BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-6/PM-AB/025/2019-20]

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

In respect of:

Shri Rajesh Marchya

PAN: AAKHR4988Q

FACTS OF THE CASE:

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") conducted investigation into trading activities of certain entities in the scrip of Malabar Trading Company Ltd. (hereinafter be referred to as, the "***Malabar***") for the period of December 26, 2011 to June 30, 2015 (hereinafter be referred to as, the "***Investigation Period***").
2. Based on the findings of the investigation, SEBI initiated adjudication proceedings against Shri Rajesh (hereinafter be referred to as, the "***Noticee***") under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "**SEBI Act**"), for the alleged violation of Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (a) & (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter be referred to as, the "***PFUTP Regulations***").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI vide order dated October 10, 2017 appointed the undersigned as the Adjudicating Officer under section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("AO Rules") to inquire into and adjudge the aforesaid allegations under Section 15HA of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated March 27, 2018 (hereinafter be referred to as the "***SCN***") was issued to the Noticee under Rule 4 of the AO 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 for the allegations as detailed in the said SCN. The SCN alleged that during the investigation period, the price of the scrip of Malabar opened at Rs. 5.15 and closed at Rs. 13.5 with a high of Rs. 351.9 and a low of Rs. 5.15. A total of 33,01,711 shares were traded during the investigation period with the average daily traded volume of 8,296 shares. The price movement during the investigation period was examined in various patches. As per the trade data during the period December 26, 2011 to May 29, 2014 the scrip price of Malabar opened at Rs.5.15 and closed at Rs.126.5 i.e. contributing to net positive LTP of Rs.121.35. The summary of trading of the Noticee was as follows:

Table 1: Summary of trading done by the Noticee

Total Trades			LTP Diff. >0			LTP Diff. < 0			LTP Diff. =0		% of Positive LTP to Total Market Positive LTP
Sum of LTP diff	Sum of Quantity	No of trades	LTP impact	QTY traded	No of trades	LTP impact	QTY traded	No of trades	QTY traded	No of trades	
26.4	1710	37	26.4	245	27	-	-	-	1465	10	**21.76%**

5. It was observed that the Noticee contributed to more than 5% to total market positive LTP through 27 trades for a total quantity of 245 shares during this patch. The total LTP contribution of the Noticee's trades was Rs. 26.4 i.e. 21.76% of total market positive LTP. The details of the said 27 trades is as follows:

Table 2: Details of trades of the Noticee

Date	Buy Order time	Sell order Time	Buy Order Quantity	Sell Order Quantity	Buy Order Price	Sell Order Price	Traded Quantity	LTP Impact (in Rs.)	Total market volume during the day	Total no. of trades during the day	No. of shares held before trade	Balance No. of shares after trade
30/01/2013	09:00:00	13:56:41	100	5	21	21	5	0.4	5	1	2850	2845
31/01/2013	09:00:01	15:02:43	100	5	21.4	21.4	5	0.4	5	1	2845	2840
04/02/2013	09:00:00	15:15:54	500	5	21.8	21.8	5	0.4	355	3	2840	2835
05/02/2013	09:00:00	11:20:43	500	5	22.2	22.2	5	0.4	5	1	2835	2830
07/02/2013	09:00:01	12:56:26	200	5	23.05	23.05	5	0.45	5	1	2830	2825
08/02/2013	09:00:00	14:33:26	495	8	23.5	23.5	8	0.45	8	1	2825	2817
11/02/2013	09:00:01	14:25:32	200	5	23.95	23.95	5	0.45	5	1	2817	2812
12/02/2013	09:00:01	10:41:24	1000	7	24.4	24.4	7	0.45	7	1	2812	2805
20/02/2013	09:00:00	13:12:27	1000	5	27.3	27.3	5	0.5	5	1	2705	2700
09/07/2013	10:30:00	10:42:14	900	5	34.3	34.3	5	0.65	5	1	2100	2095
08/08/2013	14:30:00	14:57:38	900	10	34.95	34.95	10	0.65	10	1	2095	2085
19/08/2013	14:33:30	15:11:26	1000	10	36.3	36.3	10	0.7	10	1	2085	2075
10/10/2013	14:30:01	14:35:06	1000	5	42.3	42.3	5	0.8	5	1	2075	2070
11/10/2013	10:30:01	10:58:26	198	5	43.1	43.1	5	0.8	5	1	2070	2065
28/11/2013	13:30:01	13:48:08	1000	10	55.35	55.35	10	1.05	10	1	2065	2055
04/12/2013	14:30:01	15:10:25	172	10	56.45	56.45	10	1.1	10	1	2055	2045
23/01/2014	09:00:01	10:25:16	400	5	69.85	69.85	5	1.35	5	1	2040	2035
24/01/2014	09:00:01	09:57:49	10000	10	71.2	71.2	10	1.35	10010	9	2035	2025
28/01/2014	09:00:01	09:42:51	400	10	74.05	74.05	10	1.45	10	1	2025	2015
29/01/2014	09:00:01	10:01:26	2500	10	75.5	75.5	10	1.45	10	1	2015	2005
30/01/2014	09:00:01	11:01:29	1000	5	77	77	5	1.5	15	2	2005	2000
31/01/2014	09:00:01	10:39:29	1000	10	78.5	78.5	10	1.5	10	1	2000	1990
03/02/2014	09:00:01	10:33:20	2500	20	80.05	80.05	20	1.55	20	1	1990	1970
04/02/2014	09:00:01	09:41:43	1500	10	81.65	81.65	10	1.6	30	2	1970	1960
06/02/2014	09:00:01	11:10:00	300	20	84.9	84.9	20	1.65	20	1	1920	1900
07/02/2014	09:00:01	09:52:20	1500	20	86.55	86.55	20	1.65	20	1	1900	1880
10/02/2014	09:00:01	10:33:00	2500	20	88.25	88.25	20	1.7	20	1	1880	1860
TOTAL			**32865**	**245**			**245**	**26.4**	**10625**	**39**		

6. From the trading of the Noticee, it was observed that the sell orders were placed for shares in the range of 5-20 shares when the respective buy order quantity was in the range of 100-10000 shares were already available in the system and on most days the trades of the Noticee were the only trades.

7. Thus, it was alleged that the Noticee was not acting as genuine seller and had no bona fide intention to sell because in-spite of sufficient buy orders with abundant quantity being available in the market, he placed sell orders for minuscule quantities only in each transaction on different days and by these trades, Noticee contributed to increase in scrip price and was instrumental in establishing a price higher than LTP. By trading in the aforesaid manner, Noticee manipulated the scrip price and created a misleading appearance of trading in the scrip by such trades and thereby violated Regulations 3(a), (b), (c), (d), 4(1), 4(2) (a), and (e) of PFUTP Regulations, 2003.

8. The Noticee vide letters dated April 10, 2018, November 14, 2018, November 21, 2018 and May 18, 2019 made the following submissions:

    a. The Noticee is working as accountant since 1997 and has a meager income. He does trading in share market in part time.

    b. As Noticee is retail investor, the trades in low price shares or low quantity since he doesn't have much capital. The normal trading of the Noticee is between 5 – 20 shares.

    c. 2850 shares of Malabar were purchased by the Noticee through the broker on the basis of market news.

    d. The orders are placed by Noticee over phone from his work place and at the time of placing the order he doesn't have any knowledge whether any buyer is there or not.

    e. Most of the buy order were placed at around 9 AM but the sell order has been placed after a long gap after placement of the buy order.

    f. The Noticee is not aware of the buyer of the shares and it is a coincidence that on many occasion he was the only seller.

    g. The Noticee had no ulterior motive while executing these transactions.

    h. Since the buy order was already exiting at the system at a high price, the Noticee just sold his shares at the buy order price and it's a mere coincidence and not any ungenuine practice.

    i. Since the Noticee did not place any sale order first which was higher than LTP therefore he is not instrumental in establishing higher price

than LTP. The Noticee has followed similar modus operandi in various other shares and hence his trading was genuine.

j. The Noticee is not connected with any other Noticee named in the SCN and is an independent entity.

k. The increase in LTP in the SCN is highly inflated and do not show the correct figures. On the basis of trading of the Noticee the positive LTP is only Rs. 0.71 per trade and 0.02 per share which is insignificant.

