BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-NK/AO/21/2018-19]

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

Haresh Posnak

(PAN: AAHPP4638C)

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 the 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/153889/2009 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 and stock brokers, including the Noticee, 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 into 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 returned undelivered with remark "shifted". Subsequently, Peninsular Capital Market Limited (Stock Broker of the Noticee) during its personal hearing submitted the KYC of the Noticee and it was observed that the address as per KYC and the address on which the SCN was sent was same. Considering the facts and circumstance of the case a public notice was published in English (The Hindustan Times, Mumbai Edition, 10th June 2010) informing that SCN was issued against the Noticee in the matter of K. Sera Sera and the same is available on sebi website i.e. www.sebi.gov.in under the heading "Unserved Summons / Notices" and Noticee can collect a copy of the SCN from the office of Adjudicating Officer. Further another public notice was also published in English (The Hindustan Times, Mumbai edition and New Delhi edition on 9th February 2011) reiterating the public notice published

on June 10, 2010 and also informing that the Noticee or authorized representative may appear for Personal hearing on February 21, 2011 at 3:00 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 other steps to find out the address of the Noticee and issue of public notice in the newspapers etc. as prescribed in the Adjudication Rules 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 the absence of any response from the Noticee, the Adjudicating Officer was compelled to pass an ex-parte order against the Noticee based on the material available on record.

6. Subsequently the Adjudicating Officer in the Adjudication Order dated February 28, 2011 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 amongst 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 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 has also been noted that from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to the noticee as a result of this kind of default committed by the noticee. Investigation Report has also not quantified the profit/loss for the nature of violations committed by the noticee and no 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 actions of the noticee.*

From the traded volume of the noticee it is seen that the noticee trading through Peninsular Capital Market Ltd. traded for 12 days for 2,18,200 shares (gross) in which 2,12,310 shares were traded through circular trading. This accounted for 9.83% of the market volume (gross) and 97.30% of the stock broker's trading (gross) 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. 4,50,000/- (Rupees Four Lakhs Fifty Thousand 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 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/30928/2017 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 December 18, 2017. 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 08-03-2016 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 should have issued the original SCN dated 10-02-2009 in the matter.
- Further, the Noticee refuted and denied the allegations in the above referred SCN dated 11-12-2017. 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 Hon'ble SAT vide its order dated 07/03/2016 restored the matter to the file of the Adjudicating Officer without any specific direction. Therefore, I am of view that in absence of any specific direction, it is at the discretion of the Adjudicating Officer to issue a fresh SCN or to continue with the original SCN in the matter. Therefore, I find that the Noticee's submission with respect to the issue of fresh SCN is devoid of merit and uncalled for. Further, I note from the minutes of inspection that all the documents relied upon in the proceedings were inspected by the authorised representative of the Noticee.

12. Thereafter, the Noticee was granted an opportunity of personal hearing before me on June 19, 2018 at 11:00 AM. The Noticee requested to reschedule the personal hearing to another date and the same was acceded to. The Noticee was allowed

another opportunity of personal hearing on July 26, 2018 at 4:00 P.M. The Noticee was represented by his Authorised Representative, Mr. Vikas Bengani and reiterated the submissions made vide letter dated June 13, 2016 and further requested for time to submit additional replies which was also acceded to. The Noticee submitted additional reply vide letter dated August 6, 2018.

13. The relevant portion of his reply to the SCN vide letter dated June 13, 2018 is reproduced below:

- *My submissions to the aforesaid SCN are as follows:-*
  - *It is stated in the SCN that SEBI conducted investigation into the alleged irregularities in trading in shares of K Sera Sera and into the possible violation of provisions of the SEBI Act, and various Rules and Regulations made there-under, for the period from 02-05-2005 to 01-07-2005 (hereinafter referred to as "the Investigation Period").*
  - *It is alleged that I alongwith certain entities were indulged into circular/reversal trades. It is further alleged that I had purchased 104275 shares and sold 108035 shares of K Sera Sera through the Member Broker Peninsular Capital Market Limited. It is further alleged that the Member Broker Peninsular Capital Market Limited had executed trades for 2,18,200 shares on my behalf and out of the said shares 2,12,310 shares were traded through circular trades.*
  - *It is further in the SCN that on perusal of trades executed by the alleged entities a clear pattern of circular trading A>B>C>D>E>A emerges. It is alleged that the execution of circular trading reputedly for several days by the entities as a group indicates that they had close nexus with each other and executed the circular/reversal trades with a pre-determined plan to create artificial volume in the scrip of K Sera Sera by matching their trades.*
  - *It is further alleged that the trades were not genuine transactions since it did not result into transfer of beneficial ownership but acted as merely a tool to*

create artificial volume in the scrip. It is further alleged that the circumstantial evidences clearly pointed out to the manipulative intent of the group. In view of the same it is alleged that I was indulged into circular/reversal trades to create artificial appearance of trades thereby creating artificial volume in the scrip of K Sera Sera which also adversely impacted the price of the scrip during the Investigation Period.

- *It is therefore alleged that I have violated the provisions of Regulations 4 (1), 4(2) (a), (b), (e) and (g) of SEBI PFUTP Regulations, 2003. If the allegation proves make me liable for a penalty under Section 15HA of the SEBI Act, 1992.*

- *I was show cause as to why an inquiry should not be held against me in terms of Rule 4 of SEBI (Procedure of Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995 read with Section 15I of the SEBI Act, 1992 and why penalty, if any, should not be imposed on me under Section 15HA of the SEBI Act, 1992. The compilation of Trade were provided as Annexure 1 of the SCN.*

- *By letter dated 18-12-2017 I have denied and refute the allegation made in the SCN. I further requested for the inspection of the documents/data relied while issuing the SCN. The said inspection was allowed on 16-02-2018. However, no new details has been shared with my Authorized Representative during the inspection. By email dated 19-02-2018, my Authorized Representative has brought the proceeding of the inspection into your kind notice. By letter dated 21-02-2018, the enforcement department, SEBI has refused to provide the information and documents as required and requested by me.*

- *Since my request to provide the inspection of the documents was not acceded by the enforcement department, the principle of natural justice is violated. In catena of cases the Hon'ble Tribunal has observed that principle*

of Natural Justice has been violated by not providing the relevant portion of Investigation Report and Original Trade and Order Log. In this regard I rely the Order dated 15-06-2010 passed by the Hon'ble Tribunal in Appeal No. 281 of 2009 filed by Mr. Vikas Gourihar Narnavar which observed as follows:-

"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."

I *once* again request you to provide me copy of the Investigation Report with annexure and Original Trade and Order Log.

- *I deny that I have executed any trade in the scrip of K Sera Sera. I further deny that I had created artificial volume in the scrip of K Sera Sera and further manipulated the price of the scrip.*
- *I submit that my trading account had been misused by someone in connivance of the Member Broker Peninsular Capital Market Limited. I had never placed any order in the scrip of K Sera Sera through the Member Broker Peninsular Capital Market Limited.*
- *It is further submitted that I for the first time in September-October 2005, came to know that someone was misusing trading account in my name with the Member Broker Peninsular Capital Market Limited, when I received SEBI*

summons/letter. I rush to the Member Broker and asked to close the said account immediately. I further asked the Member Broker to provide me a copy of the Ledger Account. The copy of the Ledger Account provided by the Member Broker is enclosed herewith as Annexure "A".

- *On perusal of the aforesaid Ledger Account it is revealed that several bank transfers pertaining to lakhs of rupees had been received by the Member Broker in the trading account number MBBDH2. It is further submitted that I have not transferred a penny to the Member Broker Peninsular Capital Market Limited. Thus, who had transferred the said amount to the Member Broker is a matter of investigation.*

- *It is further submitted that I am working from last 20 years with Bhavesh Shah as a peon. In the year 2005, I was not having any source of earning that I could have given transfers of lakhs of rupees to the member broker. During the year 2004-05 I was merely earning Rs. 2500/- as a salary. I always earned a limited income in salary and not having any other source of earning. My boss Mr. Bhavesh Shah is always ready to share my record of employment with your good self as and when required by you.*

- *I swear to the God and my family members that I had not provided my trading account to anybody in greed of any type of financial consideration/remuneration/profit including Member Broker Peninsular Capital Market Limited.*

- *I further submit that I had bank account with Saraswat Bank and was only opened in 2006. I had instructed the Member Broker to close the aforesaid trading account i.e. MBBDH2 in October, 2005. The alleged transaction were executed in the year 2005 only. I have not transferred a single rupee to the Member Broker Peninsular Capital Market Limited. Thus, the execution of any transaction by me in any scrip including K Sera Sera with the Member Broker*

did not arise at all. I hereby enclose a copy of my bank account with the Saraswat Bank as Annexure "B".

- *I also rely the Order dated 17-06-2015 passed by the Ld. Whole time Member in the scrip of Crazy Infotech Ltd. The Ld. WTM while exonerating M/s Spectrum Chemicals Pvt Ltd. (now known as Vidhya Jewellers Pvt. Ltd.) from the allegation of violation of provisions of PFUTP Regulations held that* ***"……Self- trades by Spectrum Chemicals***

  3.11 In addition to the reversal/circular and synchronized trades, the Noticee, viz. Spectrum Chemicals was found to have indulged in self trades for several days during the investigation period. As per the SCN, Spectrum Chemicals has indulged in self trades for 6,571 shares, (where Spectrum Chemicals was on both buy and sell sides).

  i Copy of trade and order log data provided by BSE indicate that Spectrum Chemicals have traded in the scrip of Crazy Infotech on BSE during the period of investigation through the stock broker, Ami Stock and Share Brokers Pvt. Ltd.

  ii. Spectrum Chemicals in its reply to the SCN, vide e-mail dated February 06, 2014 and written submissions vide letter dated February 17, 2014 (pursuant to the personal hearing granted on February 5, 2014), submitted that they have not executed any trades in the scrip of Crazy Infotech through any broker. They also furnished the copies of their demat account statement with MPSE Securities Ltd., Indore and bank account statement with UTI Bank, Indore Branch for the period from March 1, 2005 to February 28, 2007 and Axis Bank, Indore for the period from February 28, 2007 to January 30, 2014 in order to substantiate its contention that they have not made any payments to the Broker through whom they are alleged to have transacted in the shares of Crazy Infotech and has not made any

transactions in the scrip of Crazy Infotech through the said broker during the period of investigation.

iii. *In order to ascertain whether the alleged transactions were indeed carried out by Spectrum Chemicals, the materials/documents such as the details of demat accounts of Spectrum Chemicals, statements of transactions executed by Spectrum Chemicals during the period of investigation through the demat account, etc. obtained from the depositories (NSDL and CDSL) have been analyzed. It is observed from the information provided by NSDL, vide letter dated June 19, 2013 that no demat account is found to be held in the name of Spectrum Chemicals with any of the depository participants (DP) of NSDL. CDSL, vide e-mail dated May 19, 2015 stated that Spectrum Chemicals had only one demat account with its DP, viz. MPSE Securities Ltd.. On analysing the data/information such as demat account details and statement of transactions pertaining to aforesaid demat account of Spectrum Chemicals from the date of account opening (November 23, 2004) to date of closure (September 21, 2013) forwarded by CDSL, it is observed as under:*

a) *The spectrum Chemicals has only one demat account with the depository participant of CDSL, viz. MPSE Securities Ltd.,*

b) *The statement of transactions pertaining to the aforesaid demat account for the period November 23, 2004 to September 21, 2013 forwarded by CDSL, indicates that Spectrum Chemicals had not executed any transactions in the scrip of Crazy Infotech during the period of investigation.*

3.12 Considering the above and also in absence of any other material on record to indicate that the alleged transactions were executed by Spectrum Chemicals, I am of the view that the charge against Spectrum Chemicals has not been clearly established. In view of this, I am inclined to give benefit of

doubt to Spectrum Chemicals in respect of the charges alleged against Spectrum Chemicals."

In the aforesaid matter, after perusal of the bank and demat account of the entity it was observed that no trades were executed by the said entity and their name was misused. The same yardstick should be applied in my matter also.

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.

I further request to your good self to adjourn the scheduled hearing i.e. 19-06-2018 as my Authorized Representative i.e. Mr. Vikas Bengani is not in Mumbai from 18-06-2018 to 18-07-2018.

14. The relevant portion of his reply to the SCN vide letter dated August 6, 2018 is reproduced below:

- *In continuation to my written submissions dated 13-06-2018 and oral submissions made by my Authorized Representative before you goodself on 26-07-2018, I am making my additional written submissions to the Show Cause Notice dated 11-12-2017 (hereinafter referred to as "SCN").*
- *I have made requests to provide the Trade and Order Log in the scrip of K. Sera Sera Productions Limited (hereinafter referred to as "K Sera Sera") and copy of the Investigation Report with all annexure. I was allowed inspection of the documents on 16-02-2018. Despite the Order of the inspection by the Ld. Adjudicating Officer, the officer of the Enforcement Department had arbiteraly not allowed to access the file of the Investigation. After submission of my reply dated 13-06-2018, by letter dated 12-07-2018 your goodself has provided the Trade and Order Log. However, my request to provide the copy of the Investigation Report with annexure has not been acceded till date. When it was again brought to your kind attention during the hearing on 26-07-2018, the reason for not*

providing the Investigation Report was given to my Authorized Representative that the Investigation Report pertains information of several other entities/persons which cannot be revealed and that is why it was not provided to me. The said reason is not justified as SEBI is providing Investigation Report in several other matters and even the Hon'ble Tribunal in its Order dated 15-06-2010 in the matter of Mr. Vikas Gourihar Narnavar has observed that not providing the Investigation Report is the breach of the principles of natural justice.

- *SEBI on one side, provided me Trade and Order Log which pertain information of all trades executed during the period of Investigation and on other side, not sharing the Investigation Report. The reasons given for not providing the Investigation Report is beyond my comprehension. I still say that the Principle of Natural Justice has not been followed. Even the Order passed by the Hon'ble Tribunal in several matters including the matter of Mr. Vikas Gourihar Narnavar has not been adhered.*
- *The importance of Investigation Report in the aforesaid matter is more required when I am objecting the Trades executed in my name in the scrip of K Sera Sera through the Broker Peninsular Capital Markets Limited (now known as Acumen Capital Market (India) Limited).*
- *It is further submitted that I have never executed a single trade in the scrip of K Sera Sera through the Member Broker Peninsular Capital Markets Limited. The allegation made in the SCN is only on the basis that the Trade and Order Log contain my name. The SCN is totally silent about the fund transfer to the Broker in the account held in my name with the Member Broker, who was giving instruction to the Member Broker Peninsular Capital Markets Limited to buy or sell the shares in my name, any demat transfer etc. These are the vital questions which have been totally ignored during the Investigation.*

- *It is further submitted that I for the first time in September-October 2005, came to know that some unknown person had been misusing trading account in my name with the Member Broker Peninsular Capital Market Limited. I could aware the same when I had received SEBI summons/letter. Since I was not much educated and have less knowledge about the law, I did what I was advised at that time. I immediately approached to the Member Broker and asked the Member Broker to close the account in my name immediately and to provide me a copy of the Ledger Account. The copy of the Ledger Account provided by the Member Broker has already been provided to you. The Member Broker had closed the account and promised to me that no further trades would be executed in my name.*
- *Needless to mention that 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 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. On the contrary, I have provided the Ledger Account received from the Member Broker and my Bank Account. It is a matter of Investigation that who had transferred/provided fund into ledger account held in my name with the said Member Broker. 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.

- *During the course of hearing on 26-07-2018, a question has been raised before my Authorized Representative that probably I could have transferred fund from other accounts held by me at that time which I am now not revealing to SEBI. However, it cannot be alleged as no evidence against me with the SEBI about fund transfer. I am asking for the re-investigation. Let the bank entries to be analyzed, the truth will come out. Since the SEBI has ample power of Investigation, I earnestly request to your goodself to direct the SEBI to investigate the bank entries.*
- *In my earlier latter I have brought into your notice about my meager income. I have no resource to think in lakhs. I am ready to appear before your goodself whenever called by your goodself to answer any queries raised by you. I have nothing to conceal.*
- *Without prejudice, 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 blasting 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.

Date Of The Order	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.

15. 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

16. I have perused the documents available on record. The issues that arise for consideration in the present case 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?*

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.*

17. 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 (Noticee), 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%.

18. 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 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).

19. I find from material available on record that from analysis of the circular/ reversal trades of these stock brokers /sub brokers on behalf its 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**

20. 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 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.

