SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF FRONT RUNNING BY ANITA SHYAM MHATRE

In respect of:

Sr. No./ Noticee No.	Name of the Noticee	PAN
1.	Anita Shyam Mhatre	AKUPM1426A
2.	Sanjay Parekh	AAXPP0305J
3.	Rakesh Shah	AAZPS7610P

(*The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees*")

1. The present proceeding emanates from the investigation conducted by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") into the trading activity of Anita Shyam Mhatre, during the period of October 1, 2008 to November 30, 2008 (hereinafter referred to as **"the Investigation Period / IP"**), so as to ascertain violation of provisions of Securities and Exchange Board of India Act (hereinafter referred to as "**the SEBI Act, 1992**") and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**the PFUTP Regulations**").

2. Based on the findings recorded in the investigation, a show cause notice dated November 27, 2018 (hereinafter referred to as **"the SCN"**) came to be issued against the *Noticees*. The relevant facts, as captured in the SCN and are necessary to consider for the adjudication of the issues involved therein are briefly stated as follows:

(a) The *Noticee no. 1* was having a trading account with Anugrah Stock and Broking Pvt. Ltd. (hereinafter referred to as "**Anugrah/stock-broker**"), a Mumbai based stock broker, having membership with both BSE India Ltd. (hereinafter referred to as " the **BSE**") and National Stock Exchange of India Limited (hereinafter referred to as " the **NSE**"). The *Noticee no. 1* was introduced as a client to Anugrah by the *Noticee no. 2*, a dealer of Anugrah and the next door neighbour of the *Noticee no. 1*. The *Noticee no. 1* had traded through

Anugrah on both the Stock Exchanges i.e. the NSE and the BSE during the investigation period.

(b) The *Noticee no. 3* was working as Dealer with Reliance Capital Asset Management Company Limited (hereinafter referred to as "**RCAML**"), an Asset Management Company of Reliance Capital Mutual Fund, (hereinafter referred to as "**RCMF**") during the relevant time.

(c) Based on the integrated order/trade log obtained from NSE, it has been noted that the *Noticee no. 1* had traded on a total number of 86 scrip days (scrip days refers to all those days during the investigation period in which a particular scrip was traded). Similarly, on BSE, the *Noticee no. 1* has traded on a total number of 127 scrip days.

(d) During the investigation period, RCMF has also executed various trades, as part of its business operations.

The analysis of the trades executed by the *Noticee no. 1* on one hand and the trades executed by RCMF on the other hand has indicated that there were **64 common scrip days** with respect to trades executed at the NSE and **60 common scrip days** with respect to the trades executed at the BSE, between the *Noticee no. 1* and RCMF. In other words, on these common scrip days, both the entities viz., the *Noticee no. 1* and the RCMF have executed trades in the same scrip on the respective stock exchanges.

(e) Out of the 64 common scrip days at the platform of the NSE, on as many as on 26 scrip days, the *Noticee no. 1* has been allegedly found to have indulged in front running trading in a common scrip through a BB (buy) or SS (sale) modes of trades, ahead of the trades of RCMF. In other words, it has been noticed that the *Noticee no. 1's* buy order/trade in a particular scrip was placed/executed ahead of RCMF's buy order/trade on respective scrip day. Further, out of such 26 scrip days, the *Noticee no. 1* has reversed her position on 25 scrip days and in the process has made a profit of INR 7,38,143.80 by front running the trades of RCMF in those common scrips.

(f) A similar pattern of BB or SS mode of trading was also observed on 26 scrip days out of the 60 common scrip days on BSE, where the *Noticee no. 1* had reversed her position on all the scrip days after completing her front running trades and in the process had made a profit of INR 1,48,805.65.

(g) During the investigation, in her statement, the *Noticee no. 1* had *inter alia* stated that the *Noticee no. 2* was operating her trading account and the trades executed in her account were influenced by the information received from the *Noticee no.3*, a friend of the *Noticee no. 2*.

(h) Further, the RCAML vide its letter dated July 23, 2009, has informed SEBI that the *Noticee no. 3* has acknowledged before its Head-Compliance that he has inadvertently passed on certain information pertaining to a few trades of RCMF to one of his friends and as per his belief, such information has been used for trades executed in the name of the *Noticee no. 1*.

3. On the basis of the aforementioned facts, the SCN alleges that the *Noticee no. 1* has indulged in unfair trade practice in securities by permitting the *Noticee no. 2* to operate her trading account and front run the trades of RCMF, based on the information so received from the *Noticee no. 3*. The SCN further alleges that the *Noticee no. 2* has indulged in unfair trade practice in securities by misusing his position as a Dealer of Anugrah by front-running the trades of RCMF, based on the information that was shared/provided by the *Noticee no. 3*. The SCN alleges that the *Noticee no. 3* has also indulged in unfair trade practices in securities by misusing his official position as Dealer of RCMF and sharing information with the *Noticee no. 2*, who in turn executed trades in the trading account of the *Noticee no. 1*.

4. The aforesaid acts on the part of the *Noticees* have been alleged in the SCN to be in violation of the provisions of Section 12 A of SEBI Act, 1992 and Regulation 3 and 4 (1) of the PFUTP Regulations.

5. The SCN was served upon all the *Noticees* through registered post and in response to the same, the *Noticees* address numerous letters to SEBI. The dates of the said letters have been captured in the following table:

Sr. No.	**Noticee no.**	**Details of letters**
1.	*Noticee no. 1*	24/12/2018 27/06/2019 15/10/2019 06/02/2021 16/02/2020 19/02/2021 08/03/2021 21/03/2021 25/03/2021
2.	*Noticee no. 2*	07/02/2020 08/09/2020

		15/10/2019
3.	*Noticee no. 3*	17/12/2018 11/06/2019 10/07/2019 15/10/2019 05/02/2020 10/08/2020 01/09/2020 08/09/2020 19/02/2021 23/02/2021 08/03/2021 18/03/2021 07/04/2021 04/05/2021

6. It is noted from the records that a supplementary show cause notice dated November 11, 2020 was issued calling upon the *Noticees* to show cause as to why the amount of unlawful gains, as allegedly made by indulging into the unfair trade practices be not disgorged. Further, a personal hearing of the *Noticees* in the matter was scheduled for February 11, 2020, however, separate letters were received from the *Noticee nos. 1* and *2*, expressing their inability to attend the personal hearing on the said date, whereas the *Noticee no. 3* while requesting for inspection of documents, intimated that he has not received any intimation about the personal hearing. The hearing was again scheduled on May 19, 2020, which could not take place due to the nationwide lock-down imposed owing to Covid-19 pandemic. The hearing was accordingly scheduled for September 08, 2020, however, the *Noticees* did not attend the hearing on the said date. Further, in view of the requests being received for cross examination of *Noticee no.1* by the other *Noticees*, it was deemed appropriate to provide an opportunity for cross-examination of the *Noticee no. 1* and accordingly, the matter was fixed for holding cross examination the *Noticee no. 1* on December 17, 2020. On the said date however, only *Noticee no. 3* appeared and cross examined the *Noticee no. 1*. After the cross examination was over, the *Noticee no. 1* was asked to provide certain information like copy of her income tax returns, bank account statements, Demat account statements, Power of Attorney signed and executed with her stock broker during the relevant

period etc. In response thereto, the *Noticee no. 1*, vide her email dated February 19, 2021, has furnished the copy of her Income Tax Returns and has further stated that she could not provide the Demat account statement etc., as her broker, Anugrah, has closed down its broking business. The personal hearing in the matter was finally concluded on February 23, 2021, during which all the *Noticees* appeared in person through Video Conferencing facilities and made submissions in their defence.

7. I note that during the course of the present proceedings, the *Noticees* have requested for providing them with opportunities for cross examination of various persons. The said persons include the Compliance Officer of RCMF as well as other employees of RCMF, Anugrah etc. Besides, each of the three *Noticees* has also sought cross-examination of the remaining two *Noticees* based on the statements recorded from them during the investigation proceedings. However, after evaluating the requests made by the *Noticees* with respect to cross examination, it was observed that by virtue of the fact that the statement of the *Noticee no. 1* has been relied upon to make imputations in the SCN against the other two *Noticees*, the *Noticee nos. 2* and *3* deserved to be provided with the opportunity to cross examine only the *Notice no.1*. Accordingly, an opportunity to cross-examine *Noticee no.1* was provided to the other two *Noticees* however, only *Noticee no. 3* availed the said opportunity and cross-examined the *Noticee no. 1*. I find the request for cross examination of other third-party entities are not warranted given the specific facts and circumstances of the case, moreso when none of those officials has been examined on oath during the investigation proceedings nor any of their statements have been relied upon in the SCN.

8. I may hasten to add here that pursuant to the issuance of the SCN, the *Noticees* had filed applications under the SEBI (Settlement Proceedings) Regulations, 2018. However, after filing their applications and attending the meeting of the Internal Committee, the *Noticees* did not pursue their respective applications and accordingly, the said applications filed by the *Noticees* did not lead to a successful disposal of the proceeding

9. It has been alleged in the SCN that the aforementioned acts of the *Noticees* have violated the provisions of Section 12A of the SEBI Act, 1992 r/w regulations 3, 4 (1) of the PFUTP Regulations. In order to appreciate the charges levelled against the *Noticees*, it would be relevant to refer to the above-stated provisions of the SEBI Act, 1992 and the PFUTP Regulations, which have a bearing on the allegations made against the *Noticees*. These relevant provisions are reproduced hereunder for facility of reference:

SEBI Act, 1992

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

Section 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 recognised 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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder.

PFUTP Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

"No person shall directly or indirectly –

(a) buy, sell or otherwise deal in the 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."

Regulation 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.

10. In their various communications, the *Noticees* have raised identical arguments, which are collectively summarised hereunder:

I. The statements recorded from them during the investigation have been retracted and hence, can't be relied upon in support of the imputations made in the SCN.

II. There is non-compliance of principles of natural justice as SEBI has not provided copy of the entire investigation report, verified copy of letters of RCMF & the acknowledgment

letter dated July 21, 2009 of *Noticee no. 3,* inspection of original letters of RCMF, minutes of meetings of CIDC, copy of trade log of RCMF, copy of reasons recorded for not taking action against the RCMF etc.

III. The trades executed by the *Noticee no. 1* are *bonafide* and matching of trades is only a coincidence. It is not justified to impute the trades as front running the trades of RCMF for the reason of having huge time gap in some of the common scrip days between the trades of the *Noticee no. 1* and RCMF and on some days, the *Noticee no. 1* has traded after the trading activity of RCMF was over on that particular day.

IV. There are softwares available in market which can identify institutional trading activity, bringing such information in public domain.

V. The *Noticee no. 3* was having very limited time (less than 01 minute) to execute orders on behalf of RCMF and within such time frame, information could not be passed on to any third person. Further, the trades of the *Noticee no. 1* in many instances have been executed as earlier as 10-15 minutes of the trades of RCMF.

VI. The *Noticee no. 2* has submitted that though he is known to the *Noticee no. 1*, however, mere knowing is not sufficient to allege the serious allegation like front running. The allegation of front running is not based on any cogent evidence as he has never acted as Dealer for the trades of the *Noticee no. 1*.

11. On the basis of perusal of the charges levelled in the present proceedings and the submissions made by the *Noticees*, the only issue that needs to be decided is whether the trades of the *Noticee no. 1* as alleged in the SCN, are trades executed in the normal course of trading by the *Noticee no. 1* or the alleged trades contained elements for being held as abnormal trades in the nature of front running transactions and if so, what is the complicity of the *Noticee nos. 2* with *3* in such front running trades.

12. I have gone through the various submissions made by the *Noticees* in response to the SCN and SSCN and for the purpose of adjudging the charges, the said submissions can be broadly classified into following categories:

(a) Non-compliance of principles of natural justice; (b) Retraction of the statement made during the investigation; and (c) The trades are *bonafide* trades and are not front running trades as alleged in the SCN.

13. With regard to the first set of submissions, i.e., the non-compliance of principles of natural justice, it is noted that through their multi-fold submissions the *Noticees* have repeatedly harped upon the issue that the "original letter" of RCMF, that has been relied upon by SEBI in the

present proceedings, has not been provided to them for inspection. It has been contended by the *Noticees* that no such letter exists and without providing the inspection of the original letter, no reliance can be placed on the copy of the same. After carefully examining the aforesaid protests made by the *Noticees* pertaining to reliance on the letter of RCMF, I have to make the following observations:

(a) The said letter as referred to above is one of the factors that has been relied upon to corroborate the allegations made in the SCN and is not the only evidence relied upon in the SCN to allege the violations against the *Noticees*. The charge of indulging in front running would ultimately be tested and proved based on the trading in the securities as alleged in the SCN by the *Noticees*. Thus, assuming for a moment that the allegation of front running against the *Noticees* has been made in the absence of any letter from RCMF, the *Noticees* are still required to defend the nature of the trades executed on those particular common scrip days or the peculiar trading pattern followed by the *Noticee no. 1* in the securities market over the relevant period. I further note that an investigation has been conducted by SEBI for the sake of safeguarding the interest of investors and for taking further course of action as may be necessary based on the finding of facts from the said investigation. As the said letter is not the sole evidence for imputing the allegation of front running against the *Noticees* and has only been used as a corroborative piece of evidence, therefore, not showing the original version of the said letter to the *Noticees* would not take away or dilute the contents or evidentiary value thereof, when a copy of the same has already been provided as annexure to the SCN. In the circumstances, the contents of the letter of RCMF can be stated to be at the best providing corroborative support to the facts pertaining to the trades executed by the *Noticees* unearthed during the investigation and the said letter has not been adopted as the sole basis or only evidence to establish the charge of front running against the *Noticees*. In this regard, I seek reliance on the observation made by the Hon'ble SAT in the matter of *M/s Shreeyash Industries Limited vs. SEBI* (decided on 06/03/2018 in Appeal No 368/2017), wherein the Hon'ble SAT while rejecting the contention of not providing a copy of the complaint to the appellant therein, has held that; "5. *We find no merit in the arguments advanced by the Learned Counsel for appellants. Submission that investigation of SEBI was initiated on a complaint received from one Mr. Anil Kumar Sharma, copy of which was not given to the appellants was prejudicial to appellants has no merit since SEBI did a full investigation and the impugned order has been passed after following the due process like issue of show cause notice to the appellants and providing opportunity for reply and personal hearing etc.*"

(b) The instant proceeding before me is in the nature of a quasi-judicial proceedings during which I find that the *Noticees* have been duly provided with the copies of all documents relied upon

in the SCN and the mere fact that the original of one of the documents, viz: the letter of RCMF has not been shown to the *Noticees* in the inspection, cannot render the proceedings infructuous more so when the contents of the same have not been rebutted by the *Noticees*. Further, as noted above, the copies of all the documents relied upon in the SCN to make the allegations, have been duly made available to the *Noticees* in the form of annexures to the SCN and the *Noticees* have also duly filed their written replies to the allegations made in the SCN by referring to the contents those copies of documents. Therefore, the objection raised against the reliability of one of such documents at this stage just for not being shown the original of that document is without any reason or justification. The *Noticees* have not explained as to how the copies of documents provided to them including the copy of RCMF letter have caused prejudice to them in defending their interest and contesting the allegations made against in the SCN by producing evidence if any to the contrary.

14. In the light of the above observations, I find the contentions made and the objections raised by the *Noticees* with reference to the said RCMF letter are devoid of any merit or logical justification hence are not tenable. As pointed out above, a photocopy of the said letter has already been furnished to the *Noticees* and inspection of the photocopy of the said letter was also made available. However, strangely enough, the *Noticees*, have endeavoured to challenge the very existence of such a letter and have tried to seek exoneration from the instant proceeding on this ground without explaining with any cogent reasons as to why the existence of a letter issued by a registered intermediary (RCMF) and contents thereof should not be believed to have existed despite the same having been used by SEBI as one of the evidences in the SCN itself. The *Noticees* have not been able to make out a strong case so as to constrain me to doubt the veracity of the said letter and contents thereof. It is pertinent to add here that the aforesaid communication of RCMF also contains reference to a letter dated July 21, 2009 vide which the *Noticee no. 3* had acknowledged before Reliance Capital Asset Management Limited (Asset Management Company of RCMF) that inadvertently he might have passed on certain information to one of his friends and such information could have been used in the trades executed by the *Noticee no. 1*. Under the circumstances, the *Noticees*, instead of confronting the incriminating contents of the said letter and rebutting the said contents, should not have indulged in throwing objections against the existence of the said letter under a frivolous plea of not being shown the original of the said letter, which goes on to show that the *Noticees* have indeed nothing up their sleeves to defend themselves against the contents of the said letter.

15. It is also noted that while seeking inspection of the original communication addressed by RCMF, the *Noticee no. 3* has also submitted that the acknowledgement of having inadvertently passed on certain trade information as attributed to him in the said letter of RCMF, was made

by him under coercion and duress of the RCMF. From the said submission itself, it undisputedly emerges that the *Noticee no.3* is accepting the existence of an acknowledgment made by him before his employer about the communication of information made by him and even if the said confession was made by him under coercion or undue influence or under whatever other circumstances, the fact that the *Noticee* has made an acknowledgement before RCAMC (copy of which is a part of the communication received from RCMF), the validity of the same cannot be undermined or disputed by *Noticee no.3*. It therefore becomes clear that only in order to avoid the consequences of the instant proceeding; the *Noticee no. 3* is making a futile attempt to assail the very existence of the letter written by the RCMF merely for the reason that the original version of the same was not made available to him in the course of his inspection of documents at SEBI. It is also relevant to observe here that the *Noticee no. 3* has not explained as to what kind of coercion was applied to him or what is the reason for the duress purportedly put on him to force him to give the aforementioned acknowledgement to RCAMC making admission of having shared some information to other *Noticees* nor has he stated the reasons as to why he mentioned a specific name (that of *Noticee no. 1*) while acknowledging/confessing about his the communication of sensitive information relating to investment decisions of RCMF. The aforesaid acknowledgment made by *Noticee no.3* therefore acquires significance, when the *Noticee no. 3* now claims before me that he does know the *Noticee no.* 1 at all, whereas the other two *Noticees* viz., *Noticees no. 1* and *2* are undisputedly known to each other as being next-door neighbours. Under the circumstances, the submission of *Noticee no. 3* before me claiming that the said statement of acknowledgement was made by him under duress losses all its credential and becomes mere a bald afterthought exercise to escape the adverse consequences arising out of the said confession made before RCAMC as no details of the so called duress which he was subjected to has been furnished nor any plausible reasons as to why someone will put him under such duress, the likely benefit that may accrue to such person/entity exerting such duress on him, have been put forth before me.

16. Thus, in my considerate view, merely because the original letters under reference have not been made available for inspection of the *Noticees*, the proceedings before me will not suffer any handicap nor can there be any embargo on using such documents as evidence in support of the allegations made in the SCN, unless something cogent to the contrary is shown by the *Noticees* which would create a *bonafide* suspicion about the authenticity of such document. Moreover, as pointed out earlier the present proceedings are not solely premised on the said letter addressed by RCAMC, rather the SCN relies upon a bunch of documentary evidences as enclosed to it in the form of Annexures, to lay credence and add corroborative value to the whole set of charges made against the *Noticees*. Under the circumstances, the objections raised by the *Noticees* with

respect to the authenticity of the said letter received from RCAMC do not hold any water and is liable to be rejected.

17. I find that reliance has been placed by the *Noticees* on the judgment of Hon'ble Supreme Court passed in the matter of *SEBI Vs. Price Waterhouse (Civil Appeal no. 6001-6002 and 6003-6004 of 2012)*, in order to seek certain documents like internal file notings pertaining to the matter etc. In this connection, it is noted that copies of all the relevant documents, which have formed the basis on which allegations in the present proceedings have been levelled against the *Noticees*, have already been provided to the *Noticees* along with the SCN. Since the SCN does not refer to any internal file notings nor any internal file noting has been used as documents for being "relied upon" to make the charges against the *Noticees* no case can be made out to provide any internal documents to the *Noticees*. It is also relevant to mention here that the *Noticee no. 1* during her personal hearing had requested for the complete trade log of RCMF and accordingly, the said data was furnished to the *Noticees* vide communication dated March 10, 2021. Further, in the case of *Price Waterhouse (supra)*, the Hon'ble Supreme Court has primarily issued directions by way of a clarification specifically limited to the said matter and the Apex Court did not go into the merits of the said case. The aforesaid understanding has also been affirmed in the findings recorded in the order dated May 12, 2017 passed by the Hon'ble SAT in the matter of *Shri B. Ramalinga Raju Vs. SEBI (Appeal no. 286/2014)*. Accordingly, there does not appear to be a reason to hold that the absence of the documents such as internal file noting as demanded by the *Noticees* has caused any prejudice to them to defend their case so much so that in the absence of those documents, it would not be fairly possible to conclude the proceedings after complying the basic principle of natural justice. In view of the aforesaid, the reliance of the *Noticees* on the judgment of Hon'ble Supreme Court in the aforesaid matter is misplaced.

18. Insofar as the grievance of the *Noticees* against not providing a copy of the investigation report is concerned, I again observe that the *Noticees* having already been provided with all the relevant findings of investigation against them in the body of the SCN itself alongwith supporting annexures, have not been able to demonstrate before me as to what prejudice has been caused to their interest by not receiving the entire copy of the investigation report. Since the SCN has extracted and incorporated all the findings of the investigation report based on which the charges have been made against the *Noticees*, it is for the *Noticees* to examine, analyse and respond or rebut those findings and charges based on the explanations and evidences they have in their possession, hence asking for the entire copy of investigation report is entirely unwarranted, uncalled for and irrelevant unless the *Noticees* specifically show that non-receipt of the said report has caused prejudice to their interest in defending themselves in the present proceedings. Further, as has been held by the Hon'ble Supreme Court in the matter of *SEBI Vs. Monarch Networth (C.A. no.*

282/2014), providing relevant extract of trade logs showing the offending transactions is a sufficient compliance of principles of natural justice. In the present case, the integrated order/trade log containing extracts of the trades have already been served upon on the *Noticees*, therefore, there does not seem to be any violation of principles of natural justice qua the *Noticees.*

19. It is noted that the *Noticee no. 3,* had vide Appeal no. 182/2021 has raised certain pleas before the Hon'ble SAT with respect to the inspection of documents and cross-examination of certain persons. The said appeal came to be dismissed vide an order dated April 29, 2021, wherein the Hon'ble SAT has *inter alia* held that: "…*we do not see any reason to issue direction to the WTM at this stage. The appeal is dismissed with the observation that it would be open to the appellant to question the action of the WTM if his right to inspect the documents and to cross-examine the witness has been denied after the order is passed by the WTM by taking it as a ground in his appeal…"*

20. Subsequent to the disposal of the appeal, the *Noticee no. 3* vide his letter dated May 04, 2021, have claimed that the present proceedings are barred by limitation. In order to buttress the said submissions, the *Noticee no. 3* has sought to place reliance on various judgments like *Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771]* etc.

21. In this regard, I observe that all the documents that have been relied upon in the SCN and that are necessary for the *Noticees* to defend themselves in the case including the details of all trades executed by RCMF have been duly furnished to the *Noticees* during the present proceedings. Therefore, the claim of the *Noticees* that their rights have been prejudiced due to the delay in the matter or due to non-receipt of documents does not hold good, as the *Noticees* at no point of the present proceedings, have demonstrated successfully as to how exactly their interest in defending their case stands prejudiced due to any delay in the matter. Further, in response to the contention that the present proceeding is barred by limitation, I note that that the provisions of SEBI Act, 1992 and PFUTP Regulations do not prescribe any fixed limitation period for completion of the proceedings. Without prejudice to the above, I further note that pursuant to the completion of investigation, SCN has been issued in the year 2018. I also note that after service of the SCN on the *Noticees*, the proceedings in the present matter have been adjourned at the requests of the *Noticees,* and also due to spread of Covid-19 Pandemic. Subsequently, to ensure that the *Noticees* are provided with fair opportunities, request for cross-examination was duly considered and cross examination of the Noticee no.1 was provided on December 17, 2020. Meanwhile, the *Noticees* had also filed application exploring the option of settlement of the present SCN under the SEBI (Settlement Proceedings) Regulations, 2018. In view of the above, I find that more than sufficient opportunities have been provided to the *Noticees* to defend their case and in the absence of any prejudice having shown to have been caused, merely seeking discharge from the serious charges on the sole ground of limitation would not be tenable. In this

respect, I find it relevant to seek reliance on the findings recorded by the Hon'ble SAT, in the matter *Rajnikant Mehta Vs. SEBI -date of decision January 07,2021,* wherein its was held that *"..This inordinate delay in the disposal of the matter pursuant to a remand order is a mitigating factor to be considered while deciding the quantum of penalty under 15J of the Act. Considering this factor, we are of the opinion that on account of the undue delay in the disposal of the matter the imposition of penalty of Rs. 5 lakh becomes arbitrary and excessive and is liable to be reduced…"*

In view of the above, the contention of the *Noticees* does not hold any ground for granting discharge from the serious charges as alleged in the SCN.

22. I also note that just at the time when the present order was being finalised, the *Noticee no. 3* has vide his letter dated May 19, 2021, informed about filing of a Writ Petition by him before the Hon'ble Bombay High Court. Perusal of the said letter reveals that the non-furnishing of copy of the internal records of SEBI to show him as to whether or not, the retraction affidavit filed by the said *Noticee* whereby he has retracted from his statement originally recorded during investigation has been duly placed before the competent authority has caused the filing of the said Writ Petition. In this connection, I note that such a similar ground had already been taken by the *Noticee no. 3* in his appeal filed before SAT, which has already been disposed of by the Hon'ble SAT. Without prejudice to the same, I must also observe here that the contents of the SCN as well as the documents annexed thereto do not mention anything about the statement of the *Noticee no. 3* that was recorded during the investigation conducted by SEBI. In fact, it was from the repeated communication of the *Noticee no. 3* itself that the said statement recorded by him during investigation has been mentioned before me from time to time in the present proceedings. Notwithstanding the same, as noted above I find that the said statement of the *Noticee no. 3* has neither been referred to nor has been relied upon as a documentary evidence in the SCN to establish the allegations against the *Noticee*, hence the same need not be considered for adjudication of the present proceedings. The *Noticee no. 3*, is however agitating his grievance against the internal process of "approval of action" against him by the competent authority which led to the issuance of the SCN in the year 2018. I find the aforesaid ground of objection taken by the *Noticee* is quite frivolous and absurd especially at this concluding stage of the present proceedings and seems to be another dilatory tactic adopted by the *Noticee no. 3* to prevent the proceedings from being concluded. The *Noticee*, has never bothered to challenge the SCN at the issuance stage itself, and is now at the fag end of the proceedings, resorting to multiple proceedings. If the *Noticee* had any grievance against the very foundation of the SCN and wanted that his retraction from original statement be taken into cognizance, he ought to have petitioned before SEBI at the time of issuance of SCN or after a reasonable time before he proceeded to respond to the SCN on merits and even decided to appear for personal hearing including cross-

examining *Noticee no.1* which was granted to him as per his request. Moreover, considering the retraction, the statement of the *Noticees (Noticee nos. 2* and *3)* have neither been referred, nor relied upon as evidence in the SCN, hence, the said argument pales into insignificance and holds no relevance. Under the circumstances, I am constrained to observe that the said argument of the *Noticee no. 3* is completely misplaced in the factual context of present proceedings, as he has failed to make out any ground as to how the said retraction affidavit would help him in defending the charge made in the SCN.

23. The next leg of submissions pertains to the request of the *Noticees* for cross examination of certain other *Noticees* and the officials of RCAMC, who had handled the issue of the violation of internal Employee Security Dealing Policy of RCAMC. As regards the request for cross-examination of officials of RCAMC is concerned, strangely enough I find that the *Noticees*, on the one hand have strongly harped upon the non-existence of the letters from RCMF/RCAMC and questioned the authenticity of the copy of the said letter and simultaneously, have requested for cross examining the official of RCAMC, who had issued those letters. I find that such a self-contradictory approach on the part of the *Noticees* only reflects dilatory approach of the *Noticees* who want to further delay the matter by making such completely vague and unreasonable demand. The copies of the letters of RCAMC have already been furnished to the *Noticees* alongwith the SCN and it is for the *Noticees* to respond, rebut or explain the contents of the said letter by presenting their own set of facts and evidences and under no circumstances the said letters warrant a cross examination of the officials of RCAMC. It is not the case that the officials of RCAMC have recorded any statement before SEBI stating something against the *Noticees* which needs to be confronted by the *Noticees* by cross examining those officials. In this case a registered intermediary (RCAMC) has addressed letters to SEBI intimating certain information, copies of which were provided to the *Noticees* for their response, hence the demand of cross examining the officials of the said intermediary is observed to be a far-fetched one. As regards the cross-examination of other *Noticees* is concerned, it is seen that only the statement recorded from *Noticee no. 1* before the investigating officer during the investigation by SEBI has been relied upon in the SCN in order to level charges against all the *Noticees* in the present proceedings. Therefore, acceding to the request of *Noticee nos.2* and *3*, an opportunity to cross-examine the *Noticee no. 1* was duly provided to the said two *Noticees*, which was availed only by the *Noticee no. 3*. As no other statement of either the officials of RCMF/RCAMC, or of *Noticee nos. 2* or of *Noticee no. 3* has been relied upon as evidence while issuing the SCN, the question of providing cross-examination or the question of failure of adhering to the principles of natural justice by not providing such cross-examination, does not arise at all. It is thus clear that the *Noticees* are trying to entangle the present proceedings in the web of technicalities and procedural infirmities so as

to delay the outcome of the proceedings. I observe that as the cross-examination of the *Noticee no.1*, whose statement was relied upon to make the allegations in the SCN has already been provided, the principles of natural justice have been adequately complied with in the present matter. Therefore, the submission of the *Noticees* complaining against not being granted opportunities of cross-examination of RCMF/RCAMC officials and other *Noticees* (whose statements have not been used at all or relied upon as an evidence in the SCN) is devoid of any merit and does not require any further deliberation.

24. Moving further, it is noted that the next submission that has been made by the *Noticee no. 1* is that her statement dated February 12, 2011 recorded during the investigation proceedings has been retracted by her by filing an affidavit dated December 21, 2018. In this connection, I observe that the *Noticee no.1* in the aforesaid affidavit has claimed that during the recording of her statement under oath, she was nervous, confused and was not in proper frame of mind. I have pondered over the said submission made under affidavit by *Noticee no.1*. At the outset I can state that the statement so made under oath cannot be retracted simply because of such an inordinate delay of more than 7 years in making retraction from the deposition made by her during the investigation. Further, the fact that by the time the *Noticee no. 1* decided to retract from her statement recorded under oath by filing an affidavit, the SCN had already been issued to her and other *Noticees* by relying *inter alia*, upon the said legally valid statement. It is trite law that retraction from any statement given before any authority should be done at the earliest and such retraction should be supported by convincing and tangible evidence to suggest that the statement which was recorded on oath was factually incorrect. In this case the *Noticee no.1* stuck to her statement given by her during investigation and remained silent on the same for more than 7 years, however, when the adjudication proceedings were in progress for reasons best known to her, she decided to retract from her statement taking various general pleas in an affidavit filed by her before me. I, at this stage, seek guidance from the following judgments on the issue of recording statements under oath and evidentiary value of subsequent retractions:

i. *Avadh Kishore Das v. Ram Gopal AIR 1979 SC 861:* The Hon'ble Supreme Court have held that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them. The Hon'ble Supreme Court have further held that unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.

ii. *Dhunjibhoy Stud & Agricultural Farm v DCIT, [2002] 82 ITD 18 (Pune),* ITAT Pune Bench: It has been held by *the* Hon'ble Tribunal that where a retraction of a statement was made on an affidavit after a lapse of three years, the same should not be considered and the admissions made earlier were held to be admissible evidences.

25. Applying the aforesaid jurisprudence to the present case, I find that the retraction by the *Noticee no. 1* after issuance of SCN, and after efflux of more than 7 years of recording such a statement cannot be accepted as a valid retraction, moreso due to the fact that the husband of the *Noticee no. 1* was present along with her during her statement recording which rules out any possibility of her being under any pressure or confusion or any other mental state so much so that she had to make statements before the investigating officer which she did not consider to be factually correct. Moreover, she has made herself voluntarily available to be cross examined by the other *Noticees* during the present proceedings before me which shows she does not have any psychological inhibitions being questioned by others on oath and does not feel pressurised while giving a statement before an authority. Additionally, the fact that no cogent evidence has been brought to the table by the *Noticee no. 1* so as to indicate any factual inaccuracy in her original statement recoded during the investigation period, the attempt made by the *Noticee no.1* to retract from her original statement recorded on oath becomes a futile exercise having no substance to stand on merit. Keeping in view the foregoing discussions, the submissions made by the *Noticee no. 1* based on her purported retraction of statement are rejected being sans merit and not maintainable in law.

26. Without prejudice to the above, I note that the *Noticee no. 1* has not disputed the trades executed by her or the trades executed in her trading account. While retracting from the statement that she made in presence of her husband before the investigating officer, it has been submitted in her affidavit that the statement she had made under oath asserting that the trades were actually executed by *Noticee no.2* in her trading account is not correct. In the said retraction affidavit, it has been submitted by the *Noticee no. 1* that the trades in her trading account were executed by herself in consultation with her husband only and not by *Noticee no. 2* as stated by her earlier in her original statement. Having considered the same, I proceed to analyse the allegations made in the SCN against the *Noticees* so as to adjudge the charges so levelled in the SCN.

27. As recorded earlier, the *Notice no. 1* has been allegedly found to have indulged in front running the trades of RCMF on both the NSE and the BSE on 26 scrip days. Out of all her trades, the SCN has recorded illustration of her trading in 3 scrips each on the NSE and the BSE, where such a trading pattern of apparent front running has been observed to have been indulged in by the *Noticee no. 1* and those trades executed by the *Noticee no. 1* by way of front running have allegedly resulted into unlawful gain of INR 8.86 Lakh (approximately) [INR 7,38143.80 on NSE and INR 1,48,805.65 on BSE] in the hands of the *Noticee no.1*.

28. In my view, the illustrative analysis of the trades so highlighted in the SCN would be sufficient to decide the present matter and analysis of each and every trade in all the scrips

executed by her may not be essential for determination of the issues involved in the instant proceeding. It would be fair and sufficient to consider the clarifications advanced by the *Noticee no.1* in rebuttal of the allegations made in the SCN so as to properly appreciate the charges made therein with the help of a sample factual analysis of the trades to arrive at a finding as to whether on the basis of evidences so adduced in support of the charges in the SCN the charges of indulging in front running would stand establishes or not. The SCN has narrated the acts of front running done by the *Noticee no. 1* by providing the details of the trades executed by the *Noticee no. 1* as well as RCMF, the Big Client (BC), whose trades have been alleged to have been front run by the *Noticee no.1*. In order to explain the said allegation, the SCN provides the details of the buy quantity, average buy price, turnover, timing of placement of orders as well as execution of trades, pattern of such trades (Buy-Buy or Sell-Sell) observed in all scrips, quantity of trades that was matched between the *Noticee no. 1* and RCMF, total gains so made by trading in a particular scrip and the timing during which the trades of the *Noticee no. 1* matched with RCMF etc.

29. It is noted that the *Noticee no. 1* (the alleged Front Runner-FR) has executed her buy trades in the scrip of Gujarat State Fertilizers & Chemicals Ltd. ("**GSFCL**") on October 31, 2008 and after purchasing 11031 shares, all those shares were sold/squared-off by the *Noticee no. 1* on the same day itself in intra-day trades. The shares were purchased by the *Noticee no. 1* at an average price of INR 76.07 and were sold/squared-off on the same day at an average price of INR 80.27. Further, on the said day, RCMF, the Big Client (BC) has also purchased 50,000 shares of GSFCL and out of the said purchased lot, it is seen that as many as 11025 shares sold by the *Noticee no. 1* matched with the purchase order of RCMF. The details of the trades of the *Noticee no. 1* as well as that of RCMF that got matched through front running are summarised in the following table:

	FR (ASM)-Noticee no.1				**BC (RCMF)**			
	Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)		Total Buy Qty.	Avg. Buy Price (Rs.)	Turnover (Rs.)	
	11031	76.07		839131.80	50000	81.11		4055971.50
	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)
From	3:19:16	78.00	3:19:16	75.00	3:19:18	80.00	3:19:18	78.35
To	3:19:16	78.00	3:19:16	78.00	3:19:56	82.00	3:21:54	82.00
	Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)		Pattern observed: BB Matched Qty: 11025 % of matched Qty w.r.t BC's trade: 99.95% Gain: INR 46348.20 Time: 3:19:32 to 3:20:06			
	11031	80.27		885480.00				
	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)				
From	3:19:32	80.00	3:19:32	80.00				
To	3:20:06	80.00	3:20:06	82.00				

FR:- Front Runner; BC:- Big Client; B.O.T:- Buy Order Time; B.O.P – Buy Order Price; B.T.T – Buy Trade Time; B.T.P – Buy Trade Price; S.O.T – Sell Order Time; S.O.P – Sell Order Price; S.T.T – Sell Trade Time; S.T.P – Sell Trade Price; BB – Buy (by FR), Buy (by BC); SS – Sell (by FR), Sell (by BC).

30. From the above quoted example, I note the following:

i. A buy trade of the 11031 shares of GSFCL has been placed by the *Noticee no.1* at 03:19:16 pm.

ii. Immediately thereafter, within a gap of 2 seconds (i.e. at 03:19:18 pm), the buy orders of RCMF (Big Client) for shares of GSFCL started coming into system for purchase of 50,000 shares and such orders remained in the system till 03:21:54 pm. The average buy price paid by RCMF for the said large quantities of shares was INR 81.11.

iii. The *Noticee no. 1*, who had purchased 11031 shares of GSFCL at 03:19:16, placed an order to sell those shares in a short span of 16 seconds, i.e., at 03:19:32, at a price of INR 80.00, against her average buy price of INR 76.07. However, as the demand for shares at better prices was present in the system, the *Noticee no. 1* was successfully able to sell her shares at an average price of INR 80.27.

iv. Out of sale of such 11031 shares by the *Noticee no. 1*, a major chunk amounting to 11025 shares (99.95% of the total shares) got matched with the buy order of RCMF and thereby fetching a profit of INR 46,348.20 to the *Noticee no. 1*.

v. This matching of a trade involving such a large number of shares between the *Noticee no. 1* and RCMF happened in a gap of mere 34 seconds (03:19:32 to 03:20:06).

31. Now let me apply the aforesaid factors to the crux of the charges of the SCN that front running has been executed by the trades of the *Noticee no.1* to the impending trades of RCMF.

32. As per the information submitted during the present proceedings, the annual income of the *Noticee no.1* for the financial year 2007-2008 was INR 1.40 Lakh (approx.) and for the financial year 2008-09, it was INR 1.68 Lakh (approx.). Under the circumstances, for a person whose annual income was barely around Rs.1.40 to Rs.1.68 lakhs a year , it is quite unusual to note that the value of one buy trade that was executed by the *Noticee no. 1* in the scrip of GSFCL could be as high as INR 8.39 Lakh which means, the *Noticee no.1* was knowing very well that unless she is able to square off her buy trade during the day she would have paid INR 8.39 Lakh to the broker to take delivery of those shares, which was certainly beyond her financial capacity or known sources of annual income. It therefore implies that while placing the buy order for a purchase amount that was way beyond her annual income the *Noticee no.1* was pre-determined to square off her trade by selling those shares during the trading hours of that very day itself. Now, if the *Noticee* was knowing in advance that she will offset her buy trade by a sell trade, she would have most likely expecting a predictably profitable exit since a person of her stature and means, would

not take the risk of intra-day losses which could be of any uncertain amount. Given the aforesaid observations, the *Noticee's* action of taking an exposure in equity market in multiple times to her annual income, when analysed in the backdrop of several peculiarities noticed in the trades executed by the *Noticee no.1* viz; although the timing of the placing of buy order was chosen towards the closure of market hours, the *Noticee no. 1* was still able to sell more than 99% of the quantity purchased by her to the Big Client (RCMF) and exit her purchases in the scrip profitably on that trading day lends support to the charges made in the SCN. It clearly indicates that the aforesaid intra-day offsetting trade executed by the *Noticee* was not borne out of any *bonfide* act made in the normal course of dealing in securities but by way of executing a pre-conceived plan to choose a time to buy the shares to front-run the buy orders placed by RCMF and then square off the said purchases by selling at a higher price available in the system due to large demand created in the scrip by the buy orders of RCMF. Similarly, in another instance, while front running the trades of RCMF on October 15, 2008 in the scrip of Jindal Steel and Power Limited (JSPL), the *Noticee no. 1* has purchased 6000 shares of JSPL between 03:19:56 pm to 03:20:01 pm at an average price of INR 770. The total buying turnover in the said trades was INR 46 Lakh (approx.). Immediately after buying the said scrip, the *Noticee no. 1* placed selling order at 03:20:11 pm, which got executed into trade at 03:21:27 pm, with 100% of the shares being sold to RCMF at the said time. It is again pertinent to note that the buy trades were placed by RCMF from 03:20:07 pm to 03:29:54 pm, i.e., after hardly a gap of only few seconds of buy trades of the *Noticee no. 1* as a result of which the *Noticee* could offset her buy trades by matching her sell trades with the buy trades of RCMF and was able to make a profit of INR 40,136.95. It becomes quite glaring that the *Noticee* could take the risk of buying the shares towards the fag end of trading hours as she was sure about her ability to square off her trades profitably because of her front-running activities based on information received about the RCMF's plan as well as the proposed timing to buy the said shares in large quantities on the same trading day.

33. I would add here that the such a peculiar trading pattern of buying or selling shares ahead of the trades of BC (RCMF) in the same scrip and squaring off position at a time proximate to the time of placement of buy or sell order by RCMF has been found repeatedly in the trades of the *Noticee no. 1* and as per the allegations made in the SCN, there were 26 number of instances of such transgression committed by the *Noticee no.1* on both the Stock Exchanges i.e. the NSE and the BSE.

34. As I have observed earlier, the *Noticee no. 1* can be seen indulging in trading in extremely high value transactions, which was neither found to be in proportion to the earning at the relevant time nor has been justified by the *Noticee no. 1* with any credible explanation so as to logically explain her unusual trading pattern observed in various scrips as alleged in the SCN. From a

perusal of the records pertaining to trades executed by the *Noticee no. 1* which have been alleged in the SCN as not being fair and executed in the normal course of trading in securities, it is noted that on November 14, 2008, the *Noticee no. 1* had indulged into 'short selling' and short sold 52213 shares of Gail (India) Limited at an average rate of INR 212.74 involving a selling turnover value of INR 1.11 Crore (approx.). The shares that were 'short sold' between 10:17:31 am and 10:33:05 am; were squared off between 10:18:43 am & 10:34:02 am. The *Noticee* in the process of such short selling and thereby squaring her position as highlighted above got enriched by a sum of INR 81,077.65. I further observe that the *Noticee* has failed miserably in explaining as to what factors motivated her to place short sell orders involving such a big amount and thereafter to square off the position within a very short period of time. Had she done the short-sell in normal course of her trading activities she would have kept in mind about the possible high amounts of losses which she could have incurred if the price of the said scrip witnessed even a positive movement of only 01%, (INR 2.12). In such a scenario, the *Noticee no. 1* would have incurred losses of INR 1.10 Lakh in a single day, which was undisputedly more than 65% of her annual income. It therefore indicates that the *Noticee no.1* did not have to be mindful of the possible losses as she was predictably positive about earning profit out of her short-selling activity and such a confidence about earning profit from short-selling would come to a person who knows that she was not trading in due course of her trading in securities but under the influence of certain information about the trading plan of RCMF so that she can time her short-sell orders accordingly. The absence of justification and lack of such trading pattern noticed in her previous trading activities, coupled with her sudden exposure to such high volume trading in absolute contradiction to her annual returns, speak volumes about the unfair means used by her while executing the trades as alleged in the SCN. The aforesaid observations further get reinforced upon finding that out of all the shares placed by her to square off her position, trades of 45,659 shares (87.45%) of the *Noticee no. 1* had matched with the sell orders of RCMF, and such trades (between *Noticee no. 1* and RCMF) also got executed between 10:19:55 am and 10:33:08 am on that trading day.

35. Moving on to the other trades, it is noted that on October 16, 2008, the *Noticee no. 1*, had purchased 5407 shares of State Bank of India at an average price of INR 1530 and the total value of the said trades was INR 82.72 Lakh (approx.). As observed earlier, any opposite price movement in the share price even in the range of 1-2% of the scrip price could have resulted in heavy losses to the *Noticee no. 1*, which would have created a huge settlement obligation for the *Noticee* that was certainly beyond her financial ability and would have compelled her to default on her pay-in obligation leading to a situation that was detrimental of the settlement system of the Securities Market. In this respect also, I note that though, she was successful in squaring off her

position with a profit of INR 27,035, there is no explanation available on record, which in my view could be held to justify her action of placing such high value orders. Such trading behaviour on the part of *Noticee no.1* was possible only with a prior knowledge about the RCMF's trading plan on that day, about which she would have been so certain that it inspired her to front her trades before the RCMF. It is further pertinent to mention here that the buy leg of the above noted transaction was executed by the *Noticee no. 1* within three seconds between 03:04:19 pm and 03:04:22 pm and immediately after a few seconds, the *Noticee no. 1* was able to sell the entire stock of 5407 shares of SBI to RCMF at a price of INR 1535, through her trades executed at 03:05:07 pm. Further, it is important to note that this profit-making trading activity by following a Buy-Buy front running pattern was executed by the *Noticee no. 1* around the time of the market closure rendering the said transaction look like a very risky transaction, but the *Noticee* dared to enter into such offsetting transactions towards the closure of the market presumably based on her prior information about the timing of RCMF transactions which inspired her to front-run the transactions of RCMF and make a profit . I may add here that given the meagre annual income of the *Noticee no. 1,* the *Noticee no. 1* was bound to square off her position, else she was supposed to make good her pay-in obligation of INR 82.72 Lakh which would have been almost an impossible proposition for her which further reinforces the allegation that but for her front running activity, the *Noticee no.1* would not have dared to take such a huge buy position in the market towards the closing hour of the market which would have afforded her very little time to exit the transaction to avoid incurring the huge pay-in obligation. Thus, looking at the unique trading pattern followed by the *Noticee no.1* as an investor of the Securities Market, her minimal annual income, abnormal trading volumes that were highly disproportionate to her income, the surgical precision of time with which the trades were placed just before RCMF placed its orders, and last but not the least the qualification and skills possessed by her, one can easily conclude that such humungous trading transactions would not be carried out by any prudent person that too, towards the closure of trading hours unless the person is pretty sure and confident of squaring of her position and making profit out it. The aforesaid factual analysis brings to the fore an overwhelming preponderance of probabilities to hold that the *Noticee no.1* in the instant proceedings was successfully trading by employing her front-running strategy based on prior intimation about the trading plans of RCMF.

36. By following a Buy-Buy or Sell-Sell pattern, i.e., first executing trades in the direction of the impending trades of the Big Client and eventually squaring off the said trade when the order of the Big Client comes to the marker platform, the *Noticee no. 1* has clearly indulged into an act of front running the trades of RCMF. It was not a case of matching of one or two trades which could be ignored by painting them as co-incidence, but a whole series of trades has emerged

where the trades of the *Noticee no. 1* is found visibly influenced by the impending trades of RCMF. It is also worthy to add here that the *Noticee no. 1* has not executed any trades in those scrips any day prior to those days when the front running pattern was observed. Neither the *Noticee* has filed any document to substantiate her claim that her trades were executed in normal course of her trading activities contrary to the allegations against her nor has she been able to justify that she was habitually executing trades in this manner or that she has been executing such types of trades in other scrips as well over the period during which she was a regular investor/trader in the Securities Market. In fact the records before me suggest otherwise, indicating that she had no prior trading experience in those scrips in respect of which she has carried out front running activities as alleged in the SCN.

37. In order to further appreciate the concept of front running, I note that the issue of front running had come for consideration before the Hon'ble Supreme Court of India and I seek reliance on the judgment of Hon'ble Supreme Court, passed in the matter of *SEBI Vs. Shri Kanaiyalal Baldevbhai Patel and Ors. (MANU/SC/0096/2018)*, relevant extract of which is reproduced hereunder:

> *"…As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:*
> *Front running -Buying or selling securities ahead of a large order so as to benefit from the subsequent price move.*
> *This denotes persons dealing in the market, knowing that a large transaction will take place in the near future and that parties are likely to move in their favour.*
> *The illegal private trading by a broker or market-maker who has prior knowledge of a forthcoming large movement in prices. (Investment)*
> *The Black's Law Dictionary (Ninth Edition) defines the term 'front running' as under:*
> *Front running, n. Securities. A broker's or analyst's use of nonpublic information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in many ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares…*
> *.. ...It comprises of at least three forms of conduct. They are: (1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running"); and (3) transactions where a intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead")..."*

38. After witnessing the peculiar trading pattern followed by the *Noticee no. 1* on those common scrip days as revealed by the foregoing factual analysis and the strong preponderance of probabilities emerging therefrom of repeated front running of the trades executed by RCFM by the *Noticee no. 1* on several days, the defence taken by the *Noticee* that such trades were undertaken by her in a *boafide* manner out of some stock research made by her, turns out to be an empty and indefensible statement which can not aspire any confidence, more so when I find that she has not been seen executing similar trades before the said specific period during which those front running trades were allegedly executed by her. Had she been a regular trader in the Securities Markets adopting similar trading strategies either before or after the aforesaid impugned manipulative trades, I see no reason as to why she could not bring before me a single instance of executing similar trades in the course of her regular trading activities. Thus, the claim of the *Noticee* to have executed those trades after due research of stocks etc., is unfortunately not been supported with any evidence.

39. I note that only after concluding their personal hearing in the matter, the *Noticee no. 3* vide his email dated March 18, 2021 and the *Noticee no. 1* vide her email dated March 25, 20121, have furnished their respective analysis of the trades of RCMF, and have submitted that the trades have matched between the *Noticee no.1* and RCMF due to sheer coincidence.

40. I have perused the said submissions as well as the underlying analysis of trades which includes two different kinds of trades. One set of trades includes the trades which have been alleged to be in the nature of front running trades in the SCN and other set of trades are those trades where also both the *Noticee no. 1* and RCMF, have executed trades in common scrip, however, the said trades have not been alleged to be front running trades. I find no merit in the aforesaid submission of the two *Noticees* since merely because some other trades have not been alleged to be manipulative, the alleged trades will also have to be treated as non-manipulative or free from front-running charges notwithstanding all the possible elements of front-running trades are writ large in those trades. It is not the case of the *Noticees* that those trades which have not been alleged in the SCN have reportedly gone through a scrutiny of process and after due analysis of those trades have been explicitly declared by a competent authority to be *bonafide* trades executed in the normal course of trading. Therefore, merely for the reason that some other trades executed by the *Noticee* have not been alleged in the SCN, the trades which have been alleged to be front-run trades due to the peculiar manner in which they have been executed, would not *ipso facto* be treated on par with those non-alleged trades and will not automatically acquire the status of normal and *bonafide* trades. In this connection, it is noted that the *Noticee no.1* and *Noticee no.3* have emphasized on the time gap between the trades of the *Noticee no. 1* and the trades of RCMF to contend that the trades executed by *Noticee no.1* were independent of the

trades of RCMF and were not executed under the influence of information received about the impending trades of RCMF from any source. To deal with the aforesaid contentions, I would like to illustrate a few such impugned trades of the *Noticee no. 1* and the manner they have been executed so as to clear the doubts about the *bonafide* of those trades and further expose the apparent contradictions in her submission:

A. Trades in the scrip of Areva T & D Limited on October 08, 2008.

i. In terms of the SCN, the *Noticee no. 1* had first purchased 473 shares of the said company through the trades executed between 02:46:57 pm and 03:47:09 pm (Order placement time: 02:46:57 pm to 02:48:25 pm). The average buy price for the *Noticee no. 1* was INR 1109.25. (The market closure timings were extended during those days due to Sun Outage).

ii. Immediately after the *Noticee* placed her buy order, RCMF has entered its buy order from 02:47:14 pm till 04:05:15 pm. The total quantity of RCMF's order was 6000 share and average buy price was INR 1165.

iii. The *Noticee no. 1*, whose buy trades were being executed till 03:47:09 pm [ref para (i) above], started reversing her position by placing sell orders from 03:32:04 pm onwards.

iv. The *Noticee no. 1* had purchased a total of 473 shares till 03:47:09 pm, and was able to sell all of them till 04:14:29 pm at an average price of INR 1157.55. Out of said sale of 473 shares, trades of 121 shares were matched with RCMF (26%), during the period of 03:32:04 pm to 03:55:41 pm.

41. **Finding:** The *Noticees,* in their submissions, have tried to portray that there is a time difference of 42/43 minutes between the trades of the *Noticee no. 1* and RCMF. However, in terms of the aforesaid factual details, the said assertion is found to be patently erroneous. As can be noted from the above, the *Noticee no. 1* had taken a buy position (a BB pattern) merely 17 seconds before RCMF placed its buy order as the time of first trade of *Noticee no. 1* is 02:46:57 pm, whereas first trade of RCMF was executed at 02:47:14 pm. Further, the time gap of 43 minutes that has been shown as a factor to claim exoneration seems to be the time when the buy trade of RCMF is first matched with the sell trade of the *Noticee no. 1* (while squaring off her position). I note that citing this time gap is of no help to the *Noticee no. 1*, and rather is going to further compound the charges as in reality, the time gap of front running trade (BB) executed by the *Noticee* was merely 17 seconds. Moreover, it is also pertinent to mention here that as soon as the *Noticee no. 1* has placed her sell order at 03:32:04 pm, her trades started matching with those of RCMF, leaving no *iota* of doubt that she was well having the clear-cut knowledge of the impending large buy orders of RCMF coming into the system.

B. **Trades in the scrip of HCL Technologies on November 19, 2008.**

i. SCN has alleged that the *Noticee no. 1* has purchased 6579 shares of HCL between 10:12:12 am and 10:12:25 am.

ii. The buy orders of RCMF in HCL have been executed from 10:51:17 am to 11:08:45 am.

iii. Just before the buying activity of RCMF could have finished, the *Noticee no. 1* started squaring off her position at 11:07:44 am and resultantly, trade of 500 shares matched between the *Noticee no. 1* and RCMF.

iv. The *Noticees* have claimed that the trades of the *Noticee no. 1* were executed after the trading activity of RCMF and there is a gap of 39 minutes (as per *Noticee no. 1*) or 1 hour and 37 minutes (as per *Noticee no. 3*).

42. **Finding**: I reiterate my findings as recorded aforesaid with respect to the scrip of 'Areva' as in this case also, as soon as the *Noticee no. 1* started selling of her shares, her trade matched with RCMF in the next second and in total, 500 shares were sold by the *Noticee no. 1* to RCMF. Moreover, buying before the Big Client, irrespective of the time gap, and selling during the time when the Big Client is buying the shares holds the essence of a typical front running case, hence the above noted trades of the *Noticee no.1*, i.e. run ahead of RCMF to buy the scrip and reverse the trade by selling the shares when RCMF starts buying the shares, adequately expose the underlying knowledge of *Noticee no.*1 about the impending trades of RCMF.

43. Apart from the aforesaid instances, the *Noticees* have also quoted numerous scrips, where they have claimed that the *Noticee no. 1* has executed trades after the activity of RCMF was over and have claimed that in such scrips, no trades have matched with RCMF. Therefore, according to the *Noticee no.1* all her trades were normal trades and anyone can execute such transactions based on live market softwares, which identify the institutional trading activities. In this regard, I find that a vague assertion has been made by making reference to technological facilities which can help to detect large trading movement in scrips by institutional investors. I observe that neither the *Noticee no. 1* has named any such software being available during that period when she entered into those alleged trades nor has furnished any detail as to how the so called softwares populated specific information about the impending transactions of specific institutional clients in advance, which helped her to know about the impending trading activities of RCMF on those common scrip trading days. Further, the *Noticee no. 1* has not been able to show any subscription having been made by her for the usage of any such software by her during the relevant time, based on which she was always able to front run the trades of only one institutional investor, i.e., RCMF. There may be trading softwares providing market details of trades already executed by

institutional clients, however, any software providing advance knowledge of any impending trades of specific institutional clients appears to be only a figment of imagination of the *Noticee no. 1* as the same is not feasible nor permissible under the securities market regulations.

44. There is no denying the fact that apart from the trades that have been alleged to be in the nature of front running trades, there were many other occasions also, when the *Noticee no. 1* and RCMF, both were trading in same scrip. Infact, the SCN records that on the platform of NSE, there were 64 common scrip days between *Noticee no. 1* and RCMF and out of such 64 scrip days, clear-cut front running pattern has been observed in the trades of *Noticee no.1* on 26 scrip days, which means on the remaining number of 38 common scrip days also, the *Noticee no. 1* has traded after RCMF in common scrips, but the trades on those 38 scrip days might not have possessed those peculiar features of front running so as to be charged in the SCN as manipulative or *malafide* trades, unlike the alleged trades on 26 common scrip days. However, just because the trades on those 38 scrip days were not alleged to be front run trades in the SCN, the same cannot be taken as a ground on standalone basis to dilute the allegations of front running in respect of those alleged trades, where the *Noticee no. 1* is glaringly seen to be front running the trades of RCMF on numerous occasions, within negligible time gaps as vividly highlighted in the previous paragraphs. Rather, in my view the trading in similar scrips executed by the *Noticee* on the other 38 days, *albeit* after the trades of RCMF were executed, further affirms the allegation that the *Noticee* was keeping a track of information about the impending trades of RCMF on an ongoing basis and has taken advantage of such information from time to time as per wish and capacity. Only because on some other occasions her trades were executed after execution of the mutual fund's trades which seemingly do not give an impression of front running, no case for exonerating the *Noticees* on account of her other trades on those 26 common scrip days which were executed with negligible time gaps ahead of the trades of RCMF glaringly indicating front running by the *Noticee* can be made out. In my view, the aforesaid trades of the *Noticee no.1* executed on 38 common scrip days would rather show the fairness on the part of the investigation that no allegations have been made against those trades not merely because of the fact that those trades did not match between the two entities, but after taking into account a host other attendant factors such as quantity of trades, timing of trade and various other relevant facts prior to focussing on only those trades which were blatantly executed under a front running strategy as has been alleged in the SCN. Moreover, the *Noticees* have not been able to show that prior to the investigation period, the *Noticee no. 1* was ever trading in those scrips in such large volumes. Under the circumstances, I do not find any merit in the submission that the *bonafide* of the trades executed by the *Noticee no. 1* should not be questioned and rather, keeping in view the overwhelming factual evidences that establish the front running activities engaged in by the

Noticee no.1, those alleged trades are found to have been executed with *malafide* intent to front run the trades of RCMF. In course of the proceedings before me, the *Noticee no. 3* requested for an opportunity to cross-examine the *Noticee no. 1* one more time. Similarly, the *Noticee no. 1* has reiterated her request to cross examine the *Noticee nos. 2, Noticee no. 3* and the officials of RCMF. In this regard, I would reiterate that only the statement of the *Noticee no. 1* has been relied upon as an evidence in the SCN. Accordingly, an opportunity of cross examining her has been granted on December 17, 2020 so as to meet with principles of natural justice which he has availed. Since no statement of any other person has been relied upon to level allegations in the SCN, there is no requirement of providing cross examination of any other person or *Noticee*. Further the request of the *Noticee no. 3* seeking another opportunity to cross examine the *Noticee no. 1* without assigning any specific reasons is *ex-facie* baseless, unwarranted and is appears to be a ploy to further delay the proceeding and thus rejected.

45. Based on the factual findings and my observations thereon as recorded above, I find that the trades as have been alleged in the SCN to be unfair and fraudulent trades, have been executed in a manner so as to front run the impending orders of a Big Client like RCMF their volumes and values are highly disproportionate to the meagre declared annual income of the *Noticee*; the way in which the alleged trades have been timed for execution the quantity and amounts involved in those trades which have been executed only during a limited period and not repeated thereafter as a matter of habitual trading practice etc., are all in themselves sufficient, *dehors* the admission made by the *Noticee* under oath in her statement during the investigation, to establish the charge of front running against the *Noticees* . Even for a moment, the admission made in her statement is ignored for a while accepting the affidavit filed by the *Noticee no.1* retracting therein her statement recorded during investigation, I still find that the alleged trades are loaded so heavily with factual evidences that sufficiently suggest that such trades were not possible to be executed in the normal course of trading without the support of advance information about the impending trading planned for execution by RCMF on those 26 common scrip days. I find that the *Noticee* has grossly failed in putting forward any justification in support of her claim that her trades were executed in the normal course of dealing in securities. Applying the test of principles of preponderances of probabilities to the facts and evidences of this case, I see no reason to not hold the *Noticee no. 1* guilty of the violation as alleged in the SCN when the facts surrounding the execution of those impugned trades; the shortcoming in the unsubstantiated claims made in the submissions of the *Noticee* and other supportive materials strongly suggest that the alleged trades cannot be considered as *bonafide* trades executed in the ordinary course of trading in securities. Similarly even for once, the claim of the *Noticee no. 3* that he did not know the other two *Noticees* and the claim of *Noticee no.1* in her retraction that she executed her trades without any support of

Noticee no.2 or the claim of *Noticee no.2* that he did not have any connection with the other two *Noticees* as far as the impugned trades are concerned are to be believed, I find that the *Noticee no. 1* has not been able to discharge her burden to prove that the alleged trades were indeed her trades; executed in a *bonafide* manner in the normal course of dealing in securities; and she has not been able to explain as to why she decided to indulge in such high volume trades against her very limited income and financial status and thus the *Noticee* has not been able to discharge her onus of rebutting the allegations with corroborative material successfully. As the *Noticee no. 1* has not been successful in justifying her trades to be *bonafide* trades executed in routine by her, therefore, in the absence of any justification of executing such trades and given the facts and circumstances of the matter, in my view, the source of information and mode of communication are not essential so as to adjudge the culpability of the *Noticee no. 1*.

46. After having found that the alleged trades executed by *Noticee no.1* were unfair and executed with a motive to front run the trades of RCMF so as to derive undue and unlawful gains, I shall move on to decide the complicity of the other two *Noticees* in the present matter.

47. I may recall here that as per the SCN, the *Noticee no. 2*, was an employee of the stock broker called Anugrah, where the *Noticee no. 1* was having her trading account. The *Noticee nos. 1* and *2* are next door neighbours and the *Noticee no. 1* was introduced as a client to Anugrah by the *Noticee no. 2*. Further, the *Noticee no. 3* was working as Equity Dealer with Reliance Capital AMC/RCMF at relevant point of time. There is no dispute over these facts.

48. In terms of the statement of the *Noticee no. 1* recorded during the investigation conducted by SEBI, her trading account was being operated by the *Noticee no. 2*. It has further been admitted in the said statement that on several occasions, the *Noticee no. 2* used to place trades in her account based on the information received by him from the *Noticee no. 3*. The *Noticee no. 1* further had stated during investigation that due to certain trades (executed prior to the alleged front running trades) executed by the *Noticee no. 2* in her account, there was a huge loss caused to her by *Noticee no.2* and upon her resistance to bear those losses, *Noticee no. 2* had assured her that such losses would be covered soon.

49. On the other hand, the Reliance Capital Asset Management Limited (Asset Management Company of RCMF), vide its letters dated July 23, 2009 and March 03, 2011, had informed SEBI that:

i. Mr. Rakesh Shah (*Noticee no.3*) on July 21, 2009, has informed Head-Compliance that he (Rakesh Shah), appears to have, during October-November 2009, inadvertently passed on certain information with respect to trades of RCMF to one of his friends, without realizing implications thereof.

ii. He further informed that he believes that such sharing of information could have been abused and certain trades might have been done in the trading account of the *Noticee no. 1*, who was otherwise not known to him.

50. The SCN alleges that based on the receipt of information of impending trades of RCMF from the *Noticee no. 3*, the *Noticee no.2*, as a Dealer of Anugrah, has executed trades in the account of the *Noticee no.1*, which were in the nature of front running. I note that in order to decide the charges against the *Noticee nos. 2* and *3*, the first and foremost task is to assess whether there could be any possible link between all the three *Noticees*. In this connection, as noted earlier, there is no dispute over the fact the *Noticee nos. 1* and *2* know each other as both of them are next door neighbours and further there does not appear to be any denial to the fact that the *Noticee no. 1* was introduced as a client to Anugrah by the *Noticee no. 2,* who was working with Anugrah at the relevant point of time.

51. It is also noted from the records, more particularly, the replies and submissions filed by the *Noticees,* that apart from the *Noticee no.1*, statement of *Noticee nos. 2* and *3* were also recorded by SEBI during the investigation. However, the said statements are not part of the present proceedings as the same have not been relied upon while issuing the SCN. It is further noted that both the *Noticee nos. 2* and *3*, in their separate submissions made in response to the SCN, have asserted that they have retracted from the statements so recorded by SEBI during the investigation, in support of which the said *Noticees* have filed copy of their retraction affidavit dated June 06, 2012 (*Noticee no. 2*) and July 04, 2012 (*Noticee no. 3*), respectively.

52. I find that the *Noticee no.3* in his affidavit filed before SEBI, while denying and retracting from a number of other things/aspects of the matter has however acknowledged that he knows *Noticee no. 2*. Similarly, the *Noticee no. 2* while retracting from his earlier statement, has affirmed in his affidavit that he knows Ms. Anita Shyam Mhatre, wife of Mr. Shyam Mhatre who is his friend and neighbour. The *Noticee no. 2* has further stated in the said affidavit that: "*I further state that I used to advice trading in the account of Anita Shyam Mhatre merely as a friend, while I was working with Anugrah Stock and Broking Limited as a Dealer.*"

53. From the above, it can be very well ascertained that all the *Noticees* are tied up to a common thread wherein the *Noticee no. 2* is the point of *inter-link* between the *Noticee no. 1* and *Noticee no. 3*, as he is known to both of them. It is noted that during his personal hearing, the *Noticee no. 2* has claimed that he never acted as Dealer on behalf of the *Noticee no. 1*. Irrespective of the above assertion by *Noticee no.2*, there is no dispute to the facts that the *Noticee no. 1* was introduced to Anugrah through the *Noticee no. 2,* who was working as Dealer with Anugrah. I have already noted above that the *Noticee no. 2* in his own affidavit has candidly admitted that he was advising the

Noticee no. 1 on the aspects of trading. No matter how much *Noticee no.2* denies to have acted as dealer on behalf of *Noticee no.1* and no matter how much *Noticee no.1* now claims before me that it was she who was executing her trades without any external advise or support, the imposing factual evidences and strong preponderance of probabilities that have emerged out of the execution of several high volume and high value trades in the trading account of the *Noticee no. 1* that were grossly disproportionate to her annual income and financial abilities, a fact which has neither been disputed nor has been explained with any credible justification by her, sufficiently lead to an unassailable conclusion that the trades alleged in the SCN were not executed in normal course of trading but under the influence of specific discreet information about the impending trades of RCMF known to all the *Noticees*. Further, when all the aforesaid attending circumstances and the probabilities emerging therefrom are evaluated holistically, it becomes obvious to draw a conclusion that it was the *Noticee no. 2,* who was either dealing with trades of *Noticee no.1* or at least was guiding *Noticee no.1* in executing trades in her trading account during the relevant time when the alleged trades were executed. I would like to add here that merely because of the fact that the records do not specifically indicate that the *Noticee no. 2* was actually acting as a Dealer of the *Noticee no. 1*, the other compelling factors and factual evidences as discussed above at length cannot be ignored for establishing the complicity of the all the *Noticees* in executing those front-running trades in the trading account of *Noticee no.1*

54. Insofar as the role of the *Noticee no. 3* is concerned, I note that the SCN does not make any straight forward allegation that the *Noticee nos. 1* and *3* know each other personally. Even during the cross examination before me, in response to a question put by the *Noticee no. 3* to the *Noticee no. 1* she has denied that she knows him. However, regardless of the said denial, there are other factors supported by cogent evidence, which put the *Noticee no. 3* also in the same boat as the other *Noticees* as far as his involvement in the alleged trades is concerned. It is an admitted fact that *Noticee no. 2* and the *Noticee no. 3* are known to each other and that the *Notice no. 1* and the *Noticee no. 2* are neighbours and known to each other over a period of time. Further *Noticee no. 2* was also admittedly advising *Noticee no. 1* in her trading activities, if not directly dealing in her trading account. The fact that *Noticee no.1* had suffered huge trading loss has not been retracted for which no specific details or justification has been offered. Under the circumstances, making a categorical statement in her affirmation in the investigation about incurring huge trading loss, together with the fact that *Noticee no. 2* was advising her for trading and had further assured her that the said trading loss incurred in her trading account will be made up (compensated) very soon, clearly answer as to why those alleged front running trades were executed in the trading account of the *Noticee no. 1* which given the facts and circumstances of the case could not have been possible without specific insider information about the imminent trading activities of

RCMF, and as the evidence on records suggest such insider information about the impending trading strategy of RCMF was shared by *Noticee no.3* with *Noticee no. 2* who in turn, has utilised the said information to either directly execute front running trades on behalf of *Noticee no.1* or has helped her in execution of such trades so as to make profit by indulging in such trading mal-practices.

55. I note that the *Noticee no. 3* who claims that he did not know *Noticee no.1* at all, yet has sought in his submissions before me to justify the alleged trades of the *Noticee no. 1* arguing that those trades were not influenced by any communication of information made by him as alleged in the SCN and were her own independent trades. To justify his contentions, the *Noticee no. 3* has furnished a write up on the functioning of the RCMF, in which it has been claimed that he was hardly getting a minute's time to place orders on behalf of RCMF upon receipt of instructions from his Fund Manager. Therefore, it was not feasible for him to pass on such trade information to any person including the *Noticee no. 1*, who has executed her trades with huge time gaps. At this stage, I would like to observe that the functioning of his mutual fund (RCMF) as described by the *Noticee no. 3* in the write-up furnished by him is only a self-certified narration without any verifiable basis. Notwithstanding the same, when the aforesaid claim of *Noticee no.3* is confronted with the overall facts and circumstances of the case, more particularly the close proximity of time in placement of reversal orders in the account of the *Noticee no. 1* to match with the trades of RCMF, it can be very well deduced therefrom that irrespective of the flow of instructions/decisions in the mutual fund as have been narrated by the *Noticee no. 2*, the facts & circumstances in the matter clearly lead to an irresistible possibility that the *Noticee no.3* was sharing the impending trade details/plans of RCMF with *Noticee no. 2* whom he knew, based on which trades of RCMF were front run by *Noticee no. 1* with the help of the *Noticee no. 2*. I observe that the repeated instances of such types of trades following a peculiar pattern wherein the *Noticee no. 1* is seen to be first executing the Buy/Sell transaction and then reversing her position exactly at the time when the trades of RCMF are being entered into the system, when scrutinised in totality, speak volumes about the malicious conduct of the *Noticees* and leaves no reason to disregard the allegations levelled in the SCN. In other words, the *Noticee no.1* sailed through the stock market successfully by making intra-day gains with the active help of the *Noticee no. 2*, on the strength of the information about the would-be trades of RCMF provided by the *Noticee no. 3* which served as the trigger to indulge in front running trades on those common scrip days. Direct and clinching evidence in the form of unusual and peculiar trading pattern of the *Noticee no. 1* as discussed in detail above, coupled with volumes of circumstantial evidences viz; *Noticees* were known to one another directly or indirectly, taking the risk of high value trade positions that entailed huge pay-in obligations which were highly disproportionate to the annual income

of *Noticee no.1*, successful reversal of those high value trades despite placing the orders towards market closure time, most of the alleged trades generating large profits, no further trades by the *Noticee no.1* in similar manner after execution of the alleged trades and absence of any justification by the *Noticee no. 1* in support of such unusual and abnormal trading, etc., are in themselves self-sufficient to establish the charge of front running of trades indulged in by the *Noticee no.1* acting in concert with *Noticee no.2* and *Noticee no.3* in violation of the alleged provision of the PFUTP Regulations.

56. It is noted that the *Noticee no. 3* has vide his letter dated May 21, 2021 contended before me that the present matter should be re-investigated. The grounds taken to make such a plea are two-fold. The *Noticee no. 3* contends that apart from him, there were other officials of RCMF, who also were having the knowledge of the impending trades of the mutual fund and that he has been able to demonstrate that the matching of trades between the *Noticee no. 1* and RCMF are purely coincidental. I find that this last minute letter when the order is on the verge of getting issued to the *Noticees* is nothing but another desperate attempt to somehow delay the proceedings. The contention of the *Noticee* regarding coincidence of trades between RCMF and *Noticee no. 1* has already been discussed in the preceding part of this order. Coming to the question of other employees of RCMF also being having knowledge about the impending trades of the mutual fund, the *Noticee* is making an infructuous effort to put himself at par with other employees who are not the part of the present proceedings, either as Noticees or as witnesses. I cannot stretch myself beyond the boundaries of the SCN to impute allegations on entities at this stage, who have not been parties to the present proceedings. The factual and circumstantial evidence which strongly indicate the role played by the *Noticee* as an accomplice of other *Noticees* in executing those manipulative trades have already been discussed and upheld beyond doubt. Therefore, at this stage, a request for reinvestigating the matter is neither warranted nor acceptable.

57. To sum up, I observe that the *Noticee no. 3* while working with RCMF as a Dealer and having knowledge of the impending large trades to be executed on behalf of RCMF, has passed on those information pertaining to the said trades to the *Noticee no. 2*, who utilised such information and helped in executing those front running trades in the trading account of *Noticee no. 1* which, eventually enriched her unlawfully by INR 8,86,805.65, which she certainly could not have earned, had the other two *Noticees* not helped her indulging in those unfair trades as succinctly demonstrated in the SCN. The *Noticee no. 1* has thus been successful in front running the trades of RCMF. It is also obvious to conclude that had the information about the impending orders of the mutual fund(RCMF) not been shared by the *Noticee no. 3* with *Noticee no.2, Noticee no.1* would not have been able to front run the trades of RCMF involving such huge amounts of trades in the respective scrips, which was also not commensurate to her annual earnings.

Incidentally, the *Noticee no.1* has also not dealt with those scrips before indulging into those impugned fraudulent trades in the said scrips. The *Noticee no.1* is also seen to have not followed similar pattern of trading anytime before or after executing those front running trades based on her information about the trades proposed to be executed by RCMF. In this connection I note that in a similar such case involving front running (*SEBI Vs. Shri Kanaiyalal Baldevbhai Patel and Ors.),* the Hon'ble Supreme Court of India has held that the volume of trades, nature of trading, timing of trading etc., are inferences sufficient enough to fix the liabilities of the delinquents. In the present case also, based on the connection of the *Noticee no. 1* with *Noticee no. 2*; and between *Noticee no. 2* and *Noticee no. 3*, and the glaring abnormal trading pattern followed by the *Noticee no. 1* coupled with other strong circumstantial and attending factual evidences lead me to an irrefutable inference to term the said alleged trades as front running trades only. Accordingly, in my view, the SCN has successfully brought home the charges levelled in the SCN and there is no need for bringing any direct evidence in the form of exact mode and means of communication amongst the *Noticees* to prove the said violations as alleged in the SCN. Therefore, by indulging in such an artificial device and scheme of front-running, the *Noticees* have clearly indulged in fraudulent and unfair trade practices and all the acts of the *Noticees* were undoubtedly violative of Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulation 3 (a), (b), (c) and (d) and 4 (1) of PFUTP Regulations. Further, as the gains made by the *Noticee no. 1* were earned by way of the said unfair trade practices, I am of the view that the said unlawful amounts earned by the *Noticee no. 1* deserve to be disgorged. Keeping the above in view this proceeding is disposed of with following directions.

58. I, in exercise of the powers conferred upon me under Section 11, 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

I. The *Noticee nos. 1, 2* and *3* are restrained from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six (06) months from the date of this Order;

II. The *Noticee no. 1* shall disgorge the amount of INR 8,86,949.45, with simple interest @ 4% calculated from November 30, 2008 till the date of payment. The *Noticee no. 1* shall comply with the said direction by way of making e-payment to SEBI's account as detailed below:

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

In case of e-payments, the Noticee is advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for (disgorgement amount and along with order details)	

III. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

IV. The obligation of the aforesaid debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

59. The Order shall come into force with the immediate effect.

60. A copy of this order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

DATE: MAY 24TH, 2021
PLACE: MUMBAI

S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA