BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-6/PM-AB/006/2019-20]

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:

Smt. Rameshwari Devi Bhutra

PAN: AFOPB2891K

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 Smt. Rameshwari Devi Bhutra (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 June 18, 2014 to November 12, 2014 the scrip price of Malabar opened at Rs.68.4 and closed at Rs.345 i.e. contributing to net positive LTP of Rs.276.6. 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	
36.35	250	9	36.35	210	8	-	-	-	40	1	**8.43%**

5. It was observed that the Noticee contributed to more than 5% to total market positive LTP through 8 trades for a total quantity of 210 shares during this patch. The total LTP contribution of the Noticee's trades was Rs. 36.35 i.e. 8.43% of total market positive LTP. The details of the said 8 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
24/06/2014	09:00:00	13:42:48	250	25	79.1	79.1	25	3.75	25	1	250	225
25/06/2014	09:00:00	13:55:07	900	25	83.05	83.05	25	3.95	25	1	225	200
26/06/2014	09:00:00	14:53:39	1000	25	87.2	87.2	25	4.15	25	1	200	175
27/06/2014	09:00:00	10:49:50	100	25	91.55	91.55	25	4.35	25	1	175	150

30/06/2014	09:06:42	12:51:09	100	25	96.1	96.1	25	4.55	25	1	150	125
01/07/2014	09:00:00	12:30:17	75	25	100.9	100.9	25	4.8	25	1	125	100
03/07/2014	12:43:11	13:26:30	100	50	111.15	111.15	50	5.25	50	1	100	50
07/07/2014	09:15:00	12:41:39	200	10	116.7	116.7	10	5.55	50010	17	50	40
TOTAL			**2725**	**210**			**210**	**36.35**	**50210**	**24**		

6. From the trading of the Noticee, it was observed that the sell orders were placed for shares in the range of 10-50 shares when the respective buy order quantity was in the range of 75-1000 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, she 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 letter dated April 9, 2018 replied to SCN, making the following submissions:

    a. 300 shares of Malabar were purchased by the Noticee through the broker on May 24, 2012 at a price of Rs. 15.43.

    b. The Noticee sold 50 shares on March 6, 2013 at a price of Rs. 32.30 to book some profit and lower the cost.

    c. The Noticee intended to sell the remaining 250 shares around Rs. 100 and when the price reached Rs. 78.84, the Noticee slowly started selling shares and sold 200 shares. As the Noticee had recovered her cost, she intended to sell the remaining shares slowly and accordingly sold 10 shares for Rs. 116.30 on July 7, 2014. However, there was a fall in price and the Noticee sold the remaining 40 shares on July 10, 2014 at a price of Rs. 100.08.

    d. The Noticee is not aware of the buyer of the shares and was satisfied that the shares were sold a good price. The Noticee has come to know from the SCN that the price of shares of Malabar went up till Rs. 350/- but the Noticee sold all her shares at Rs. 100.08.

e. The Noticee purchased only 300 shares of the company through a broker and the Noticee had no ulterior motive while executing these transactions.

f. The Noticee is applying in IPO since 1991 and sells shares whenever she get good price. The Noticee is not aware of the reasons for increase in price of shares and the broker also doesn't have time during market hours to tell about the reasons of price increase.

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. The authorized representative appeared on the said date and reiterated the submissions made vide letter dated April 9, 2018.

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 in illiquid Stock Options done by the Noticee 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 purchased a total of 300 shares on May 25, 2012 and sold 50 shares on March 6, 2013. The Noticee sold the remaining 250 shares between June 24, 2014 and July 10, 2014. The striking feature of the trading of the Noticee is that 8 trades as given in Table 2 of the Noticee have contributed to a LTP increase of Rs. 36.35 in the scrip of Malabar. Out of the said 8 trades in 8 days, the Noticee's trade on 7 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 she has traded for only 300 shares and she was not aware of the other people dealing in the scrip and about the reasons for increase in the price. Further, the total profit of the Noticee from sale of these shares is Rs. 25,725. I observe from the submission of the Noticee that she is not a regular

trader in the market and claims to invest in IPOs since year 1991. As per the Noticee she sells shares when the price increases.

15. However, the submissions of the Noticee are contrary to her trading in shares of Malabar. The Noticee purchased 300 shares on on May 24, 2012 from stock exchange and not through IPO. It is observed from the trading data of the scrip on BSE that during the month of May, 2012, except for 3 days, the scrip witnessed a volume of 1 share per day. This indicates that the scrip was fairly illiquid and even in May, 2012 the scrip was locked at an upper circuit of 2%. Thus, in May, 2012 there was hardly any volume in the scrip of Malabar and on May 24, 2012 i.e. on the day when Noticee bought the shares, the total volume was 801 shares. Thus, the normal pattern of investment as submitted by the Noticee does not match the manner in which she has traded in the scrip of Malabar. Even if the Noticee was occasional trader, she would have come to know that there is negligible volume in the scrip of Malabar and it is locked at upper circuit every day with trading of just 1 share daily. It is unfathomable as to why an occasional investor would invest in such illiquid scrip and surprisingly, manages to get the shares from stock exchange even when the normal trading in the scrip was only 1 share per day.

16. It is also worthwhile to note that the Noticee has claimed to have sold 50 shares on March 6, 2013. It is seen from the trading data that in the month of March, 2013 the scrip of Malabar was traded only 4 days. On March 6, 2013 the volume in the scrip was only 660 shares spread across 6 trades. Thus, it can be seen that the liquidity situation was even worse in March, 2013 when the Noticee decided to sell part of her holding. 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. Further, there were no sales in F.Y. 2016. The fact that the Noticee continued to remain invested in such a company is against the investment profile of the Noticee.

17. The liquidity position of the scrip remained very sparse throughout 2013 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 or 10 share were executed on the system taking the price up. Even in June, 2014 when the Noticee sold 250 shares of Malabar, the pattern of selling is very suspicious. 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 25 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. However, what is intriguing is that the Noticee appears to be aware that there is low liquidity in the scrip from the time she purchased the shares 2 years ago and also that the price of scrip was moving up. If the Noticee would have acted genuinely, she would have waited for the scrip to touch her intended sell price and then sell the shares at the intended price. If the Noticee could have waited for more than 2 years, she could have waited for some more time.

18. The Noticee has submitted that after the scrip price crossed Rs. 100 she sold 50 shares on July 3, 2014 and intended to sell shares the remaining 50 shares in smaller lots of 10 shares. She sold 10 shares on July 7, 2014 but when the price fell she sold the remaining 40 shares immediately on July 10, 2014. However, as stated earlier, there was no reason for the Noticee to try and test the depth of market when it was clear that sufficient buy orders were available in the system. Thus, it can be inferred that the Noticee did not have any bonafide intention to deal in the shares of Malabar right from the day she acquired the shares. As discussed earlier, her trading strategy is in stark contrast to the investment strategy submitted by her. Hence, the submission of the Noticee cannot be accepted.

19. 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?**

20. 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."

21. 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.

22. It is seen from the submission of the Noticee and the trade data that the manipulative trades which increased the price of the shares of Malabar was for only 210 shares for which the Noticee made a profit of around Rs. 20,000/-. Further, 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 her actions.

ORDER

23. 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.

24. 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

25. 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.

26. 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	

27. 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: April 26, 2019

Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER