BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/GR/RK/2021-22/12327)

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

In respect of:

SL. No.	Name of the Entity	PAN
1	Divyadrishti Traders Pvt. Ltd.	AABCD8146J

In the matter of IPO of Tijaria Polypipes Ltd.

FACTS OF THE CASE

1. Tijaria Polypipes Limited., (hereinafter referred to as **"Tijaria/TPL/the Company**") came out with an Initial Public Offering (hereinafter referred to as "**IPO**") of 1,00,00,000 equity shares of a face value of Rs 10/- each, issued at a premium of Rs 50/- per equity share, wherein it raised Rs 60/- Crores to fund its proposed expansion and diversification plans. The aforesaid IPO opened on September 27, 2011 and closed on September 29, 2011. TPL allotted 71,64,406 shares in the retail individual investors category (constituting 71.64% of the total IPO shares) and 28,36,001 shares to the Qualified Institutional Buyers (hereinafter referred to as "**QIBs**") (constituting 28.36% of the total IPO shares). The shares of TPL were listed on the Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") and the National Stock Exchange of India Limited (hereinafter referred to as "**NSE**").

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in respect of trading in the scrip of TPL, upon observing a steep fall in the share price on the first day of listing i.e. October 14,

2011. The price of TPL in NSE, fell from the highest price of Rs 67.75 per share to Rs 16.50 per share while in BSE, it fell from the highest price of Rs 67.80 per share to Rs 16.05 per share. It is noted from the Investigation Report that Divyadrishti Traders Pvt. Ltd. (hereinafter referred to as "**Noticee/DTPL**") entered into synchronized trades to give exit to certain QIBs which created artificial volume in the scrip of TPL, leading to false and misleading appearance of trading in the securities market. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticee under Sections 15HA and 15HB of the SEBI Act for the alleged violations committed by the Noticee under Section 12 A of SEBI Act read with Regulation 3(a), 3(b), 3(c), 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Based on the findings of the investigation, initially, SEBI initiated Adjudication proceedings in the matter and appointed Shri D Ravikumar, as the Adjudicating Officer (hereinafter referred as **AO**) under Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (Adjudicating Rules) to inquire into and adjudge under Sections 15HA and 15HB of the SEBI Act for the alleged violations committed by the Noticee under Section 12A of SEBI Act read with Regulation 3 (a),3 (b),3 (c),3 (d) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

Subsequently, Shri. Suresh B Menon was appointed as the Adjudicating Officer in the said matter in the place of Shri D Ravikumar. Thereafter, vide order dated April 9, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter. The proceeding is therefore being carried forward where it had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated January 28, 2016 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15HA and 15HB of the SEBI Act for the alleged violations stated at para 3 above. The aforesaid SCN was served upon the Noticee.

5. The fact of the case and the allegations made in the SCN are summarised below:

   a) The company raised Rs. 60/- crores to fund its proposed expansion and diversification plans through a public issue of 1,00,00,000 equity shares of face value of Rs. 10- each, issued at a premium of Rs. 50/- per share. The public issue (IPO) of the Company opened for subscription on September 27, 2011 and closed on September 29, 2011. The shares of the company were listed on BSE and NSE on October 14, 2011. It was observed that 3,100 applicants were allotted shares in the IPO of the company, out of which 3097 applicants were allotted shares in the retail category and three QIBs were allotted shares. The three allottees in the QIB category were Sparrow Asia Diversified Opportunities Fund (SPARROW), IPRO Funds Ltd (IPRO) and Credo India Thematic Fund Limited (CREDO).

   b) It is alleged that there was a steep fall in the scrip price of the Company on the first day of its listing on both BSE and NSE. Investigation was therefore conducted to examine the steep fall in the scrip price of the Company on the first day of its listing on the Stock Exchanges. It is alleged that the two QIBs viz. CREDO and SPARROW were given exit option to sell their holdings in BSE and NSE at a premium to issue price. It is alleged that SPARROW had sold 9,74,739 shares of the company on the first day of its listing on the Stock Exchanges and SPARROW sold 5,14,739 shares on BSE and 4,60,000 shares on the NSE. It is alleged that one of the major

counterparty to the trades of SPARROW on the first day of trading on BSE and NSE was DTPL. It is alleged that when SPARROW had sold the shares of the company on BSE and NSE, DTPL bought 25,706 shares on BSE and 85,580 shares on NSE respectively. The details of the buy orders of DTPL (buyer) as against the sell orders of SPARROW (seller) is mentioned as under:

Exchange	Buy Order Qty.	Sell Order Qty	Seller name	Traded Qty.	Buy Order price	Sell Order Price	Buy Order Time	Sell Order Time
BSE	50,000	1,15,000	SPARROW	25706	62	62	11:16:19	10:43:10
NSE	100000		SPARROW	44223	62	62	11:05:22	10:02:47 10:05:48 10:04:33 10:06:43 10:09:23
	50000		SPARROW	41357	62	62	11:07:45	10:02:47 10:05:48 10:04:33 10:06:43

c) From the above table, it is observed that on BSE, the sell order for 1,15,000 shares was placed by SPARROW on October 14, 2011 at 10:43:10 for Rs.62/- which got matched with the buy order placed by DTPL for 50,000 shares at 11:16:19 at Rs.62/- per share and the trade got executed for 25,706 shares. Similarly, on NSE, the sell order placed by SPARROW on October 14, 2011 for Rs.62/- got matched with the buy order placed by DTPL for 1,00,000 shares at 11:05:22 at Rs.62/- per share and the trade got executed for 44,223 shares. On the same day i.e on October 14, 2011, another sell order placed by SPARROW on NSE also got matched with the buy order of DTPL for 50,000 shares at 11:07:45 at Rs.62/- per share and the trade got executed for 41357 shares

d) It is further alleged that out of 9,30,631 shares sold on the first day of trading by CREDO i.e on October 14, 2011, 4,60,000 shares were sold by CREDO on BSE and 4,70,631 shares were sold on NSE. It is alleged that one of the major counterparties to the trades of CREDO on the first day of trading on NSE was DTPL for 56,546 shares. The details of the purchase

order placed by DTPL which got matched with the sell order of CREDO is as given below:

Exchange	Buy Order Qty.	Seller name	Traded Qty.	Buy Order price	Sell Order Price	Buy Order Time	Sell Order Time
NSE	100000	CREDO	50000	62	62	11:05:22	10:27:13 10:30:10 10:30:17 10:56:41 10:59:21 11:04:35
NSE	50000	CREDO	6546	62	62	11:07:45	11:04:35

e) From the above table, it is observed that on NSE, the sell order was placed by CREDO at various timing for Rs.62/- on October 14, 2011 which got matched with the buy order of DTPL placed for 100,000 shares at 11:05:22 at Rs.62/- per share and the trade got executed for 50000 shares. On the same day i.e. on October 14, 2011, another sell order placed by CREDO on NSE also got matched with the buy order of DTPL for 50,000 shares at 11:07:45 at Rs.62/- per share and the trade got executed for 6546 shares. From the abovementioned details, it is alleged that DTPL entered two buy orders for 1,50,000 shares out of which trades for 1,42,126 shares got resulted with the said two QIBs ('Sparrow' and 'Credo').

f) It is alleged that with respect to the aforesaid purchase of the shares from the two QIBs viz. CREDO and SPARROW by DTPL, DTPL had sold these shares to Shri Jivraj Zala ('**Zala**') in a synchronised manner. It is also alleged that Shri Jivraj Zala, in turn, was funded by the company to the extent of approx. Rs.3.8 crore indicating connections between the management of TPL and Jivraj Zala. The details of the sell orders placed by DTPL on October 14,2011, which got matched with the purchase order of Shri Jivraj Zala is as given below

Exchange	Sell Order Qty.	Buy Order Qty	Buyer Name	Traded Qty.	Sell Order Price	Buy Order Price	Sell Order Time	Buy Order Time
BSE	50,000	1,00,000	Jivraj Zala	41,681	47.25	47.25	12:25:37	12:25:38

g) From the above table, it can be seen that on BSE, the buy order for 1,00,000 was placed by Shri Jivraj Zala on October 14,2011 at 12:25:38 for Rs.47.25, which got matched with the sell order placed by DTPL for 50,000 shares at 12:25:37 for Rs.47.25 per share and the trade got executed for 41681 shares. It is alleged that the aforementioned orders between DTPL and Shri Jivraj Zala were synchronised. Thus, it is alleged that DTPL had aided and abetted the two QIBs in giving them an exit option to sell their holdings at a premium to the issue price. It is further alleged that DTPL who had bought the shares at a high price from the two QIBs was also given an exit by Shri Jivraj Zala on both BSE & NSE who on various instances had bought shares from DTPL in sychronised trades, details of which are mentioned in the table above.

h) It is alleged that in order to give an exit to the two QIBs at a premium to the issue price, DTPL bought 50,000 and sold 50,000 shares of TPL in BSE. The said purchase of 50,000 shares was at an average price of Rs.61.94 per share and the sell was at an average price of Rs. 47.25 per share and thereby DTPL made a loss of Rs. 7,34,815/- due to their trading in the scrip of TPL. Similarly, on NSE, DTPL bought 1,50,000 and sold 56,550 shares of TPL at an average price of Rs. 61.99 per share and the sell was at an average price of Rs. 44.77 per share and thereby DTPL made a loss of Rs. 9,74,055 from the purchase and sell of 56,550 shares Subsequently, on October 17, 2011, DTPL sold 79,733 shares of TPL on NSE at an average price of Rs.15.23 per share and 20267 shares of TPL on BSE at an average price of Rs.15.47 per share. Therefore, DTPL incurred a total loss of Rs.54,08,745.05 from the purchase and sell of 1.5 lacs shares due to its trading in the scrip of TPL.

i) It is alleged that DTPL incurred an overall loss of Rs. 61,43,560/- and provided exit inter alia to the two QIBs viz. CREDO and SPARROW at a premium to the issue price by trading in the scrip of TPL on the first day of listing i.e. October 14, 2011. It is further alleged that DTPL, in turn, by

entering into synchronized trades with Shri Jivraj Zala managed to sell their entire holdings in TPL.

j) It is alleged that Mr Rajesh Kumar Agarwal who is a Director on the Board of DTPL was also on the Board of Divyadrishti Merchants Pvt Ltd (DMPL) and Wheelers Developers Pvt Ltd (WDPL). These three entities viz DTPL, DMPL and WDPL shared the common address i.e 163B, M G Road,3rd Floor, Kolkata – 700 007. It is also observed from the trading pattern of the 3 entities vis DMPL, DTPL and WDPL that they had provided exit to the QIBs viz SPARROW and CREDO and have later on sold their holdings in TPL by entering into synchronised/structured deals with Shri Jivraj Zala.

k) Therefore, it is alleged that DTPL was acting as a front and was aiding and abetting those who had interest in ensuring that the QIBs who were allotted shares in the IPO, are able to exit at a premium to the issue price. It is, therefore, alleged that DTPL has violated the provisions of Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

6. The aforesaid SCN was duly served on the Noticee. Subsequently, the Noticee vide its letter dated July 19, 2016, submitted its reply to the SCN, which is summarized as below:

"we have traded in TPL on the day of listing in ordinary course, independently, with a profit making objective, and out of our own funds.

Our trades in TPL were miniscule compared to the volume in the market that day.

Trades which allegedly matched with the counter parties were in ordinary course, not by design or with prior understanding.

Only 11.41% of sell quantity of Sparrow and 5.80% of sell quantity of Credo matched with our buy trades, Further, it is submitted that we are not connected to the entity Sparrow or Credo.

It is denied that we are related/connected or known to the alleged Shri Jivraj Zala.

With regard to the allegation of synchronized trades, it is submitted that in order to establish synchronization, it is necessary to prove that two contracting parties

had struck a deal before head, i.e. there was prior meeting of minds. However, there is nothing in the SCN to show any relationship of ours with Mr. Jivraj Zala or to show any meeting of minds.

It is submitted that not a single piece of evidence has been brought on records to show that we have been reimbursed for our losses or that we have made any illegal gain out of the trading in TPL on the listing day."

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, hearing opportunity was provided to the Noticee vide Hearing Notice dated October 26, 2020 to appear for personal hearing on November 24, 2020, through video conferencing on the Webex platform, however the Hearing Notice returned undelivered. Thereafter, attempt was also made to serve the Notice to the Noticee through publication. Hence, vide publication dated March 15, 2021 in national and vernacular dailies (viz. The Times of India, EI Samay and Sanmarg), the Noticee was advised to collect the copy of the SCN from the office of AO or to download it from SEBI website. Further, an opportunity of personal hearing was also granted to the Noticee on March 31, 2021 vide the same publication. In reply to this, the Noticee vide its email dated March 25, 2021 requested to be provided with a copy of SCN and for some additional time to file its reply to the SCN. Subsequently, vide email dated June 10, 2021, the Noticee was informed that the SCN was duly delivered to it and it has already filed its reply to the SCN vide its letter dated July, 2016.

8. Further, vide the same email, an opportunity of personal hearing was also granted to the Noticee before the AO on June 17, 2021 which was later rescheduled on July 24, 2021 on the request of the Noticee. It was *inter-alia* mentioned in the said email that if the Noticee failed to appear before the Adjudicating officer on the said date and time, then the matter shall be proceeded with on the basis of the material available on record. Despite the same, the Noticee failed to appear for the said hearing.

9. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticee opportunities of being heard and submit its reply in the matter. Therefore, I deem it

appropriate to decide the matter on the basis of facts/material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that it has violated various provisions of SEBI Act and SEBI PFUTP Regulations, 2003.

After perusal of the material available on record, I have the following issues for consideration, viz.

I. Whether Noticee has violated Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4 (1) of SEBI PFUTP Regulations, 2003?

II. Does the violation, if any, attract monetary penalty under Sections 15 HA and 15HB of SEBI Act for the Noticee?

III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

Relevant provisions of SEBI PFUTP Regulations, 2003:

3. 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 thereunder;

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 thereunder.*

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.*

Relevant provisions of SEBI Act 1992:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A.No person shall directly or indirectly—

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

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

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

Issue I: Whether Noticee has violated Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4 (1) of SEBI PFUTP Regulations, 2003?

12. I have perused the facts of the case, gist of allegations made against the Noticee as per the SCN, documents available on record and my findings thereof are specified below:

Findings:

a) From the fact of the case, I observe that the Noticee had traded in shares of Tijaria on the first day of trading i.e., on October 14, 2011.

b) The following allegations are made against the Noticee in the SCN:

- The Noticee had given an exit option to 2 QIBs to sell their holdings in BSE and NSE at a premium to the issue price.
- The Noticee had incurred heavy losses on the trading to provide exit to the said 2 QIBs.
- The Noticee was given an exit by Zala in BSE and NSE for selling the shares bought from the 2 QIBs in synchronized manner, who in turn was funded by the company to the extent of Rs.3.8 Crores.
- Noticee was acting as a front and was aiding and abetting those who had interest in ensuring that the QIBs who were allotted shares in the IPO, are able to exit at a premium to the issue price.
- The aforementioned conduct of the Noticee is in violation of relevant provisions of SEBI Act and PFUTP Regulations, 2003.

c) It is alleged that the Noticee had given exit to 2 QIBs on NSE, and in turn, he was given an exit by Jivraj Zala on NSE in synchronized trades. In this regard, my findings are as under:

i. I find that it is not in dispute that the Noticee had executed trade both in NSE and BSE on the first day of listing i.e., on October 14, 2011 and had bought 25,706 shares and 85,580 shares from SPARROW on BSE and NSE respectively. Further, the Noticee had

bought 56,456 shares from Credo on NSE. It is also fact that there were trades of these 2 QIBs in the scrip of TPL on the day of listing.

ii. However, the relevant issue to decide herein is whether any unfair trade practice/manipulation is arising out of these trade of the Noticee as alleged in the SCN or any intention to enter into such transaction/trade is evident from the material available on record. The proof of fraudulent /manipulative transaction in the circumstances always depends on inference drawn from a mass of actual details, the nature of transaction, conduct of the parties etc., It is difficult to prove intent by direct evidence in these types of manipulation and therefore circumstantial evidence has to be taken into consideration. Further the circumstantial evidence should be sufficient to raise a presumption in its favor with regard to the existence of a fact sought to be proved since it is exceedingly difficult to prove facts which are especially with in the knowledge of parties concerned. The legal proof in such circumstances partakes the character of a prudent man's estimate as the probabilities of the case.

iii. With respect to allegation that Noticee gave exit to 2 QIBs viz. CREDO & SPARROW, the Noticee in its reply has submitted that if their intention was to bail out these QIBs, they would have traded in a way that all their buy and sell orders including the order quantity, order price and traded quantity would have matched. In this regard, I observe that on first day of listing SPARROW and CREDO sold 9,74,739 and 9,30,631 shares of TPL respectively on NSE out of which Noticee had bought 88,190 shares from SPARROW and 56,933 shares from CREDO, which is just 11.41 % of shares sold by SPARROW and 5.80 % of shares sold by CREDO. Further, there were only 1 buy order and 2 buy orders were placed by the Noticee at BSE and NSE respectively which resulted in trades between Noticee and

the 2 QIBs at NSE wherein there was time gap of 10 to 65 minutes between sell and buy orders.

iv. Regarding the allegation that the Noticee has sold the shares bought from the aforesaid 2 QIBs to Zala in a synchronized manner, I find that the Noticee had placed only 1 sell order which matched with buy orders of Zala. I note that there were matchings in the quantity and rate coupled with proximity in the time of entering buy/sell order by the Noticee and the counter party i.e., Zala. I note that the total volume of shares traded in the scrip of TPL on the listing day on NSE was 5,99,65,008 shares and on BSE 4,74,75,546 shares whereas, investigation revealed that on the said day, volume of shares traded by the Noticee in the scrip of TPL 1,00,000 shares on BSE. I also note that though the volume of the Noticee in the scrip on the day of listing was merely 0.21% on BSE, the volume of shares traded by the Noticee which matched with the trades of Zala, as counterparty, amounted to 83.3% on BSE. Hence, it shows an unusual matching of trades of the Noticee with the trade of its counterparty viz. Zala.

v. I further note that, in the present case, the Noticee had placed only 1 buy order on BSE which matched with sell orders of Zala. Further, from the aforementioned trades having such negligible percentage in the scrip, it is difficult to arrive at the conclusion that this synchronized trade was executed by the Noticee with an intent to create misleading appearance of trading in the securities market. It is important to note here that the motive behind executing fraudulent synchronized trade can either be to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading so as to induce others to deal in the particular scrip. However, I note that the Investigation Report, per se, has not brought out any allegation of price manipulation attributed to Noticee's structured trade.

vi. Further from the fact of the case, I find that the Noticee by buying and selling approximately 1,50,000 and 50,000 shares of TPL on NSE and BSE respectively, on the first day of listing, incurred loss of Rs. 61,43,560/-. However, why the Noticee would enter these synchronized trades and incur huge loss has not been brought out on record.

vii. Further it is noted that with regard to these trades, what were the pending orders prior to these order and trading pattern of the Noticee has not been brought out on record. Further, it is also noted that why the Noticee would enter synchronized trades with Zala, and incur huge loss has not been brought out on record. It is also noted that direct connection, in terms of financial transaction/off market transfer/ any other linkages, between the Noticee and the counterparties to the aforesaid trades also not been brought out on record.

viii. I also note that there are no adverse observations regarding other forms of market manipulation i.e. self-trading, reversal trading or executing orders away from last traded price or creation of new high prices by way of first trades etc. against the Noticee in the investigation Report. Also, the instances of synchronized trade by Noticee are not of such magnitude that can be said to have affected the rest of the market volume, if considered in the light of the volume of transactions that the Noticee had done to the total volume on the exchange on the listing day.

ix. Therefore, I find that in the instant case, the evidence and material available on record are insignificant to hold that the trades executed by the Noticee were to give exit to QIBs viz. CREDO and SPARROW and thus to be provided exit by Zala in synchronized trades, as alleged. Further establishing intent or fraudulent motive in commission of such trade is absolutely imperative to allege anyone

with fraudulent and unfair trade practice. However, in the present case there is no such document/information/evidence provided to establish such fraudulent intention, except for the funds allegedly provided by TPL through layering of transactions to the extent of Rs. 3.8 Crores for trading in the scrip on the first day of listing to the counter parties to the trade i.e. Zala.

x. However, as regards to the charges on the diversion of substantial part of IPO proceeds by TPL in the form of ICD refund to certain entities in such a way to offset losses sustained by certain entities/individuals (including Zala) who had allegedly provided an exit to retail allottees/QIB of their shares allotted in IPO at a premium to the issue price, I note that the Hon'ble Securities Appellate Tribunal ("**SAT**") on the appeal *(Appeal No.372 of 2014 decided on 29/6/2016)* made by the TPL and its director against the order of WTM dated 20th June, 2014 has held that allegation and observation regarding the diversion of fund from the account of TPL to the Noticee through layering of transaction through Nihita, Orbit Financial Consultants Pt. Ltd. and Sanjukta Vanijya Pvt. Ltd. cannot be sustained. This apart, same position was reiterated by Hon'ble SAT in its order dated September 19, 2016 pertaining to the matter of Lopa S Bhavnagari vs. SEBI, wherein a similar allegation was levelled against the appellant therein, who had also traded in the scrip of TPL on the listing day. In that case, the Hon'ble SAT has held:

"17. We find merit in the argument made by the learned Senior Counsel for the appellants on the contention that diversion of IPO funds and thereby part funding of the losses made by the appellant cannot be sustained following the order of this Tribunal in case of Tijaria Polypipes Ltd. (Appeal No.372 of 2014 decided on 29/6/2016). However, we do not agree with the arguments that the appellant's

trading in the TPL scrip on the opening day of IPO was just business as usual."

xi. Therefore, in the light of what has been held by the Hon'ble SAT, I find that based on materials on record, it is difficult to conclude with conviction that the counter party to the Noticee i.e. Zala has been funded by TPL to trade in the scrip, on the day of its listing. Further, though it was alleged that the Noticee had enabled the exit of 2 QIBs I find that there is no material on record/evidence to prove that the Noticee was connected to the counter parties to its trade nor is connected with directors/promoter of the company. In addition, there is nothing on record to show what advantage/gain was incurred by the Noticee by providing exit to the QIBs viz. CREDO & SPARROW. It is therefore, as far as the transaction of the Noticee concerned, I am of the view that there is hardly any evidence against the Noticee so as to proceed against it for the alleged violation merely because the Noticee's trades had matched with that of Jivraj Zala without there being any indication of a reasonable motive for the Noticee to do the alleged acts, while itself suffering a significant loss.

d) In addition to the aforesaid findings, I rely on the decision of the Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *KSL & Industries Ltd v. SEBI vide appeal no 9/2003* wherein it has been held that, *"....I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not sustained.... Fraud cannot survive on mere conjecture and surmises."*

I would also like to rely on the Judgment of the Hon'ble SAT in the matter of *Ketan Parekh Vs. SEBI (Appeal No. 2 of 2004 decided on 14.07.2006)* where it was held that, *".....Any transaction executed with the intention to defeat*

the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

e) Hence, I note that although there was unusual matching of trades of the Noticee with the trades of its counterparty ('Zala'), however, the evidence and material available on record are insignificant to establish manipulative intent or fraudulent motive in commission of such trade. In view of the above, I am of the view that the allegations made against the Noticee for violation of Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4 (1) of SEBI PFUTP Regulations, 2003 have not been established.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 15HB of the SEBI Act for the Noticee?

The provisions of Sections 15HA and 15HB of the SEBI Act, 1992 read as under:

SEBI Act 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 of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

SEBI Act 15HB - Penalty for contravention where no separate penalty has been provided

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 extend to one crore rupees.

13. In view of the foregoing, since the allegations made against the Noticee regarding violation of Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003 have not been established, therefore, the Noticee is not liable for monetary penalty under Sections 15HA and 15HB of the SEBI Act, 1992.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

14. Since, the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI 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, I hereby dispose of the Adjudication Proceedings initiated against the Noticee vide Show Cause Notice dated January 28, 2016.

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

Date: June 25, 2021 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**