BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2018-19/2550-2551]

In respect of -

Kalpana Dharmesh Chheda [PAN: AEUPC2888L]

having address at - Kelawala Tower, Flat No. 701, 7th floor, Near Mithibai College, Vile Parle (West), Mumbai – 400056

and

Utkarsh Dharmesh Chheda [AHEPC7771K]

Having address at - Kelawala Tower, Flat No. 701, 7th floor, Near Mithibai College, Vile Parle (West), Mumbai – 400056

In the matter of *Zodiac Ventures Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the trades carried out in the scrip of Zodiac Ventures Ltd. ("**ZVL**") for the period between October 1, 2013 and December 22, 2014 (hereinafter referred to as the "**Investigation Period**"). Between October 1, 2013 and August 20, 2014 (hereinafter referred to as the "**relevant period**"), the price of the scrip of ZVL increased from Rs. 32.85 as on October 01, 2013 to Rs. 537.60 as on May 30, 2014 and closed at Rs. 507.90 as on August 20, 2014. During the relevant period, Kalpana Dharmesh Chheda ("**Noticee 1**") and Utkarsh Dharmesh Chheda ("**Noticee 2"**) (hereinafter together referred to as "**the Noticees**") were seen to have indulged in several trades with small volumes, at prices above the Last Traded Price ("**LTP**"), which allegedly created a misleading appearance of trading, and manipulated the price of the scrip resulting in higher price with each trade. Thus, SEBI initiated adjudication proceedings against the Noticees for alleged violation of Regulations 3 (a), (b), (c), (d) and 4 (1), (2) (a) and (e) of the

SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "**PFUTP Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") by SEBI under section 15-I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated July 20, 2018, to inquire into, and adjudge under section 15 HA of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), the alleged violations of the aforesaid provisions of the PFUTP Regulations, by the Noticee. The appointment of the AO was communicated vide order dated July 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/VS/21879/1/2018 dated August 6, 2018 (hereinafter referred to as "**SCN**"), was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of section 15 HA of the SEBI Act, for alleged violation of Regulation 3(a),(b),(c),(d), 4(1) and 4(2)(a) and (e) of the PFUTP Regulations.

4. The allegations levelled against the Noticees in the SCN are summarized as follows:-

    (a) The Noticees were among the top 2 net sellers during the relevant period. Investigation brought out that the price of the scrip was artificially raised by the Noticees by continually selling small quantities of shares of the scrip (most trades took place for 1 share only) at a price above the Last Traded Price ("LTP"), despite availability of buy orders for more quantities. The Noticees contributed Rs. 320.45 (i.e. 53.5% of the total market positive LTP) to the market positive LTP through 52 sell trades with 20 different counterparties. It was noted that all 52 positive LTP contributing sell orders of the Noticees were placed second in the day.

These sell orders of the Noticees accounted for 52 of the 164 market positive LTP trades in the scrip of ZVL. Further, 68 trades out of the 435 trades in the scrip of ZVL during the relevant period were carried out by the Noticees. The details of the abovesaid 52 positive LTP contributing trades are reproduced below:-

Sr. No.	Date	Seller PAN	Seller Name	Buyer PAN	Buyer Name	Trade Quantity	Sell Order LMQ	Available Buy order quantity range
1	07.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-1000
2	09.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-1000
3	10.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-1000
4	14.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ALDPG9625M	Hetal Nilesh Gor	1	1	10-1000
5	17.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-10000
6	21.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	BDHPG2498F	Sneha Goenka	1	1	200-2500
7	25.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-2500
8	30.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-2500
9	31.10.2013	AEUPC2888L	Kalpana Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	10-2000
10	03.11.2013	AEUPC2888L	Kalpana Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-2600
11	26.11.2013	AEUPC2888L	Kalpana Dharmesh Chheda	ALVPP7764J	Manjulaben Sukhdev Pandya	1	1	10-2500
12	27.11.2013	AEUPC2888L	Kalpana Dharmesh Chheda	AAXPG6030H	Anil S Gabria	1	1	2-2500
13	02.12.2013	AEUPC2888L	Kalpana Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	5-500
14	05.12.2013	AEUPC2888L	Kalpana Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-500
15	06.12.2013	AEUPC2888L	Kalpana Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-2000
16	18.12.2013	AEUPC2888L	Kalpana Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	5-500
17	24.12.2013	AEUPC2888L	Kalpana Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	4-50
18	17.02.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AEUPP3825L	Brijesh Jitendra Parekh	2000	2000	1-2000

19	18.02.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AFMPM3283Q	Hiren Hargovindas Mehta	1000	2000	1000
20	19.02.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AABPB8187C	Ashok Arvindkumar Bhuta	1000	2000	10-2000
21	25.03.2014	AEUPC2888L	Kalpana Dharmesh Chheda	BDKPS7297D	Mamadsha Rahimsha Shekh	5	5	5-15000
22	31.03.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	2	2	18-450
23	01.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	4	4	450
24	02.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AFAPN8764M	Prem Lata Nahar	5	5	100-450
25	03.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	5	5	450
26	09.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	4	4	50-100
27	10.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	1	1	50
28	11.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	3	3	50
29	15.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	2	2	10-150
30	16.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	2	2	25
31	17.04.2014	AEUPC2888L	Kalpana Dharmesh Chheda	AUHPS6431N	Pradip Bhimshi Shah	4	4	25
32	15.10.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	10-1000
33	22.10.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	ACDPL9295R	Laherchand Shamjibhai Lakhani	1	1	100-3500
34	23.10.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AAEHJ1610D	Jayesh Narendra Kesharia Huf	1	1	10-3000
35	01.11.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-5000
36	11.11.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-2000
37	25.11.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	10-2000
38	04.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AALCS6810J	Shreya Merchants Private Limited	1	1	10-500
39	09.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AEUPC2888L	Kalpana Dharmesh Chheda	1	1	8-100
40	10.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	DILPS9782M	Jignaben Alpeshbhai Shah	1	1	8-100
41	11.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AEUPC2888L	Kalpana Dharmesh Chheda	1	1	8-2500
42	12.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	8-500

43	13.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AFMPP4559A	Sonal Nimesh Panchamia	1	1	7-100
44	17.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	6-500
45	19.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AEUPC2888L	Kalpana Dharmesh Chheda	1	1	5-500
46	20.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	5-500
47	23.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AEUPC2888L	Kalpana Dharmesh Chheda	1	1	4-25
48	27.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	ALDPP2563K	Shila Ambalal Patel	1	1	4-25
49	30.12.2013	AHEPC7771K	Utkarsh Dharmesh Chheda	AACPG1688E	Anil Rayshi Gada	1	1	4-200
50	07.01.2014	AHEPC7771K	Utkarsh Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	10-500
51	08.01.2014	AHEPC7771K	Utkarsh Dharmesh Chheda	AKCPM8622Q	Alka Mittal	1	1	10-300
52	20.03.2014	AHEPC7771K	Utkarsh Dharmesh Chheda	AVFPK0546H	Kailash	1	1	1-3000

(b) From the above table, it can be observed that during the relevant period, the sum of market positive LTP in the market for ZVL at the time was Rs. 476.45, of which Rs. 320.45 was accounted for by the positive LTP contribution made by the Noticees. It was also observed that in 49 of the abovesaid 52 transactions, despite buy order being sufficient, the Noticees were seen to place successive sell orders ranging in volume from 1 to 5 shares at a price which was above LTP. In four of the sell orders of Utkarsh Chheda where the said Noticee sold one share per transaction, the related Noticee i.e. Kalpana Chheda was the counterparty, and the trade was executed for sale of one share even though the availability of shares for purchase was much higher than one share, as seen from the table in the preceding paragraph. Thus, a substantial portion of the price rise in the scrip during the relevant period was a result of successive small volume sell orders placed by the Noticees.

(c) ZVL's market capitalization was not supported by the fundamentals of the company.

(d) The Noticees are related to each other – Kalpana Chheda is the mother of Utkarsh Chheda and the wife of one Dharmesh Chheda, a sub-broker with Inventure Growth and Securities Ltd., who was seen to be managing the trading accounts of the Noticees, and was also a family member of the Noticees.

5. By indulging in execution of the aforementioned reversal trades, the Noticee allegedly violated regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) and (e) of the PFUTP Regulations, which are reproduced below:-

"*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.

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

6. A time period of 14 days was granted to the Noticees to present its reply to the SCN. Subsequently, vide letter dated September 1, 2018, the Noticees denied all charges levelled in the SCN, sought inspection of the documents indicated in the said letter, and also sought personal hearing at least 4 weeks after the inspection. Vide letter dated September 28, 2018 an *in seriatim* response to the Noticee's request for inspection of documents was provided, reiterating that all findings of investigation which were relevant to the Noticee and which were relied upon with respect to the charge against the Noticees were included in the SCN and its Annexures. An opportunity of personal hearing was provided on October 15, 2018 at 3:35 p.m. Vide letter dated October 11, 2018, the Noticees once again sought inspection of certain documents alongwith a request to reschedule the hearing post-inspection. The request of the Noticees was considered and relevant documents were provided vide letter dated October 19, 2018. Further, an opportunity of inspection of relevant documents was provided on November 9, 2018, when the Noticees were represented by Mr. Meit Vipul Shah ("Authorized Representative" or "AR").

7. Vide Hearing Notice No. EAD5/OW/P/MC/VS/2018/32414/1&2 dated November 27, 2018, the Noticee was granted an opportunity of hearing on December 6, 2018 at 3:30 p.m. Vide their letters dated December 3, 2018 the Noticees sought reschedulement of hearing to after January 6, 2019, which request was granted, and vide Hearing Notice dated December 11, 2018, a final opportunity of hearing was granted to the Noticees on January 9, 2019.

8. During the hearing on January 9, 2019, the Authorized representative of the Noticees handed across written submissions dated January 8, 2019. The AR reiterated the said submissions during the course of the hearing. In the above-mentioned submissions the Noticees have stated that -

   (a) The Noticees had not been provided with complete trade log and order log of all the trades which took place in the market, they have not been

able to analyse their transactions against the market and are unable to defend themselves

(b) The Noticees have a clear and unblemished track record for all dealings in the stock market so far

(c) The Noticees dealt in shares of ZVL within their financial and risk-bearing capacity.

(d) The Noticee is not connected to ZVL or its promoters/directors

(e) Since the Noticee's trades were all delivery-based and met with all obligations of fund and securities with the broker and the exchange, they could not have resulted into price/volume manipulation

(f) On perusal of trade and order log file it is seen that the Noticee placed an order to sell at the price which already existed on the trading terminal at that point of time. Therefore, they cannot be held responsible for placing an order at a price higher than LTP since it is the buyer who placed the order before the Noticee.

(g) The present SCN has been issued 5 years from the date of transactions and no query with respect to the transactions was raised at the relevant time by the broker, exchange or any other agency.

(h) The scrip of ZVL was in the "T" group, settled on a trade to trade basis, and intra-day trading was not allowed. Investors could only have bought or sold shares (not both) during the day, price was controlled by BSE, there was a requirement of 100% margin and shares were bought or sold with 100% delivery.

(i) As the scrip was in the 'T" group, it was illiquid and there was no speculative element

(j) Even if sale of shares in small quantities took place, the sale was genuine, delivery-based, beneficial ownership passed and consideration was paid/received through the market mechanism.

(k) From the investigation report it appears that although various other entities ("suspected entities", "top LTP contributors") have contributed to the alleged price manipulation and artificial volume, however action has been initiated only against the Noticees.

(l) Para. 8 of the Investigation Report mentions concentration of top 10 brokers both on buy side and sell side, but the name of the broker

through which the Noticee dealt at the relevant time is not in the said list. The said para also mentions the list of top 10 buy and sell clients wherein the Noticees' names are not mentioned.

(m) Para. 9 of the Investigation Report states that "ISD had identified group of 80 entities of which, connections of 64 entities was provided and connection with respect to the remaining 16 entities was not provided " The list of 64 entities has been provided at Annexure 4 which does not contain the Noticees' names. However, no action has been taken against any of the suspected entities and also no reason has been given for not taking any action. The Noticees' names are not amongst the names of the suspected entities.

(n) In *Shri Kamlesh R Shah v. SEBI* (Appeal No. 192 of 2011) the SAT vide order dated 15.02.2012 had held that where the appellant and certain other delinquents had committed almost identical violations, the punishment imposed on them by the Board should be similar.

(o) No allegation of synchronised trades, self-trades, circular/reversal trades have been made against the Noticee, therefore the serious charge of fraudulent and unfair trade practice against the Noticees is misdirected.

(p) Para. 15 of the Investigation Report mentions names of "Top LTP contributors (BSE)" divided into Group 1, Group 2 and Group 3 but the Noticees' names are not a part of the Groups.

(q) With respect to sale of one share, the Noticees submitted that they were holding shares since a long time. An open offer was given by few reputed individuals who were builders at the rate of Rs. 30/-, however, based on fundamentals given in the offer document the Noticee was confident that the fair market value of the share is much more than Rs. 30/-. The Noticee perused the offer document (copy enclosed with reply) and observed that the book value of the share was Rs. 21/- and the preferential issue was done at Rs. 30/-. Hence, the Noticees started selling shares one by one only after the price touched Rs. 30/-, and wanted to sell shares at the maximum price, hence sold one share daily and the same pattern was observed prior to execution of sale trade of single share.

(r) The Noticees' transaction in ZVL was at the then prevailing market price as existed at the time the Noticees placed their order to sell shares of ZVL. Therefore, the said transactions could not have been termed "fraudulent' or manipulative in nature. The volume and price of ZVL were not affected by the Noticees' dealings in the scrip of ZVL.

(s) The daily traded volume was one share even before the Noticees started selling the shares. Even in the period prior to sale of shares by Noticees, buy orders were more than sell orders. However, Noticees are not able to comment further since they have not been provided with complete trade log and order log.

(t) The Noticee Kalpana Chheda placed an order to sell at the price which already existed on the trading terminal at that point of time. Therefore, the Noticees cannot be held responsible for placing an order at a price higher than LTP since the buyer had already placed an order before the seller. Therefore, no allegation of price manipulation can be levelled against the Noticees.

(u) The Noticees are not connected to promoter/director of ZVL and have no financial dealings with promoters, directors or key management persons of ZVL. Further, the Noticees are shareholders and pure investors in ZVL and have no connection with any other activity in the company. No allegation is mentioned in the SCN regarding the Noticees' connection with any of the above-mentioned entities or with the suspected entities.

(v) At the relevant time, no alert was generated by any regulatory authority and only in hindsight SEBI has established that the Noticees created misleading appearance of trading and manipulated price, resulting in higher price in the scrip of ZVL.

(w) It is untenable to arrive at a finding of "fraud" solely on the basis of the fact that the Noticees dealt in the scrip of ZVL. The Hon'ble SAT has held in the case of ***R. K. Global v. SEBI*** (decided on 16.09.2010) that a higher degree of probability must exist before a serious charge such as that of execution of fraudulent trades could be found to have been established. In another case of ***Narendra Ganatra v. SEBI*** (decided on 29.07.2011) the Hon'ble SAT observed that proving a charge of

conniving with group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip, requires a higher degree of probability, and cannot stand on surmises and conjectures. In *Videocon International v. SEBI* (2002) 4 CLJ 402 (SAT), the SAT held that the charge of market manipulation under regulation 4 (a) of the PFUTP Regulations attracts only in the transaction is so made so as to induce any other person to sell or purchase securities.

(x) The Supreme Court has held in *Ram Sharan Yadav v. Thakur Mineshwar Nath Singh*, [(1984) 4 SCC 649] a charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities.

(y) Certain mitigating factors should be given due regard –

I. The SCN has been issued after a gap of 5 years from execution of transactions of Noticees, and prejudice is cased to the Noticees in recollecting all relevant data/details

II. No harm or injury or loss has been caused to any investor of securities market due to the noticees' dealings in the scrip of ZVL

III. The Noticees have not derived any gain, disproportionate or otherwise

IV. The lapses, if any, are non-repetitive in nature

V. There is no investor complaint in respect of the Noticees' dealings in the scrip of ZVL

(z) The Noticees pray that the proceedings initiated vide SCN dated 06.08.2018 be dropped without imposing any monetary penalty on the Noticees, and the allegations *qua* the Noticees be withdrawn at the earliest.

9. During the personal hearing conducted on January 9, 2019, the Authorized Representative of the Noticees undertook to make certain additional submissions within a week, regarding –

(a) Details of their shareholding in ZVL – date, mode, period and cost of acquisition of shares of ZVL

(b) Reasons for having sold 1 share at a time during the relevant period

10. Vide e-mail received from Noticee 2 on January 22, 2019, certain additional submissions were made, wherein the Noticees submitted that the reasons for selling one share at a time during the relevant period were, *inter alia,* that the transactions related to a period 5 years old, the decision to buy and sell depends on a host of factors including sentiment of an investor, profit motive, as well as past pattern of trading in ZVL shares where it was observed that with every execution of trade for one share, buyer placed an order at new upper circuit limit on the subsequent day. Therefore, the Noticees followed the same pattern. With respect to the allegations in the SCN, the Noticees further submitted that their trade for sale of single share had no correlation to the allegation of creation of artificial trade/manipulation in price of shares since the Noticees had executed purely delivery-based transactions and even after completion of the Noticees' transactions, the price of the scrip of ZVL moved upwards to new highs seemingly without execution of any single trade by the Noticee. Further sale transaction of Noticee cannot be alleged to have impact on increase in price since it is the purchase transaction which ought to have impact on increase in price. SEBI has not made any allegation against any person who placed order to sell 1 share prior to and after execution of the Noticees' impugned transaction, even though price had invariably increased. The Noticees also submitted on abnormality of the policy framed by stock exchanges on circuit filters, when market perceives that share is not traded at its fair market value and there is circuit filter wherein price increases with trades executed for every single trade, thereby person who sells the shares incurs loss. Therefore, the system/policy needs some review for fixing circuit filter in shares where trades take place continuously at higher circuit filter price in an illiquid scrip. Due to existence of circuit filter, trading in the scrip remains illiquid as it is not traded at a fair/expected price. In such situations, stock exchanges should relax circuit filter at least for a day so that investors like the Noticees do not suffer from consequences presently faced by the Noticees.

11. With respect to acquisition of shares of ZVL, Kalpana Chheda submitted that she had bought 5 shares (net rate Rs. 15.35/- per share) and 50 shares (net rate Rs. 15.35/- per share) of ZVL on 04.06.2013 and 05.06.2013 respectively, on market.

Further, Kalpana Chheda's father-in-law had purchased ZVL shares during his lifetime and the shares were held in physical form for long period of time and were dematerialised on 11.06.2013.

12. Subsequently, based on the Noticees' submissions, the trade and order log of ZVL during the investigation period was perused, and it was deemed relevant to provide additional information to the Noticees. Therefore, a copy of the trade log of the total buy and sell trades carried out by the Noticees in the relevant period, as well as the order log for the relevant period, were provided to the Noticees vide a Supplementary SCN dated February 14, 2019 which was successfully delivered to the Noticees. Vide the Supplementary SCN, the Noticees were advised to file any additional reply/comments within 14 days from receipt of the said Supplementary SCN. However, no reply has been received from the Noticees after the additional submissions dated January 22 2019.

13. In view of the above, I hereby proceed to decide the case on merits on the basis of the SCN, the submissions made during the personal hearing conducted on January 9, 2019, the reply dated January 8, 2019 and the additional submissions received vide e-mail dated January 22, 2019.

CONSIDERATION OF ISSUES AND FINDINGS

14. The issues arising for consideration in the instant proceedings before me are:-

    I. Whether the trades carried out by the Noticees in the scrip of ZVL during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) and (b) of the PFUTP Regulations?

    II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15 HA of the SEBI Act?

    III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15 J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE I Whether the impugned 52 positive-LTP contributing sell trades carried out by the Noticee during the Investigation Period were in violation of regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a) of the PFUTP Regulations?

15. The allegation against the Noticees is that the Noticees continuously placed sell orders of single share or small quantities of shares (1-5 shares) at successively higher prices on 55 days during the relevant period, which upon execution contributed a total of Rs. 320.45/- to market positive LTP through 52 trades during the said period. The impugned sell orders were for small quantities of shares or single shares, despite availability of buy orders for larger quantities.

16. It has been brought out by material on record that the Noticees, are related to each other as mother and son. This fact has not been disputed by the Noticees.

17. It is seen on perusal of the trade log that during the investigation period, the Noticees followed a pattern of selling 1 share during the day at successively higher prices, starting from Rs. 32.85 on October 1, 2013 till the price reached Rs.175.4 on January 8, 2014. During this period, trading took place on 46 days. The Noticees were the only sellers on 38 out of the aforementioned 46 trading days. The order log shows that on each of these days, the only sell order placed during the day had been placed by the Noticees.

18. Thereafter, Noticee 1 sold a total of 7000 shares on February 17th, 18th and 19th 2019 at prices ranging from Rs.182.45 to Rs.189.75. There were no further trades by the Noticees till March 20, 2014, when once again, Noticee 2 was the only seller of 1 share and price increased from Rs.205.05 to Rs.215.3 as a result of this single share trade. On March 21st, 24th and 25th, 2014, the Noticees collectively sold 10174 shares at prices of Rs. 226.05, Rs. 237.35 and Rs. 249.20.

19. The pattern of selling small quantities of shares appears again from March 31st, 2014 to April 17th, 2014 during which, on 10 trading days, the Noticees sold shares ranging from 1 to 5 shares in 13 trades. On 9 of these 10 days, they were the only sellers and price moved up from Rs.274.70 to Rs.425.80.

20. Altogether, Noticee 1 sold total 16054 shares of ZVL through 45 sell trades on 33 days between October 1, 2013 and April 17, 2014. Noticee 2 sold 1195 shares of ZVL through 23 sell trades on 22 days between October 15, 2013 and March 21, 2014. The positive LTP contribution of Noticee 1 was Rs. 236.6, while the positive LTP contribution of Noticee 2 was Rs. 83.85.

21. It is relevant to note that all trades in ZVL took place in Public Call Auction Sessions ("PCAS") till February 3, 2014. All the trades from February 17, 2014 onwards are in normal trading session. ZVL was an illiquid scrip being traded through PCAS in which trading is governed by SEBI Circular CIR/.MRD/DP/6/2013 dated February 14, 2013. During PCAS, trades in the scrip are permitted to take place in six trading sessions of 1 hour duration each, where all limit orders as well as market orders are considered for computing an equilibrium price at which maximum volume is executable.

22. During the PCAS sessions, the orders were placed by the Noticees after the buy order had been placed. Admittedly, the buyers were placing buy orders at successively high prices on succeeding days. However, a perusal of the order log indicates that a large number of buyers were present on all trading days, for a fairly large number of shares. It is relevant to note that there were more than 50 diverse buyers placing buy orders against a handful of sellers other than the Noticees particularly till February 3rd, 2014. Considering that during the period of PCAS, the Noticees were the only sellers on most days, the Noticees' order was the only order on the sell side which caused trade to be executed in the call auction session. It can be inferred from the trade and order log that entering sell orders at prices above LTP by the Noticees resulted in execution of trades at increasingly higher prices, which contributed to increasing buyer interest.

23. After the scrip moved to normal trading from February 17th, 2014, the order log shows that buyer orders were entered earlier, and the orders by Noticees were the active orders resulting into trade execution, particularly during the period between March 31st, 2014 and April 17th, 201, during which the Noticees' sell trades were solely responsible for price rise on 9 out of 10 days.

24. From the trade and order log, specific illustrations of which are described above, it is seen that the Noticees were solely responsible for significant upward price movement in ZVL. The pattern of selling 1 share every day over an extended period of more than 3 months is not normal trading behaviour, and indicates a plan or device to make the price of the scrip move upwards by trading it at the highest possible price during the day.

25. The Noticees' have contended that the trading pattern for the scrip was such that price of the scrip was rising irrespective of the Noticee's orders. This cannot be accepted as the price was rising mainly because of trades executed by the Noticee. Noticees have further contended that they simply followed the prevailing trading pattern in the scrip where with every execution of trade for one share, the buyer placed an order at new upper circuit limit on the subsequent day. I note that even if a buyer placed an order at a high price, the trade could not have been executed unless an opposite sell order was available. If this happened with various different sellers, it could be argued that the price formation was natural. However, the only sellers on most days are the Noticees, again indicating a planned scheme intended to cause the scrip price to increase.

26. The Noticees were provided a copy of the trade and order log for all trades vide Supplementary SCN dated February 14, 2019. Upon receipt of the same, no further arguments for defending the case were made by the Noticees. While the Noticees have contended that they were not connected to the promoters/ directors, I note that such connection is not a pre-requisite for manipulating a stock.

27. Similarly, the contention of the Noticees that they were buying and selling with 100% delivery does not necessarily imply that the stock price cannot be manipulated. The pattern of trading, the repetitive nature of the trades, the illiquid nature of the scrip, the impact of the single share trades on the LTP are all significant factors weighing in towards an inference that the Noticees were instrumental in creating a false appearance of trading in the scrip of ZVL and in manipulating the price of the scrip.

28. Noticees have contended that they did not figure in the top 10 buyers or sellers. This by itself is not sufficient to prove that the Noticees did not manipulate the price. The trading pattern by the Noticees is unique and no other sellers or buyers have traded in a similar manner in the scrip during the period under investigation.

29. Noticees have also contended that the market policy of circuit filters contributed to the price rise, as seller stand to lose if he sells at upper circuit, as price may rise on the next day. This is a circular argument, as when a scrip is illiquid, a single trade can be used to hit the upper circuit filter, and create an impression of upward price movement. When single trades are executed by the same seller continuously over a period of 2-3 months, the pattern of there being no other sellers on most of the days leads to the inference that this was a planned strategy to increase price.

30. To illustrate, on October 1st, 2013 Noticee 1 placed a sell order for 1 share of ZVL at a price of Rs. 32.85/-, and being the only seller during that trading session, sold 1 share of ZVL at the said price. On October 7th, 2013, once again, Noticee 1 sold 1 share but at a price of Rs. 34.45/-. Similarly, on October 9th, 10th, 14th, 15th and 17th, either of the Noticees placed a sell orders at higher prices (viz. at Rs. 36.15, Rs. 37.95, Rs.39.8, Rs. 41.75, Rs. 43.8), thus leading to execution of trades in the scrip of ZVL at successively higher prices. There were no other sell orders. These could be considered to be stray cases if they took place on a few occasions, but this is seen to be a consistent pattern over 55 days between October 2013 to April 2014. On most trading days, as mentioned earlier, there is no other seller than the Noticees.

31. When the price of the scrip reached above Rs. 180/- on February 17th, 2014 from Rs. 32.85/- on October 1st, 2013, the Noticees sold 17175 shares at this increased price in 16 trades which took place between February 17th, 2014 and March 25th, 2014. Thus, the Noticees, after causing the price to increase from around Rs. 32 to above Rs.180, also gained substantially from the price increase by selling a large chunk of shares at a higher price going up to Rs.249.20.

32. The Noticees, upon being asked to provide cost of acquisition of shares sold by them, informed that the shares were acquired by the father in law of Noticee 1. As the actual cost of acquisition is not provided, if the cost is assumed to be Rs.10, then the profit made by the Noticees by selling around 17200 shares upto April 17th, 2014 amounts to around Rs.35.5 lakhs.

33. When the Noticees placed successive sell orders at prices higher than the LTP, they employed a device or artifice to generate buyer interest by causing the price to rise in a short span of time, thereby inducing buyers into entering the market for ZVL and purchasing shares, so that existing shareholders could off load shares at higher prices.

34. It has been held by the Hon'ble Supreme Court in the case of *SEBI. v. Kanaiyalal Baldevbhai Patel* vide order dated September 20, 2017 that in order to attract regulations 3 and 4 of the PFUTP Regulations, the correct test is one of preponderance of probabilities. The Court held that "*the inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified*."

35. In the instant case, the facts brought out above when considered in totality lead to a conclusive inference that the trades executed by the Noticees were fraudulent, manipulative and designed to inflate the scrip price to sell at a later opportune time and make wrongful gains.

36. In view of the above, I find that the Noticees violated provisions of Regulation 3(a), (b), (c) and (d) as well as Regulation 4(1) and (2)(a) and (e) of the PFUTP Regulations.

Issue II **If yes, whether Noticee is liable for imposition of monetary penalty under Section 15HA of SEBI Act?**

and

Issue 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?**

37. As it has been established that the Noticee violated provisions of Regulations 3(a), (b), (c), (d) and 4(1) and 4(2) (a) and (b) of the PFUTP Regulations, hence the Noticee is liable for imposition of monetary penalty under Section 15 HA of the SEBI Act.

38. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:-

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.

39. As noted earlier, the Noticees have contributed to artificial price rise in the scrip from Rs. 32.85 to 425.80. In the process, they have made wrongful gains of around Rs.35.5 lakhs. Specifically, Noticee 1 made wrongful gains of around Rs.33 lakhs and Noticee 2 made wrongful gains of around Rs.2.5 lakhs. However, the exact cost of acquisition of shares sold by the Noticees is not available and the wrongful gain figures are estimated assuming cost of acquisition to be Rs.10. Therefore, taking into account the facts and circumstances of this case, and the mitigating factors mentioned by the Noticees, I am of the view that a penalty of Rs.45 lakhs upon Noticee 1 and Rs.5 lakhs upon Noticee 2 will be commensurate with the violations committed by the Noticees.

ORDER

40. After taking into consideration all the facts and circumstances of the case, the number of trades executed, the trading pattern, the impact of the trades on LTP, and the quantum of wrongful gains made by each of the Noticees, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 45,00,000/-(Rupees Forty Five Lakhs only) upon Noticee 1, Kalpana Dharmesh Chheda, and a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) upon Noticee 2, Utkarsh Dharmesh Chheda, under Section 15 HA of the SEBI Act, for violation of regulations 3(a),(b) (c) and (d) and regulations 4(1) and 4(2)(a) and (e) of the PFUTP Regulations.

41. 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

42. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:-

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

43. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: March 28, 2019 **Maninder Cheema**

Place: Mumbai **(Adjudicating Officer)**