital Market Limited	Haresh Posnak	2000
12:50:02 12:50:06 12:50:09 12:50:18	SPJ Stock Broker Private Limited	Own Account	Bijay Bhagwandas & Company	Sunil Purohit	2000
13:22:38 13:22:40	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	2000
13:33:15 13:33:20 13:33:25 13:33:31	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	2000
13:50:01 13:50:05	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	2100
15:32:30	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	125
13:52:30 13:52:41 13:52:46	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	2100
14:13:43	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	2000
14:25:44 14:25:49	Peninsural Capital Market Limited	Haresh Posnak	Bijay Bhagwandas & Company	Sunil Purohit	2000
14:29:46 14:29:48 14:29:52	Galaxy Broking Limited	Santosh Gade	Peninsural Capital Market Limited	Haresh Posnak	2000
15:03:02	SPJ Stock Broker Private Limited	Own Account	Galaxy Broking Limited	Santosh Gade	1400
15:03:32	Bijay Bhagwandas & Company	Sunil Purohit	SPJ Stock Broker Private Limited	Own Account	1400
15:03:54	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	1500
15:04:29	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	1475
15:04:41 15:04:49	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited Galaxy Broking Limited	Haresh Posnak Santosh Gade	1500 25

15:19:59	Galaxy Broking Limited	Santosh Gade	SPJ Stock Broker Private Limited	Own Account	700
15:20:33	Peninsural Capital Market Limited	Haresh Posnak	Galaxy Broking Limited	Santosh Gade	700
15:20:51	SPJ Stock Broker Private Limited	Own Account	Peninsural Capital Market Limited	Haresh Posnak	700
			Total Shares Traded		**47387**

21. From the above table it can be seen that on 02/05/2005 trading member Bijay Bhagwandas & Company (Code: 77) trading on behalf of its client Sunil Purohit purchased 7250 shares and sold 7300 shares of K Sera Sera, trading member Peninsular Capital Markets Limited (code: 156) trading on behalf of its client Haresh Posnak, purchased 8100 shares and sold 7200 shares, trading member SPJ Stock Broker Private Limited (code: 646) trading in proprietary account purchased 7149 shares and sold 7250 shares, trading member Galaxy Broking Limited (code: 513) trading on behalf of its client Santosh Gade purchased 6100 shares and sold 5949 shares and trading member VSE Stock Services Limited (code: 253) trading on behalf of its client Mehul A Shah purchased 1200 shares and sold 2100 shares. Similarly on 03/05/2005 trading member Bijay Bhagwandas & Company (Code: 77) trading on behalf of its client Sunil Purohit purchased 11287 shares and sold 11500 shares of K Sera Sera, trading member Peninsular Capital Markets Limited (code: 156) trading on behalf of its client Haresh Posnak, purchased 12275 shares and sold 12300 shares, trading member SPJ Stock Broker Private Limited (code: 646) trading in proprietary account purchased 11625 shares and sold 11987 shares, trading member Galaxy Broking Limited (code: 513) trading on behalf of its client Santosh Gade purchased 10200 shares and sold 9700 shares and trading member VSE Stock Services Limited (code: 253) trading on behalf of its client Mehul A Shah purchased 2000 shares and sold 2000 shares of K Sera Sera.

22. I note that the Investigation had identified 16 trading days on which circular trades were executed during the investigation period and the Noticee had indulged into circular trades on 15 days of the aforesaid 16 days. Further the quantity of the circular trades as a percentage to the total market trade volume on those days were

in the range of 4% to 77%. The table below gives the details of the day wise circular traded quantities vis a vis market traded quantities and their percentage.

Trade Dates	Circular Trade Volume	Market Traded Volume	%age of Circular Trade Volume to Market Trade Volume
02/05/2005	29799	39553	75.32
03/05/2005	47387	61296	77.31
04/05/2005	60075	164383	36.55
05/05/2005	49400	65478	75.45
06/05/2005	41750	54516	76.58
09/05/2005	30199	64879	46.55
10/05/2005	35000	66911	52.31
11/05/2005	19700	33804	58.28
12/05/2005	45000	62668	71.81
13/05/2005	50000	67948	73.59
16/05/2005	2550	36347	7.02
17/05/2005	18400	49240	37.37
18/05/2005	18715	62420	29.98
19/05/2005	7500	62479	12.11
20/05/2005	8900	28606	31.11
23/05/2005	6700	159537	4.20
Total	**471075**	**1080065**	**43.62**

23. I note that the Noticee in his reply had denied that he had executed the trades alleged in the SCN and that someone has used his name and executed those trades in the present scrip and also similar trades in several other scrips and therefore, denied the violations alleged in the Show Cause Notice (SCN). The Noticee also submitted that he had filed police complaint with respect to the illegal trades and that the police was also not able to help since the matter was 10-12 years old. I also note that the Noticee submitted that his requests for original trade and order log of the scrip has not been acceded to. I note that the Noticee has not submitted any supporting documentary evidence to base his claim upon with respect to misuse of his name and trading account for illegal/unauthorized trading. With respect to the police complaint, reliance is placed on Hon'ble Securities Appellate Tribunal Order in the matter of **Varun Arya v/s Securities and Exchange Board of India** in Appeal No. 205 of 2011 decided on 23 April 2012 wherein it was held that *".....Filing of an FIR after two years of the initiation of proceedings by the Board is only an afterthought and cannot be accepted as a good ground to support the case of the appellants".* In the above case, it can also be concluded that the Noticee has filed a

wrong/ incorrect FIR, however as the issue of filing false FIR is not being adjudicated, the same is not being examined further.

24. I note that the Noticee has accepted that it had a trading account with the stock broker, Vijay Bhagwan Das & Company. I also find that the trades executed on the exchange's platform were under client code of the Noticee. I also find that the details of the trades provided to the Noticee was exactly those details which were relied upon. I find that date and timings of each of the trades date wise along with quantity was provided to the Noticee. I also note that the Noticee in his own submissions have accepted that the trades executed were perfect examples of synchronized trades with intention to create artificial volume in the scrip. It is pertinent here to quote the Noticees submission "*I say and submit that the trades executed in the said scrip by all alleged entities/persons are perfect circular/reversal trades and almost all trades were executed with intention to create artificial volume in the said scrip of K SERA SERA".* The Noticee further submitted "*On perusal of data provided in the SCN, it is revealed that there were perfect matching of trades in the scrip of K. Sera Sera during the Investigation Period. It could only be possible if a person who execute trade must have direct contact with another side of broker. Otherwise, the trades executed in the said scrip within a span of zero second to one minutes between buy and sell order time is not possible. These trades are perfect example of synchronized trades where time, rate and quantity differences are negligible".*

25. Further, the Noticee was not able to explain what more details was required to provide a detailed explanation and how the original trade and order log would be beneficial to him. Despite above, the Noticee was provided with the Original Trade and Order log in the scrip of K Sera Sera. Further, I refer to the Hon'ble SAT order dated April 16, 2012in Appeal no. 49 of 2012 in the matter of **Rajesh N Jhaveri Vs SEBI** wherein the Hon'ble SAT observed "*We also hold that the adjudicating officer was right in providing the appellant with the material relevant to the investigation and not the entire trade logs relating to the transactions in the scrip of the company. In any investigation procedure, justice can be rendered if the*

person is provided with the material relevant to him and which is proposed to be used against him for which he should be given reasonable opportunity of defence. In the present case, no useful purpose would have been served by providing the appellant with details of all the transactions concerning the scrip of the company". In view of the above, I find that even though it was not binding to provide the original Trade and Order log to the Noticee, he was provided with the same.

26. I note that the Noticee has referred to the Hon'ble SAT order dated December 1, 2010 in Appeal no. 137 of 2010 in the matter of Jitesh Pranlal Sheth Vs SEBI. On perusal of the aforesaid Hon'ble SAT judgment I find that the facts of the case in the aforesaid matter was different from that of the present case. I find that in the aforesaid matter the details of the trade that was provided to the Noticee were different from that of the original trade and order log. Further, the trades were not synchronized as alleged since the time difference of the trades ranged between 10 to 25 minutes in some cases and since the scrip was highly liquid, it becomes difficult for traders to match the trades. The above facts are different from the present matter. The trades in almost all the instances were synchronised which has also been accepted by the Noticee as mentioned above in Para 24. Further, the Noticee was provided with the Original Trade and Order Log as per his request. In view of the aforesaid I am of considered view that the judgment of Hon'ble SAT in the matter of Jitesh Pranlal Sheth Vs SEBI is not relevant to the present matter and that the Noticee has made reference to the same out of context and therefore, find no merit in submission of the Noticee. Further, since the Trade and Order log in the matter were provided to the Noticee, the observation of the Hon'ble Tribunal in the aforesaid matter do not apply to the present matter.

27. I note that the Noticee has made another reference to the Hon'ble SAT Order dated 15-06-2010 in Appeal No. 281 of 2009 in the matter of **Vikas Gourihar Narnavar v/s SEBI**. On perusal of the aforesaid Hon'ble SAT judgment I find that the facts of the case in which the judgment was pronounced was different from that of the present case. I find that in the aforesaid matter, the Noticee was not provided with

the relevant portions of the trade details based on which the allegations were levelled. Thus, Hon'ble SAT observed "*We have heard the learned authorised representative of the appellant and the learned counsel appearing for the Board and* ***it is their common case that relevant portions of the investigation report and the trade logs as referred to in the show cause notice*** *which depicted the role played by the appellant had not been furnished to him along with the show cause notice. This being so, we are satisfied that the principles of natural justice had been violated and that the appellant was not afforded proper opportunity to file his reply. It was necessary that he should have been made aware of the details of the role that he played in the manipulation of the scrip of the company which was said to have been described in the investigation report. Without going into the issues sought to the raised in this appeal, we set aside the impugned order and remit the case to the adjudicating officer for a fresh enquiry in accordance with law."* In the present matter I find that the Noticee was provided with the relevant portion of the Investigation report in the form of Show Cause Notice and also the relevant portion of the trade logs which depicted the role played by the Noticee in the manipulation of the scrip of the company. Therefore, I am of considered view that the above order of Hon'ble SAT has been referred here do not apply to the present matter and that the same has been referred out of context and find no merit in submission of the Noticee. Further, since the Trade and Order log in the matter were also subsequently provided to the Noticee, the observation of the Hon'ble Tribunal in the aforesaid matter do not apply to the present matter.

28. I further, note that the Noticee has referred to another Hon'ble SAT order dated 23-03-2010 in the matter of **Adolf Pinto v/s SEBI**. In the aforesaid matter the Hon'ble SAT observed "*An affidavit dated January 25, 2010 has been filed by a manager of the respondent Board along with the diagrams. The officers of the Board have also made available the basic data from which the diagrams have been prepared. Xerox copies of the basic data which is fairly voluminous were supplied to the appellants last evening. Dr. S.K. Jain the authorised representative*

of the appellants in Appeal no.110 and other connected appeals and also the learned counsel appearing for the other appellants have pointed out some glaring errors in the basic data from which the charts/diagrams have been prepared. It appears to us that the basic data now placed before us is not the trade and order logs and the details given therein have been collected from different sources and collated in the form of charts. The errors pointed out by the appellants could have crept in at the time of putting the details in the form of charts. Another grievance of the appellants is that they had never been furnished with copies of the trade and order logs from which it could be established whether the trades executed by them were circular in nature". On perusal of the above, I find that in the above matter, the Noticee was not provided with enough time to study the details of the data provided and respond to the same. Further, there were also some mistakes in the charts and diagrams that were provided which raised doubts on the correctness of the data which is not the case with the present matter. Further, in the present matter, the Noticee was provided with the details of his alleged trades along with the Show Cause Notice and the Noticee had enough time to study and respond to the alleged trades and consequent allegations. I also find that the Noticee has not pointed out any mistakes in the trade details provided. Further, since the Trade and Order log in the matter were provided to the Noticee, the observation of the Hon'ble Tribunal in the aforesaid matter do not apply to the present matter.

29. I find that the Noticee in his reply dated August 14, 2018 has submitted that Investigation had not brought on record any other evidence except the trade and order details to establish the role of the Noticee in the execution of the synchronised/circular trades and the resultant manipulation in the scrip of K. Sera Sera. I find that the trades executed by the Noticee is enough evidence to establish its role in the manipulation. Further, the Noticee has not provided with any evidence or documents to suggest otherwise than what is alleged in the SCN. I find that the Noticee has simply denied his role in the execution of the synchronised/circular trades and the consequent manipulation in the scrip of K. Sera Sera with placing any

material/documents in support of his submission. I am of the view that merely denying the charges levelled in the SCN in absence of any supporting material is not sufficient to accept the submission of the Noticee and therefore view the same as merely an afterthought to distance himself from the allegations. In view of the above I am bound to reject the aforesaid submission of the Noticee.

30. I note that the Noticee has submitted that the connection and relation has not been established between him and other purported entities. I find that the circular/reversal trades were repeatedly executed over a period of time by some of the clients including the Noticee and some of the stock brokers were part of a predetermined plan to match their trades which were not genuine. These repeated execution of trades during the investigation period did not result into transfer of beneficial ownership of the shares and created artificial volume in the scrip of K. Sera Sera, which also impacted the price. I find that the trading pattern over a period of time clearly indicates the manipulative pattern of the group including the Noticee. Therefore, I am of considered view that no further evidence of nexus amongst the entities to the trades needs to be displayed. The said submissions of the Noticee are also not tenable in view of the Judgment of Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 wherein it was held: *"22. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always*

be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion".

31. Further, it is an admitted fact by the Noticee that the trading pattern in the present matter is synchronised and circular in nature which has led to creation of artificial volume in the market and that these synchronized and circular trades were executed without an intention to change the ownership of securities. In the matter, reliance is placed on the rationale in the Judgment of Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 wherein it was held that: *"22. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion. ……. 26. It has been vehemently argued before us that on a screen based trading the identity of the 2nd party be it the client or the broker is not known to the first party/client or broker. According to us, knowledge of who the 2nd party/ client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution*

under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. The failure of the brokers/sub-brokers to alert themselves to this minimum requirement and their persistence in trading in the particular scrip either over a long period of time or in respect of huge volumes thereof, in our considered view, would not only disclose negligence and lack of due care and caution but would also demonstrate a deliberate intention to indulge in trading beyond the forbidden limits thereby attracting the provisions of the FUTP Regulations. The difference between violation of the Code of Conduct Regulations and the FUTP Regulations would depend on the extent of the persistence on the part of the broker in indulging with transactions of the kind that has occurred in the present cases. Up to an extent such conduct on the part of the brokers/sub-brokers can be attributed to negligence occasioned by lack of due care and caution. Beyond the same, persistent trading would show a deliberate intention to play the market. The dividing line has to be drawn on the basis of the volume of the transactions and the period of time that the same were indulged in. In the present cases it is clear from all these surrounding facts and circumstances that there has been transgressions by the respondents beyond the permissible dividing line between negligence and deliberate intention."

32. The Hon'ble SAT in the matter of **Bhavesh Patel and Others versus SEBI** in the matter of S J Corporation Limited in Appeal No. 456 of 2015 decided on 25 April

2018 reaffirmed the rationale cited in the matter of **Securities and Exchange Board of India vs. Rakhi Trading Private Ltd.** (Civil Appeal No. 1969 of 2011 decided on February 08, 2018) and **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 and observed that: *"….. 44. Learned Counsel Shri. Gaurav Joshi relied on the following judgments of the Supreme Court (a) Securities and Exchange Board of India vs. Rakhi Trading Private Ltd. (Civil Appeal No. 1969 of 2011 decided on February 08, 2018); (b) Securities and Exchange Board of India vs Shri Kanaiyalal Baldevbhai Patel, 2017 SCC On Line SC 1148 decided on September 20, 2017 and (c) Securities and Exchange Board of India vs. Kishore R. Ajmera, (2016) 6 Supreme Court Cases 368 decided on February 23, 2016 and submitted that in deciding on PFUTP violation, totality of facts and preponderance of probabilities have to be resorted to as full evidence may not be forthcoming and manipulative, fraudulent schemes also include deliberately making losses as held in Rakhi Trading (supra). ….. 50. Argument made by each of the appellant individually that each of them played only a small trade in isolation or as per normal course of their business or some of them did not trade at all or some small loan has been given etc. stand no merit when totality of the picture is looked at. All of them together enabled launching this major fraud by using a dormant, low capital base and low public float company. In this context, we also find that the argument that many of the appellants did not off-load either full or major chunk of their holding even in Phase-III or thereafter also has no merit since with the still limited liquidity of about 1100 shares per day there was an inbuilt absorptive limitation for the market and thereafter the ad-interim restraint order of the WTM of SEBI came on their way on February 5, 2010. As held by the Hon'ble Supreme Court in several orders such as SEBI vs Rakhi Trading (supra), SEBI vs. Shri Kanaiyalal Baldevbhai (supra) and SEBI vs. Kishore R. Ajmera (supra) complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In Rakhi Trading (supra) it is held that in some cases parties may even incur willful losses in the market to achieve some objectives*."

33. Hon'ble SAT in its order dated 16.01.2012 in the matter of **Sparkline Mercantile Co. Pvt. Ltd. Vs SEBI** in Appeal No. 171 of 2011 observed: *"It is an admitted position that it is difficult to get direct evidence with regard to synchronization of trades for the purpose of upsetting the market equilibrium or to manipulate the market. It is only on the basis of circumstantial evidence that such a connection can be proved. Looking at the details provided in the investigation report, the show cause notice and the findings recorded by the adjudicating officer, we are convinced that the adjudicating officer has brought enough material on record in support of the conclusion that the entities mentioned in the tables above are connected entities and traded among themselves with prior arrangement resulting in creation of artificial volume and distorting the market equilibrium. A large number of trades were executed among the group entities within a minute of placing the order. This cannot happen without prior meeting of minds among the connected entities. From the details of the trades executed and having regard to the trading system, we do not think that such large number of trades could match between the same parties unless the trading system was being abused. Therefore, we have no hesitation in upholding the findings recorded by the adjudicating officer in the impugned order.*"

34. The order of Hon'ble Securities Appellate Tribunal in the matter of **Monika Jain Vs. Adjudicating Officer SEBI** decided on 11.02.2011: "…*A circular trade is a fictitious trade which is executed on the trading screen of the exchange which does not result in the transfer of beneficial ownership in the traded scrip. Such trades only create false or misleading appearance of trading in the securities market and thereby lure the lay investors to jump into the fray…*"

35. In the light of the above facts, and drawing support from the various judicial pronouncements mentioned above, it is established that the Noticee along with the other entities created artificial volume in the market by executing synchronized and circular trades and thereby created false and misleading appearance of trading in the market and entered into transaction in securities without intention of performing it or without intention of change of beneficial ownership of such securities and

therefore has violated the provisions of Regulation 4(1) 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of SEBI (PFUTP) Regulations 2003..

36. The relevant text of the aforesaid provisions is quoted here:-

"4. Prohibition of manipulative, fraudulent and unfair trade practices:

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market. ……

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(e) any act or omission amounting to manipulation of the price of a security;

(g) entering into transaction in securities without intention of performing it or without intention of change of ownership of such security. ……..

ISSUE II: Does the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?

37. The aforesaid violations on the part of Noticee makes the Noticee liable for penalty under Sections 15 HA of the SEBI Act 1992 which reads as follows:

15HA. Penalty for fraudulent and unfair trade practices.-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 89which 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.

38. As regards the Noticee it is clear that they are liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India Order in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** has also held "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

39. Factors to be taken into account by the adjudicating officer:

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

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

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

(c) the repetitive nature of the default.

1 [Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer 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.]

40. It is noted from the records that SEBI has taken various actions against the Noticee, detailed as under:

In the matter of	**Order Passed By**	**Date of Order**	**Quantum of Penalty/Debarment**
Era Construction Limited	Adjudicating Officer	28/02/2013	Rs. 8,00,000/-
SKS Logistic Limited	Adjudicating Officer	13/04/2012	Rs. 1,00,000/-
Today's Writing Products Limited	Adjudicating Officer	13/04/2012	Rs. 2,00,000/-

Rajesh Exports Limited	Adjudicating Officer	29/03/2012	Rs. 3,00,000/-
Adani Export Limited	Adjudicating Officer	25/02/2011	Rs. 1,00,000/-
Parsoli Corporation Limited	Adjudicating Officer	21/12/2010	Rs. 2,00,000/-
K. Sera Sera Productions Limited	Adjudicating Officer	30/07/2010	Rs. 15,00,000/-
KRBL Limited	Adjudicating Officer	30/06/2010	Rs. 3,00,000/-
K. Sera Sera Productions Limited	Adjudicating Officer	31/05/2010	Rs. 4,00,000/-
TASC Pharmaceuticals Limited	Adjudicating Officer	31/03/2010	Rs. 1,00,000/-
Gravity India Limited	Adjudicating Officer	25/02/2010	Rs. 1,00,000/-
Karuna Cables Limited	Whole Time Member	08/10/2009	Debarment from 08/10/2009 to 07/10/2010
Today's Writing Products Limited		01/11/2007	Debarment from 01/11/2007 to 28/02/2008

41. It is clear from the records that the act of the Noticee is repetitive in nature and has been visited upon several times as a consequences of violations of the securities laws, which albeit are under challenge.

42. The material available on records do not reveal nor specify the disproportionate gains/ unfair advantage by the Noticee, and neither the specific loss suffered by the investors due to violations by the Noticee.

43. In view of all of the above, I am of the considered view that the Noticee by indulging into the circular/synchronised trades has violated the provisions of Regulations 4(1) and 4(2)(a), 4(2)(b) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

ORDER

44. For the aforesaid reasons and after taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the

Adjudication Rules, hereby impose a monetary penalty of Rs. 6,00,000/- (Rupees Six Lakhs Only) on the Noticee i.e. Mr. Sunil Purohit (PAN: AHSPP9704F) under section 15HA of SEBI Act, 1992 for violation of the provisions Regulations 4(1) and 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 which will be commensurate with the violations committed by the Noticee i.e. Sunil Purohit.

45. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of **"SEBI – Penalties Remittable to Government of India",** payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	**State Bank of India**
Branch	**Bandra - Kurla Complex**
RTGS Code	**SBIN0004380**
Beneficiary Name	**SEBI – Penalties Remittable To Government of India**
Beneficiary A/c No	**31465271959**

46. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA- III, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	

Bank Details in which payment is made	
Payment is made for (like penalties/ disgorgement/recovery/Settlement amount and legal charges along with order details)	
Penalty	

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

Date: August 31, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**

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