l. The Noticee possessed only 3350 shares out of which he has sold 1710 shares during the investigation period. The Noticee acquired these shares in staggered manner and would also like to sell these shares in staggered manner.

m. The allegation of increase in LTP by selling 5 shares in incorrect because even if he had sold 100 shares, the LTP would still increase.

n. The Noticee has placed reliance on the judgment in the matters of ***SEBI v. Kishore Ajmera*** [(2016) 6 SCC 368: AIR 2016 SC 1079], ***Parsoli Corporation vs. SEBI*** (Appeal No 146/2011 order dated 12th August 2011) ***and Samir Arora v SEBI*** (2005) 59 SCL 96 (SAT)]

9. An opportunity of personal hearing was granted to the Noticee on October 30, 2018 in accordance with Rule 4(3) of the AO Rules. However, the Noticee sought adjournment vide e-mail dated October 26. An adjournment was granted to the Noticee and the hearing was rescheduled on November 14, 2018. The Noitcee and his authorized representative appeared on the said date and reiterated the submissions as summarized above.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the reply to the SCN, oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

Issue No. I Whether the trading done by the Noticee in shares of Malabar during the Investigation Period were in violation of Regulations 3(a), (b), (c) & (d), 4(1), 4(2)(a)&(e) of the PFUTP Regulations?

Issue No. II If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated

in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

11. Before proceeding further, I would like to refer to the relevant provisions of PFUTP Regulations which are reproduced as under:-

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

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

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) .....

(c) .....

(d) .....

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

12. It is seen from the SCN and the reply of the Noticee that the Noticee had a total of 3,350 shares of Malabar purchased before the IP. The Noticee sold a total of 1710 shares during the period from December 26, 2011 to May 29, 2014. The striking feature of the trading of the Noticee is that in the 27 trades as given in Table 2, the Noticee has contributed to a LTP increase of Rs. 26.40 in the

scrip of Malabar. Out of the said 27 trades in 27 days, the Noticee's trade on 23 days were the only trades of the day. Although it is observed from table 2 that the Noticee placed sell orders after the buy orders, the quantity of shares sold by the Noticee was much smaller as compared to the pending buy orders.

13. Considering this pattern of trading it was alleged that the Noticee was not acting as genuine seller and had no bona fide intention to sell the shares. Further, the Noticee was selling small quantity of shares at upper circuit price which was the reason that led to increase in the price of the shares of Malabar.

14. I have considered the submissions of the Noticee wherein the Noticee has submitted that this was his regular pattern of trading and that he trades in low price or low volume due to limited capital. Further, he was not aware of the other people dealing in the scrip. Further, the Noticee has submitted that the sell orders were always placed after the buy order and he is not responsible for price increase.

15. However, the submissions of the Noticee are contrary to his trading in shares of Malabar. The Noticee has claimed that he had limited capital and his earing was also very meager. However, the Noticee still purchased 3350 shares of Malabar which was not a very liquid scrip or had any fundamentals. I have also seen the trading pattern of the Noticee as submitted by him and observed that he trades in smaller quantities but generally he has traded in liquid scrips and carries on mostly intraday trading or have sold the shares without holding them for a very long period. Even in reply of the Noticee dated November 21, 2018 where he has given his comparative trading in other scrips it is noted that he has done comparison of his trading in Malabar with scrips such as BEML, Biocon, Bank of India, Ranbaxy, etc. which are very liquid. In the case of Malabar, it can be seen that the Noticee started selling shares at price of Rs. 21 in Jnauary, 2013 and even when the price quadrupled in February, 2014 he had sold only around 50% of his holding. Such an exceptional holding period for a company like Malabar doesn't match with the normal trading pattern of the Noticee.

16. The Noticee claims to have placed the orders on phone and even if the Noticee was placing the orders on phone, he would have come to know that there is negligible volume in the scrip of Malabar and on most occasions there hasn't been any trading in the scrip. Further, the Noticee should have realized that It is locked at upper circuit every day with miniscule trading volume.

17. It is also worthwhile to note that the Noticee has submitted that he had limited loss bearing capacity and hence he sold shares in small lots. It is seen from the trading data that the scrip of Malabar was sparsely traded. It is surprising that inspite of the poor liquidity situation, the Noticee was confident that the price of the scrip will go up. It is important to note that Malabar reported net profits of

Rs. 0.08 crore, Rs. 0.23 crore and Rs. 0.07 crore for the year ended March 2011, March 2012 and March 2015 respectively. Company's quarterly results show that the company was not earning profits consistently. The fact that the Noticee continued to remain invested in such a company is against the investment profile of the Noticee.

18. The liquidity position of the scrip remained very sparse throughout 2013 and 2014 and because of the very minuscule trading the price of the scrip easily went up. The pattern of trading by other sellers was similar to the Noticee wherein the trades of 1 share, 5 shares or 10 shares were executed on the system taking the price up. The Noticee was aware that the scrip was thinly traded and that the price was constantly moving upwards. There was no need for the Noticee to sell the shares in installments of 5, 10 or 20 shares as there were sufficient buy orders in the system on most of the days. However, the Notice appears to have knowingly, sold small amount of shares everyday so as to ensure that there is at least 1 trade in the scrip and the price of the scrip keeps on increasing. If the Noticee would not have sold the shares there wouldn't be any trade in the scrip and new price would not be established. If the Noticee would have acted genuinely, he would have waited for the scrip to touch the intended sell price and then sell the shares at the intended price. If the Noticee could have held the shares for this long, he could have waited for some more time.

19. The Noticee has submitted that the SCN gives a wrong picture because he sold much more shares and the LTP increase if only 0.02 per share. It is interesting to note that the Noticee has sold 1465 shares in 10 trades where there hasn't been any change in LTP which makes it an average of 146.5 shares per trade. However, in 27 trades which have contributed to change in LTP (23 being the only trades of the day) the shares sold are only 245 making it an average of only around 9 shares per trade. Such an aberration in trading cannot be justified by merely saying that it is a coincidence. Thus, it can be inferred that the Noticee did not have any bonafide intention to deal in the shares of Malabar. As discussed earlier, his trading strategy is in stark contrast to the investment strategy submitted by him. Hence, the submission of the Noticee cannot be accepted.

20. The Noticee has also submitted that he doesn't know the company or any other entity named in the SCN. In this regard, I find it relevant to refer to the decision of the Hon'ble Supreme Court in the matter of ***Securities and Exchange Board of India*** v. ***Kishore R. Ajmera*** [(2016) 6 SCC 368: AIR 2016 SC 1079] wherein, the Supreme Court has held, "*…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 naïve to rest the final conclusions on the 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….*"

21. Thus, in the present matter even in absence of any connection, the trading pattern of the Noticee shows a deep rooted conspiracy. As stated earlier, the submissions of the Noticee are factually incorrect and hence cannot be accepted.

22. In view of the aforesaid, I find that the Noticee, by engaging in such non-genuine transactions, manipulated the price of the scrip of Malabar and also created a misleading appearance of trade in the scrip. I am of the considered view that the aforesaid act of the Noticee is in clear violation of Regulations 3(a),(b),(c)&(d) and 4(1), 4(2)(a)&(e) of the PFUTP Regulations.

Issue No. II **If yes, whether the violation, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?**

&

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

23. Since violation of Regulations 3(a),(b),(c)&(d) and 4(1), 4(2)(a)&(e) of the PFUTP Regulations by the Noticee is established, I am of the view that the same warrants imposition of monetary penalty upon the Noticee under Section 15HA of the SEBI Act, text of which is produced as under :

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

24. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.

25. In the instant case the profit made by the Noticee or the loss caused to investors cannot be quantified. However, as stated earlier, the Noticee contributed to the increase in the price of shares of Malabar through her trading. No material is available on record to indicate that the Noticee has repeated his actions.

ORDER

26. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 8,00,000/- (Rupees Eight Lakhs only) on the Noticee.

27. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - II [**EFD-DRA-1]** SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) 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

28. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

29. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually	
Bank Name and Account Number from which payment is remitted	
UTR No	

30. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 28, 2019

Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER