BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AS/03/2018]

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

P. J. Chaudhary

Broker of BSE (SEBI Registration no. INB010019411)

(PAN: AABPC4327R)

In the matter M/s SKS Logistics Ltd.

ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 22 of 2015, vide order dated March 29, 2016, while setting aside the adjudication order dated August 28, 2014, remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Appellant viz. P.J. Chaudhary, (hereinafter referred to as the Noticee) for the violations of the provisions of Regulations 4 (1) read with 4 (2) (a) 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 "PFUTP Regulations") and Regulation 7 read with Clause A (1), (2), (3), (4) and (5) of Code of Conduct specified under Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 in the matter of SKS Logistics Ltd. (hereinafter referred to as SKS). The Hon'ble SAT observed that-

   "In view of the decision of this Tribunal in the case of Amrut Securities Ltd. vs. SEBI (Appeal No. 254 of 2015 decided on 16.03.2016) and in the case of Vijay J. Thakkar vs. SEBI (Appeal No. 381 of 2014 decided on 09.02.2016), counsel for the parties state that the impugned order dated August 28, 2014 be quashed and

set aside and matter be restored to the file of AO for passing the fresh order on merits and in accordance with law."

FACTS OF THE CASE IN BRIEF

2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the alleged irregularity in the trading in the shares of SKS Logistics Limited, erstwhile SKS (Ship) Limited (hereinafter referred to as "**SKS"/"Company"/"scrip"**') and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") and various Rules and Regulations made there under for the period from June 01, 2004 to October 29, 2004 (hereinafter referred to as "**Investigation Period"**). The Investigation revealed that P. J. Chaudhary (hereinafter referred to as the **Noticee**) had indulged in circular / synchronized trading in connivance with certain clients/ brokers thus instrumental in creating artificial volume in the scrip which distorted market equilibrium.

3. SEBI has therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticee to inquire and adjudge the alleged violations of the provisions of Regulations 4(1) read with 4(2)(a) 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 "**PFUTP Regulations**") and Regulation 7 read with Clause A (1), (2), (3), (4) and (5) of Code of Conduct specified under Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as the "**Broker Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer, vide order dated May 28, 2009 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") to enquire into and adjudge under section 15HA and 15HB of the SEBI Act 1992 for the alleged violations.

SHOW CAUSE NOTICE, REPLY AND HEARING

Show Cause Notice

5. Show Cause Notice no. ADJ/SKS/AS/187389/2009 dated December 15, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15HA and 15HB of the SEBI Act, for its alleged violation of the provisions of Regulation 4(1), 4(2) (a) and 4(2) (g) of PFUTP Regulations and Regulation 7 read with Clause A (1), (2), (3), (4) and (5) of Code of Conduct of Broker Regulations.

6. The allegation against the Noticee was that it was trading along with a few brokers in a particular pattern which appeared to be circular/ synchronized in nature. It was alleged that the Noticee created artificial volume in the scrip of SKS and mislead genuine investors by giving them the impression that the scrip is being actively traded when that was actually not the case. The time difference between most of the buy and sell orders executed were within one minute and that such transactions were in the nature of synchronized trades.

Reply to Show Cause Notice

7. The Noticee vide letter dated January 04, 2010 inter-alia submitted that:
    a) Since February 2004 one Mr. Ramesh S. Mandal was in their employment and left their service in the month of March 2005 on the pretext that he is getting a job abroad.
    b) Looking to the trust and faith imposed in Mr. Ramesh S. Mandal, the Noticee allowed him to effect jobbing in the scrip of SKS Logistics Ltd. He effected jobbing in their name between September 14, 2004 and September 24, 2004 and November 3 and 4, 2004.
    c) Noticee denies that they were trading in a circular/synchronized manner with the brokers mentioned. They repeat and reiterate that they were

effecting jobbing transactions in the scrip in question. They have further stated that during the period of investigation, i.e. between June 1, 2004 to October 29, 2004, they have effected transactions only on six days.

d) Noticee denies that the transactions effected by them in the scrip in question, were circular in nature as alleged or otherwise. They have further submitted that the transactions were effected by them through the trading system provided by the Exchange. While executing the transactions one would not know as to who is the counter party member broker and/or client, and the transactions are executed following automating trading environment of the exchange. They have stated that they have no relationship of any nature whatsoever with the counter party member brokers and/or their clients.

e) They have further stated that in Show Cause Notice under reply, details regarding "Trade Time" and "Order Time" have not been given, therefore they are unable to verify allegation contained in the paragraph under reply.

f) They have denied that they have created artificial volume in the scrip in question and have misled genuine investors by giving the impression to them that the scrip is being actively traded. They further deny that their transactions in the scrip in question were synchronized trades.

Hearing

8. The undersigned granted an opportunity of personal hearing to the Noticee and the Noticee appeared before me through their representative Mr. Abdul Wahab A.H. Mukri. The Noticee reiterated the submissions made by them vide letter dated January 04, 2010. Further as desired by them, the relevant extract of trade and order log were sent to the Noticee vide letter dated October 17, 2012, which returned undelivered. Another attempt was made vide letter dated October 22, 2012 to deliver the relevant extract of trade and order log and that also came undelivered. Subsequently, vide letter dated November 7, 2012, relevant extract of Trade and Order log were delivered to the noticee. However, Noticee did not file any further reply.

9. Pursuant to the order dated March 29, 2016 of the Hon'ble SAT for passing fresh order on merits and in accordance with law, the Noticee was provided with an opportunity of hearing on February 15, 2018. However, the Noticee did not attend the said hearing. Therefore, another opportunity of personal hearing was granted to the noticee on March 12, 2018.In the said hearing, the authorized representatives of the noticee, Mr. J.J. Bhatt and Ms. Hiral Parag Shah, reiterated the submissions made before the Hon'ble SAT. In addition, the noticee, inter-alia submitted copies of six AO orders passed in the matter of SKS Logistics Ltd. and order dated February 08, 2018 of Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Pvt. Ltd.

Consideration of Issues, Evidence and Findings

10. I have carefully examined the charges made against the Noticee as mentioned in the SCN, oral and written submissions and the documents as available on record. In the instant matter the following issues arise for consideration and determination:
    a. **Whether the Noticee has violated Regulations 4 (1) read with 4 (2) (a) & (g) of the PFUTP Regulations 2003 and Regulation 7 read with Clause A (1), (2), (3), (4) and (5) of Code of Conduct specified under Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992?**
    b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15 HA and 15HB of the SEBI Act for the aforesaid violation?**
    c. **What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act?**

11. Before proceeding, I would like to refer to the relevant provisions of the PFUTP Regulations and the Broker Regulations which reads as under:

PFUTP Regulations

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;

….

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

CODE OF CONDUCT FOR STOCK BROKERS - Regulation 7

A. General.

(1) ***Integrity:*** *A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

(2) ***Exercise of due skill and care:*** *A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

(3) ***Manipulation:*** *A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

(4) ***Malpractices****: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investor's interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

(5) ***Compliance with statutory requirements:*** *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

Issue a) **Whether the Noticee has violated Regulations 4 (1) read with 4 (2) (a) & (g) of the PFUTP Regulations 2003 and Regulation 7 read with Clause A (1), (2), (3), (4) and (5) of Code of Conduct specified under Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992.**

12. I find from the investigation report that the price of the scrip of SKS increased sharply during the period August 05, 2004 to August 20, 2004. The scrip opened at ₹19.9 on August 05 2004 reached a high of ₹39.10 and closed at ₹36.5 on August 20, 2004. The average daily traded quantity was around 9,000 shares. During this patch of 12 trading days, the scrip had touched its applicable upper circuit limit on 7 trading days. The upper circuit limit was revised downward from 20% to 10% by BSE on August 11, 2004.

13. The scrip was trading in the price range of ₹27.75 to ₹37.90 till September 17, 2004. From September 20, 2004 onwards, the price of the scrip started increasing from opening price of ₹34.75 on September 20, 2004 and touched its period high of ₹68.40 on October 12, 2004. The circuit filter was revised again from 5% to 2% on October 12, 2004. The average daily traded quantity during this period was around 31,000 shares. From October 14, 2004 to October 29, 2004, the scrip traded in the price range of ₹58.00 to ₹68.00.

14. I find from the investigation report that the Noticee along with a few other clients was trading in a particular pattern which appeared to be circular/synchronized in nature. The names of the trading members and their respective clients are mentioned below:

    a) Bhagvandas & Co. dealing on behalf of Shri Sunil Purohit
    b) Peninsular Capital Market dealing on behalf of Shri Haresh Posnak
    c) Vijay J Thakkar . dealing on behalf of the Mehul Shah
    d) Harikishan Hiralal dealing on behalf of Shri Mahesh Bissa
    e) SPJ Stock Brokers Pvt. Ltd. dealing in its own account
    f) Noticee dealing on its own account.
    g) Galaxy Broking Ltd. dealing on behalf of Shri Bhuptani Kapil Chatrabhuj and
    h) Sumat P. Jain dealing on behalf of Shri Sunil Satish Kuril

15. I find from the investigation report that the above clients entered into trades on various dates in a particular pattern and that it was usually among themselves through a group of three to four brokers/clients i.e. A→B→C→D→A and the same number of shares were rotated in a circular manner among brokers/clients

in the group on daily basis so that the same number of shares go back to the original seller at the end of the day and the net position of the broker/client remains nil.

16. I find that the trades between the brokers accounted for more than 50% of the total market trades on certain days as given in table below:

Date	Traded Quantity (Circular in Nature)	Total Traded Quantity on that date	% of Traded Quantity
14-Sep-04	9000	26265	34.27%
15-Sep-04	2100	11842	17.73%
20-Sep-04	25050	39089	64.08%
21-Sep-04	26025	46393	56.10%
23-Sep-04	10050	37543	26.77%
24-Sep-04	22130	43485	50.89%
28-Sep-04	19975	28651	69.72%
29-Sep-04	27400	38107	71.90%
30-Sep-04	7500	68008	11.03%
25-Oct-04	12700	21070	60.28%
26-Oct-04	15000	43062	34.83%
27-Oct-04	4500	23235	19.37%
29-Oct-04	10540	41910	25.15%

These circular trades accounted for around 16% of the total traded quantity during the investigation period.

17. I give below few examples of Noticee's trades on certain dates with the group of entities mentioned above to illustrate the nature of transactions entered by it:

i. **<u>14/09/2004</u>**

<u>3000 shares</u>

a. 10:52:12 AM S.P.J Stock Brokers Pvt. Ltd. sold 3000 shares @ ₹36.8 to Noticee

b. 10:52:42 AM Noticee sold 3000 shares @ ₹37.10 to Sunil Purohit

c. 10:52:53 AM Sunil Purohit sold 3000 shares @ ₹37.25 to S. P. J. Stock Brokers Pvt. Ltd.

ii. **<u>15/09/2004</u>**

<u>700 shares</u>

a. 10:37:42 AM S.P.J Stock Brokers Pvt. Ltd. sold 700 shares @ ₹34.35 to Noticee

b. 10:41:41 AM Noticee sold 700 shares @ ₹34.40 to Sunil Purohit

c. 10:41:52 AM Sunil Purohit sold 700 shares @ ₹34.45 to S.P.J. Stock Brokers Pvt. Ltd.

iii. 20/09/2004

3000 shares

a. 12:35:53 S.P.J Stock Brokers Pvt. Ltd. sold 3000 shares @ ₹34.5 to Noticee

b. 12:36:19 Noticee sold 3000 shares @ ₹34.55 to Sunil Purohit.

c. 12:37:49 Sunil Purohit sold 3000 shares @ ₹34.60 to Mehul Shah.

d. 12:38:30 Mehul Shah sold 3000 shares @ ₹34.65 to Mahesh Bissa.

e. 13:02:06 Mahesh Bissa sold 3000 shares @ ₹34.85 to S.P.J. Stock Brokers Pvt. Ltd.

3350 shares

a. 14:23:46/14:24:04 S.P.J Stock Brokers Pvt. Ltd. sold 2000/1250 shares @ ₹34.5 to Noticee

b. 14:24:48 Noticee sold 3350 shares @ ₹34.75 to Sunil Purohit.

c. 14:25:00 /14:25:03 Sunil Purohit sold 3350 shares @ ₹34.80 to S. P. J. Stock Brokers Pvt. Ltd.

iv. 21/09/2004

3750 shares

a. 11:32:07/11:32:14/11:33:09 S.P.J Stock Brokers Pvt. Ltd. sold 3750 shares @ ₹35.90/₹ 36.00 to Noticee.

b. 11:33:32 Noticee sold 3750 shares @ ₹36.10 to Sunil Purohit.

c. 11:42:38 Sunil Purohit sold 3750 shares @ ₹36.25 to Mahesh Bissa.

d. 11:42:03 Mahesh Bissa sold 3750 shares @ ₹36.40 to S.P.J. Stock Brokers Pvt. Ltd.

3675 shares

a. S.P.J Stock Brokers Pvt. Ltd. sold 3675 shares to Noticee

(*2000 shares were sold @ ₹34.20 at 10:38:39 and 1675 shares were sold @ ₹34.25 at 10:38:50*).

b. 10:39:35 Noticee sold 3675 shares @ ₹34.75 to Sunil Purohit.

c. Sunil Purohit sold 3675 shares to S.P.J. Stock Brokers Pvt. Ltd.

(2500 shares were sold @ ₹35.35 at 10:51:05 and 1175 shares were sold @₹35.2 at 10:51:08)

v. 23/09/2004

1700 shares

a. 12:18:05 S.P.J Stock Brokers Pvt. Ltd. sold 1700 shares @ ₹40.05 to Noticee.

b. 12:21:02 Noticee sold 1700 shares @ ₹40.10 to Sunil Purohit.

c. 12:22:31 Sunil Purohit sold 1700 shares @ ₹40.05 to S. P. J. Stock Brokers Pvt. Ltd.

1650 shares

a. 14:13:05 S.P.J Stock Brokers Pvt. Ltd. sold 1650 shares @ ₹40.05 to Noticee.

b. 14:13:53 Noticee sold 1650 shares @ ₹40.10 to Sunil Purohit.

c. 14:14:12 Sunil Purohit sold 1650 shares @ ₹40.15 to S. P. J. Stock Brokers Pvt. Ltd.

vi. 24/09/2004

2750 shares

a. 10:21:00 S.P.J Stock Brokers Pvt. Ltd. sold 2750 shares @ ₹40.20 to Noticee.

b. 10:38:25/10:38:34/10:38:43 Noticee sold 2675 shares @ ₹41.40 to Bhuptani Kapil Chatrabhuj.

(Noticee sold 75 shares back to S.P.J. Stock Brokers Pvt. Ltd. and S.P.J. Stock Brokers Pvt. Ltd. sold 75 shares to Bhuptani Kapil Chatrabhuj)

c. 10:37:21 Bhuptani Kapil Chatrabhuj sold 2750 shares @ ₹41.25 to Sunil Purohit.

d. 10:35:34 Sunil Purohit sold 2750 shares @ ₹41.05 to S.P.J. Stock Brokers Pvt. Ltd.

3655/3670 shares

a. 11:54:23 Noticee sold 3700 shares @ ₹41.40 to Mehul Shah.

b. 11:55:43 Mehul Shah sold 3700 shares @ ₹42.05 to S.P.J. Stock Brokers Pvt. Ltd.

c. 12:03:42 S.P.J Stock Brokers Pvt. Ltd. sold 3655 shares @ ₹42.15 to Noticee.

18. The Noticee along with the other entities mentioned above entered into trades in such a manner that on several instances, the time difference between buy order and sell order was nil. The original buy order quantity and the original sell order quantity is observed to be matching in 934 trades involving 1,68,740 shares out of a total of 1133 trades involving 1,91,970 shares. The original buy order rate

and the original sell order rate is observed to be matching in 584 trades involving 1,01,910 shares. In 486 trades (out of a total of 1133 circular trades) constituting 91,485 shares, the order prices as well as the order quantities are matching and the buy orders and sell orders have been placed within a minute and therefore these trades appear to be synchronized.

19. It is observed that the noticee dealing on it's own account, on September 14, 2004 bought 3000 shares at 10:52:12 at a price of ₹36.80 and at 10:52:42 sold the same number of shares at a price of ₹37.10. This resulted in circular trades for 9000 shares within 1 minute, executed between the noticee and two other brokers. Similar circular trades were observed wherein the broker/ client placed the buy order and sell order of the same scrip and for the same quantity within a gap of 1 minute. This trading pattern (buying and immediate selling or vice versa) has been observed for trading of 1,73,470 shares out of the total circular trades for 1,91,970 shares. It is observed that these trades resulted in increase of volumes.

20. The pattern of synchronized order placement/circular trades clearly points out that the transactions were carried out with the intention that the order of the Noticee with other members should match and there was a prior arrangement with respect to these transactions. The trading pattern indicates that the time difference between buy and sell order was approximately close to or less than a minute.

21. From the trading pattern, I find that the noticee first bought the shares of SKS from S.P.J. Stock Brokers Pvt. Ltd. for which the buy and sell orders were synchronized and subsequently sold the same quantity of shares almost immediately to Sunil Purohit (5 out of 6 trading days).

22. The role of the Noticee in executing the larger game plan of creating manipulation in the scrip of SKS cannot be overlooked. It is not possible for a single entity to manipulate the market and the role of the entire group has to be considered in a holistic manner to arrive at any conclusion. In the instant matter the trading pattern of the members of signifies the misleading appearance of trading.

23. The fact is that had the trades of the Noticee been executed in the normal course of business, the possibility of such perfect matching would not have been possible. The buy and sell prices of one entity were close to the buy/sell rates of the other entity in all the settlements, such that the trades of these entities were always matched. A trade can be executed on the screen and still be manipulative in nature. Considering the number of such trades, it is clear that there has been a gross mis-use of the screen based trading system. It is also to be stated that "intention" is inherent in all cases of synchronized trading and the same was also brought out in the case of Nirmal Bang Securities (P) Ltd. Vs. SEBI by the Hon"ble SAT whereby it was observed that "Intention is reflected from the action of the Appellant. Choosing selective time slots does not appear to be an involuntary action."

24. I find that the noticee, vide letter dated January 4, 2010, has inter-alia, made the submission that Mr. Ramesh S Mandal, whom they had employed him since February 2004, informed them in second week of November 2014 that he has overheard in the market that prices of SKS are likely to rise and he sought permission to effect transactions in the said scrip. That he effected jobbing transactions in their name between September 14 to 24, 2004 and from November 3 and 4, 2004. I find that the circular trades were executed during September 14 to 24, 2004 in the proprietary account of the Noticee. Therefore, the Noticee is responsible for the trades executed in it's proprietary account.

25. The Noticee has also denied that they were trading in circular / synchronized manner with the brokers and they were effecting jobbing transactions in the scrip. The transactions were effected by them through the automatic trading system of the exchange and they did not know who is the counterparty member broker/ client. I note that as illustrated above, the Noticee executed circular/ synchronised trades. Further, for 5 out of 6 trading days, when the Noticee executed such circular trades, the shares of SKS were bought by the Noticee from the same counter-party i.e. S.P.J. and subsequently sold same number of shares to the same counterparty in many instances i.e. Sunil Purohit within few

seconds/ minutes. This clearly indicates the meeting of minds and manipulative trading pattern. Therefore, the said submission of the Noticee is without any merit.

26. The Noticee also submitted that the details regarding trade time and order time were not provided to them. Vide letter dated October 17, 2012, the relevant extract of trade log and order log which included trade time and order time was provided to the Noticee.

27. I have noted the submissions of the Noticee denying the allegations were trading in circular / synchronized manner with the brokers and they were effecting jobbing transactions in the scrip. It cannot be a mere coincidence that every time, the orders placed by the Noticee matched with the same set of counter parties. A mere look at the trading details annexed to the SCN, which contains the details of a large number of trades, makes it clear that the trades were synchronized/circular. By indulging in such manipulative trading, the Noticee created artificial liquidity in the scrips and played a role in the manipulation of the trading. I find that out of the six trading days when the noticee executed circular trades, on three trading days, the contribution of the circular trading volume was more than 50% of the total traded volume (maximum 64%). Further, for 5 out of 6 trading days, when such circular trades executed by the Noticee, the Noticee had bought the shares of SKS from the same counter-party i.e. S.P.J. and subsequently sold same number of shares to the same counterparty i.e. Sunil Purohit within few seconds/ minutes.

28. Regulation 4(2)(a) of PFUTP, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulations 4(2)(g) of PFUTP prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. As detailed above, the acts of the Noticee clearly created false and misleading appearance of trading in the shares of SKS and also that it did not act in a bonafide manner. The facts of the case highlight the Noticee's involvement, by executing continuous synchronized/circular trades

in a substantial manner, in the manipulation of price/volume of the shares of SKS which led to creation of artificial volumes and misleading appearance of trading in the said shares. As the transactions executed by the Noticee in the scrip of SKS were synchronized/ circular, there does not appear to be any genuine trading interest in the scrip.

29. In terms of Clauses A(1) to A(5) of the Code of Conduct prescribed under the provision of Brokers Regulations, a stock broker shall not, inter alia, create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. The Broker shall also maintain high standard of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. It also mandates that the Broker shall not, inter alia, indulge in a manipulative transaction with a view to distort the market equilibrium and comply with all the statutory requirements. The trades of the Noticee as explained hereinabove in detail establishes that the same created a misleading appearance of trading, artificial volume and price in the shares of SKS. It further shows that the Noticee had failed to exercise due skill, care and diligence and not maintained high standard of integrity, promptitude, fairness in the conduct of its business as a stock broker. Moreover, the transactions of the Noticee, in the proprietary account, in the said scrip, were synchronized/ circular and there does not appear to be any genuine trading interest in the said scrips.

30. Generally, synchronized/ circular are the instruments/ tools employed by some unscrupulous elements in the securities market to manipulate the market and deceive the general/genuine investors in the market place. The pattern of trading, behaviour of the entities, apparent irregularities and the available trading date, etc., prove manipulation which always depends on inferences drawn on a mass of factual detail. When all of these are considered together, they can emerge as ingredients to prove the manipulative scheme designed and executed by such manipulators with intent to tamper with free market forces.

31. In view of foregoing, I find that the submissions of the Noticee are not tenable and consequently, hold that the charges leveled against the Noticee are proved and that the allegation of violation of provision of regulations 4(1), 4(2)(a), and (g) of PFUTP, A(1), (2), (3) (4) and (5) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations stands established.

Issue b) Whether the Noticee is liable for monetary penalty prescribed under Section 15 HA and 15HB of the SEBI Act for the aforesaid violation?

32. The next issue arise for consideration is as to what would be monetary penalty that can be imposed on the noticee for violation of aforesaid Regulations. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund[2006] 68 SCL 216(SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes since qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*".

33. Thus, the aforesaid violations by the Noticee make it liable for penalty under Sections 15HA and 15 HB of SEBI Act, 1992 which read as follows:

> ***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 of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*
>
> ***Penalty for contravention where no separate penalty has been provided***
>
> *15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extent to one core rupees.]"*

Issue c) What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act?

34. While determining the quantum of penalty under sections 15HA and 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

> ***"15 J Factors to be taken into account by the adjudicating officer***
>
> *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."*

35. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains of unfair advantage enjoyed by an entity and the consequent losses suffered by the investor I have noted that the investigation report also does not dwell on the extent of specific gains made by the clients or the broker. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee in that it traded in the scrip of SKS in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. The greater the liquidity, the higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volumes and been induced into investing in the said scrip. Bedsides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for the said acts of omissions and commissions. Considering the continuous effort of the Noticee in this aspect where the synchronized/circular trades were

carried out over a period of time, it can safely be surmised that the nature of default was also repetitive.

36. Further, the noticee has relied on the order dated February 08, 2018 of the Hon'ble Supreme Court in the matter of SEBI Vs. Rakhi Trading Pvt. Ltd. I find that in the said order, with regard to the brokers, the Hon'ble Court has stated that SEBI has not provided any material to suggest negligence or connivance on the part of the broker. It is also mentioned that as held by the Court in the matter of Kishore R. Ajmera, there are several factors to be considered. Therefore, the Hon'ble Court has held that to hold a broker guilty of violation of PFUTP regulations or Code of Conduct, certain factors are to be considered as done in the case of Kishore R Ajmera.

37. I find that that the Hon'ble Supreme Court in the Appeal Civil Appeal no. 2818 of 2008, SEBI Versus Kishore R. Ajmera and others, while allowing the SEBI appeal against the SAT order in the matters of *M/s Ess Ess Intermediaries Pvt. Ltd.,* and others, has recorded the following:

"…In these cases the volume of trading in the illiquid scrips in question was huge, the extent being set out hereinabove. Coupled with the aforesaid fact, what has been alleged and reasonably established, is that buy and sell orders in respect of the transactions were made within a span of 0 to 60 seconds. While the said fact by itself i.e. proximity of time between the buy and sell orders may not be conclusive in an isolated case such an event in a situation where there is a huge volume of trading can reasonably point to some kind of a fraudulent/manipulative exercise with prior meeting of minds. Such meeting of minds so as to attract the liability of the broker/sub-broker may be between the broker/sub-broker and the client or it could be between the two brokers/sub brokers engaged in the buy and sell transactions. When over a period of time such transactions had been made between the same set of brokers or a group of brokers a conclusion can be reasonably reached that there is a concerted effort on the part of the concerned brokers to indulge in synchronized trades the consequence of which is large volumes of fictitious trading resulting in the unnatural rise in hiking the price/value of the scrip(s). It must be specifically taken note of herein that the trades in question were not "negotiated trades" executed in accordance with the terms of

the Board's Circulars issued from time to time. A negotiated trade, it is clarified, invokes consensual bargaining involving synchronizing of buy and sell orders which will result in matching thereof but only as per permissible parameters which are programmed accordingly.

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 factor 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."

38. While applying the test prescribed by the Hon'ble Supreme Court in the said matter, I find that it indicates the deliberate intention of the noticee to manipulate the market and there has been transgression by the noticee beyond the permissible dividing line between negligence and deliberate intention. Out of the six trading days when the noticee executed circular trades, for three trading days, the contribution of the circular trading volume was more than 50% of the total traded volume (maximum 64%). Further, for 5 out of 6 trading days, when such circular trades executed by the noticee, the noticee had bought the shares of SKS from the same counter-party and subsequently sold same number of shares to the another counterparty within few seconds/ minutes. Being a registered market intermediary at the relevant point in time, the noticee was under obligation to exercise due diligence and care and ensure that the trades executed through it on behalf of its clients or otherwise, were genuine trades and not executed to disturb the market equilibrium and to falsely influence the volumes or price of the scrip. Instead, the noticee, trading in the proprietary account, not only indulged in circular trades but also synchronized trades which created significant artificial volumes in the scrip and disturbed the market equilibrium.

39. The Hon'ble SAT while remanding the instant matter to the undersigned has relied on it's order dated February 9, 2016, Appeal No. 381 of 2014-Vijay J. Thakkar vs. SEBI. I find that by in the said order, the Hon'ble SAT has inter-alia observed the following:

"It is a matter of record that by three separate orders all dated 13.04.2012, the AO of SEBI had imposed penalty of ₹1 lac under Section 15HA of the SEBI Act on each of the persons who had indulged in synchronized/circular trades. In the impugned order passed on 28.08.2014 the AO has not considered the aforesaid orders all dated 13.04.2012 which have direct bearing while imposing penalty against the appellant."

40. Due to the reasons mentioned above, I am of the view that there is no case for change in the penalty of ₹16,00,000 imposed on the Noticee under Section 15HA of the SEBI Act earlier vide order dated August 28, 2014 for violation of SEBI (PFUTP) regulations.

41. With regard to the issue of violation of code of conduct for Stock brokers, as explained above, the trades of the Noticee, in the proprietary account, created a misleading appearance of trading, artificial volume and price in the shares of SKS. The said trades, which were synchronized/ circular, were executed with the intention to create an artificial volume in the scrip of SKS. Therefore, the Noticee had failed to exercise due skill, care and diligence and not maintained high standard of integrity, promptitude, fairness in the conduct of its business as a stock broker. In view of the above, there is no case for change in the penalty of ₹6,00,000 imposed on the Noticee under Section 15HB of the SEBI Act earlier vide order dated August 28, 2014 for violation of Code of Conduct for Stock Brokers.

ORDER

42. 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, I hereby impose a monetary penalty of ₹16,00,000/- (Rupees Sixteen Lakh Only) under section 15HA SEBI Act and ₹6,00,000/- (Rupees Six Lakh Only) under section 15HB SEBI Act, i.e. total penalty of ₹22,00,000/- (Rupees Twenty Two Lakh Only) on the Noticee which will be commensurate with the violation/s committed by the Noticee.

43. 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

44. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

- 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)

45. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: June 01, 2018 **ASHA SHETTY**

Place: Mumbai **ADJUDICATING OFFICER**