21. I note that similar quantity (same or with little 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 11:41:32 11:41:35 11:41:41 11:41:46	Galaxy Broking Limited	Santosh Gade	Bijay Bhagwandas & Company	Sunil Purohit	2000
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	Peninsural Capital	Haresh	Bijay Bhagwandas &	Sunil Purohit	2000

14:25:49	Market Limited	Posnak	Company		
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**

22. 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.

23. 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**

24. I note that the Noticee in his reply had denied that he had executed the trades alleged in the SCN. However, the Noticee has accepted that it had a trading account with the stock broker, Peninsular Capital Markets Limited and submitted that someone in connivance with the said stock broker had misused his name and trading account with the said stock broker and executed those trades in the scrip of

K. Sera Sera. The Noticee has further submitted that it had never placed any order in the scrip of K. Sera Sera through Member Broker, Peninsular Capital Markets Limited. I note that the Noticee has not brought on record any supporting evidence, documentary or otherwise to base his claim upon with respect to the misuse of his name and trading account for illegal/unauthorized trading. Further, the Noticee has not given details of any action initiated against the stock broker for misusing his trading account except seeking details of the alleged trades. I also find that the trades executed on the exchange's platform were under client code of the Noticee. Therefore, it can also be concluded that the Noticee had executed those trades and after the discovery of the irregularity and initiation of the Adjudication proceedings, as an afterthought he is coming up with such kind of baseless arguments.

25. I note that the main contention of the Noticee in the present matter is that he was not provided with the full investigation report along with all the annexures pertaining to the case. I also note that the Noticee had sought inspection of documents relied upon while issuing the SCN which was acceded to. From the reply of the Noticee I find that the Noticee had also sought documents which were not relied upon while issuing the SCN along with those documents which were relied upon, which as per the Noticee was not provided with during the inspection. I find from the material available on record that the relevant portion of the investigation report and the relevant annexures were provided to the Noticee in the form of SCN. I also find that while issuing the SCN, no other documents such as KYC or any other details except as mentioned above, has been relied upon. 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 and other documents 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, since he had denied the execution of the alleged trades. It is pertinent here to refer to the Hon'ble SAT order dated April 16, 2012 in 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". I find that the Noticee was provided with all the documents/evidences and details of the trades provided to the Noticee was exactly those details which were relied upon while issuing the SCN. In view of the above, I do not find merit in the submissions of the Noticee regarding non-furnishing of original Trade and Order log.

26. 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 the 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.

27. I note that the Noticee has submitted that the for the past 20 years he had been working as with one Mr. Bhavesh Shah and that he was drawing a salary of Rs. 2500/- per month. Further, I note that he has submitted that the ledger account received from the member broker, Peninsular Capital Markets Limited reflected several bank transactions of lakhs of rupees and that for him the same was not possible. Further, he stated that the said matter needs to be investigated. I find that upon his finding that his trading account is being misused by Peninsular Capital Markets Limited, he should have filed complaint with the Police and he should have filed complaint with exchanges/SEBI with regard to the same. However, I find he did neither of the above which is indicative of his involvement in the alleged manipulation. I find from his submission that he opened his bank account in 2006 with The Saraswat Co-Operative Bank Limited. However, I find from material available on record that his trading account was opened with Peninsular Capital Markets Limited in September 2004 wherein his bank details was provided as saving banks account 01190006455 with State Bank of Hyderabad, the details of which has been deliberately concealed by the Noticee. The Noticee has not explained how he was able to open a trading account with the stock broker in September 2004 in absence of a banking account until 2006. Further, the Noticee has also not explained how and from which/whose bank account, receipt and payment of consideration for shares purchased/sold were to be made and also whose bank

account details were provided in his KYC with Peninsular Capital Markets Limited. In view of the above, I am of considered view that the Noticee's submission with respect to the fund transfer from bank is devoid of merit and hence, liable to be rejected.

28. I note from the submission of the Noticee that he had opened his bank account with the Saraswat Co-operative Bank Limited February 14, 2006. I also note that he had no other source of income except salary of Rs. 2500/- which he received from his employer Mr. Bhavesh Shah. However from the bank statement of the Noticee for the period from February 14, 2006 to August 08, 2006 (6 months period for which the statement has been furnished by the Noticee) I find that Rs. 1878609/- was deposited and Rs. 1252980/- was withdrawn from the said bank account. The aforesaid transaction within a short period of 6 months is not in sync with the aforesaid submission of the Noticee. I also find that there is no deposit of Rs. 2500/- during the period in the said bank account.

29. I take note of the submission of the Noticee stating that he was not much educated and had little knowledge of law and also that he was not having any source of earning to have given transfer of Lacs of Rupees to the brokers. From perusal of his bank account statements I fail to understand how a person working as a peon in an office drawing a meagre salary of Rs. 2500/- per month, has within a period of 6 months deposited approximately Rs. 19 Lacs and made payments (withdrawal) of Rs. 13 Lacs (approximately). I also find many simultaneous debit and credit transactions in his account. I find from the bank account statement of the Noticee that Rs. 102295.28 was deposited through cheque on 30/05/2206 and on the same day the Rs. 102000/- was withdrawn through self cheque (cash withdrawal). I also note two instances of cash deposit of Rs. 25000/- each and certain cheque deposit during the period 20/07/2006 to 31/07/2006 which has been paid to Anagram Sec Ltd and Anagram Comtrade Ltd. and others. Further the next para of his submission are as "*I swear to the God and my family members that I had not provided my trading account to anybody in greed of any type of financial*

consideration/remuneration/profit including Member Broker Peninsular Capital Market Limited". I note that the above submissions are contradicting the transactions reflecting in his bank statements.

30. Further, the Noticee has submitted only 6 months bank account statement and that also do not reflect the statements with respect to funds made in his submission. Taking on face value the aforesaid submission of the Noticee, it is clear that he deliberately and with full knowledge of consequences allowed his names to be used by somebody for manipulative transactions in the scrip of K. Sera Sera. In view of the above, I am of considered view that the Noticee has deliberately concealed facts and has tried to mislead the course of present proceedings. I view the above actions by the Noticee very seriously. However, taking note of the submissions of the Noticee regarding his financial conditions I do not propose any further action/penalty for the above.

31. I note that the Noticee has referred to the SEBI order dated 17/06/2015 in the matter of Crazy Infotech Limited. Upon perusal of the said order and materials submitted by the Noticee I find that the Noticee had submitted his bank and demat account in the aforesaid matter. However, in the present matter he has not submitted the bank statement and demat statement of the relevant period. Further, the Noticee submitted that he did not own a bank account during the period of alleged transactions (circular trades). I also note that the bank account statement (Saraswat Bank) submitted is only for a period of 6 months and the same is different from the bank account (State Bank of Hyderabad) mentioned in the KYC of the Noticee. In view of the above, I am of considered view that the Noticee has referred to the aforesaid SEBI order out of context and therefore do not apply to the present matter.

32. I note that the Noticee has been provided with all the relevant documents relied upon in respect of the alleged violations in respect of the Noticee putting reliance on the Hon'ble SAT order dated dated April 16, 2012 in Appeal no. 49 of 2012 in the matter of **Rajesh N Jhaveri Vs SEBI** wherein it was held that only the material relevant to the Noticee is to be provided.

33. I note that the Noticee has submitted that the connection and relation has not been established between him and other purported entities. The said submissions of the Noticee are 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".*

34. Further it is an admitted fact by the Noticee that the trading pattern in the present case is synchronised and circular in nature which led to creation of artificial volume in the market by executing synchronized trades and circular trade without an intention to change the ownership of securities. 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. Upto 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."

35. 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."

36. 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."

37. 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…*"

38. 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.

39. 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?

40. 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.

41. 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?

42. 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.]

43. It is noted from the records that SEBI has also initiated proceedings under section 11B in the matter of IFSL Limited and Karuna Cables Limited against the Noticee.

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

45. The material made available on records neither reveals nor specify disproportionate gains/ unfair advantage made by the Noticee, and the specific loss suffered by the investors due to violations by the Noticee

46. 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), 4(2)(e) and 4(2)(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

ORDER

47. 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. Haresh Posnak (PAN: AAHPP4638C) 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. Haresh Posnak.

48. 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**

49. 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	

50. 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**