BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/AN/2020-21/11240-11246]

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

In respect of:

S. no.	Names of the Noticee	PAN
1	Girish Agarwal & Sons (HUF)	AADHG4862K
2	Girish Kumar Agrawal	ABJPA7327E
3	Suryapratap Gupta (HUF)	AAMHS9766F
4	Global Enterprises	AAJFG7931K
5	Shakira Sharfuddin Shaikh	APQPS9295E
6	Sankalp Garg	AIMPG6109Q
7	Sajjan Kedia	AENPK7771D

(In the matter of Partani Appliances Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) upon receipt of a reference from Income Tax Department alleging price manipulation to have taken place to generate bogus long term capital gains, conducted investigation for alleged price manipulation in the scrip of Partani Appliances Limited (hereinafter referred to as ***"PAL"***) on BSE to ascertain whether there was any violation of any provisions of SEBI Act, 1992 (hereinafter referred to as ***"SEBI Act, 1992"***) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as ***"PFUTP Regulations, 2003"***). The investigation was carried out for the period from 20/10/2014 to 31/03/2015 (hereinafter referred to as ***"Investigation Period"***). From the Last Traded Price (hereinafter referred to as ***"LTP"***) analysis

carried out for the price of PAL on BSE, the investigation observed that the entities namely Girish Agarwal & Sons (HUF) (hereinafter referred to as ***"Noticee 1"***), Girish Kumar Agrawal (hereinafter referred to as ***"Noticee 2"***), Suryapratap Gupta (HUF) (hereinafter referred to as ***"Noticee 3"***), Global Enterprises (hereinafter referred to as ***"Noticee 4"***), Shakira Sharfuddin Shaikh (hereinafter referred to as ***"Noticee 5"***), Sankalp Garg (hereinafter referred to as ***"Noticee 6"***) and Sajjan Kedia (hereinafter referred to as ***"Noticee 7"***) (collectively hereinafter referred to as ***"Noticees"***), indulged in creating a misleading appearance of trading and manipulated the scrip price of PAL.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the findings of investigation, SEBI initiated adjudication proceedings against the aforesaid Noticees and the undersigned was appointed as Adjudicating Officer (hereinafter referred to as **"*AO"***) vide order dated July 05, 2017 to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 for the alleged violations by the Noticees, of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003. The appointment of the AO was communicated vide communique dated July 19, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notices having reference Nos. SEBI/EAD/PM/RR/31369/2017 dated December 13, 2017; SEBI/EAD/PM/RR/31371/2017 December 13, 2017; SEBI/EAD/PM/RR/31372/2017 December 13, 2017; SEBI/EAD/PM/RR/31373/2017 December 13, 2017; SEBI/EAD/PM/RR/31374/2017 December 13, 2017; SEBI/EAD/PM/RR/31375/2017 December 13, 2017 and SEBI/EAD/PM/RR/31376/2017 dated December 13, 2017 were issued to Noticee 1 to 7 respectively, in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995# (hereinafter referred to as ***"Adjudication Rules"***) r/w Section 15-I of the SEBI Act, 1992. I note that the Show Cause Notices as aforesaid were common and for the sake of brevity would be hereinafter referred to

as ***"SCNs".*** The SCNs called upon the Noticees to file their reply within 14 days of the receipt of the SCN.

[# With effect from March 8, 2019, SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was amended to SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995]

4. It is noted from the records that the SCNs to the Noticees were sent by SPAD and were duly served on the Noticees. Further, I note that replies were received in respect of Noticee 1, 2 & 6 from their common Authorized Representative (hereinafter referred to as ***"AR"***) vide its separate letters, all dated July 10, 2018. Replies from Noticee 3, 4, 5 & 7 were received vide their letters dated January 23, 2018; January 16, 2018; January 25, 2018 and January 29, 2018 respectively. However, in the meantime Noticee 2 had filed an application for settlement of Adjudication Proceedings intimated vide SCN bearing no. SEBI/EAD/PM/RR/OW/31369/2017 dated December 13, 2017. I note that the said application for settlement was rejected by the Competent Authority on 03/11/2020 and the outcome was also communicated to the entity on 03/11/2020.

5. After the rejection of settlement application and in compliance with the principles of natural justice and considering the situation prevailing due to Covid-19, opportunity of personal hearing was granted to Noticee 1 to 7 vide emails through Video Conference on the platform of Webex on December 21, 2020. Noticee 1, 2 & 6 availed of the opportunity of hearing given on December 21, 2020. Noticee 3, 4 & 7 sought for extension of time for hearing and accordingly January 11, 2021 was fixed as next date of hearing, which was duly availed by Noticee 4 & 7 and Noticee 3 further sought postponement of hearing. Finally, hearing for Noticee 3 was completed on January 21, 2021. Pursuant to the hearing, Noticee 1, 2 & 6 has filed consolidated reply dated December 24, 2020 through their common AR. I further note that Noticee 1, 2 & 6 had also filed their respective replies before hearing, all their respective replies are dated July 10, 2018 and submitted through their common AR. Noticee 3 has filed post hearing submission vide letter dated February 01, 2021 and I also note that the Noticee 3 had also filed reply dated January 23, 2018. Noticees 4 & 7 have not filed any post hearing submission and their replies dated January 16, 2018 and

January 29, 2018 respectively have been noted. Further, I note that Noticee 5 didn't avail the opportunity of hearing provided on December 21, 2021 and an email sent to the email-id simmyperformer@gmail.com of Noticee 5, providing opportunity of hearing to Noticee 5, did not bounce back. In view of the same, I am constrained to proceed in the matter in respect of the Noticee 5 on the basis of the material available on record including Noticee 5 reply dated January 25, 2018.

6. I further note that all the relevant documents relied upon in framing charges against the Noticees have been provided to them and adequate time has also been provided to all the Noticees to file their submissions in response to the SCN issued to them. Further, principles of natural justice have also been duly complied with in the instant adjudication proceedings and hence in my view, no prejudice has been caused to any of the Noticees.

7. I have perused all written replies submitted by the Noticees (pre- hearing as well as post- hearing submissions) and the presentations made on their behalf during the personal hearing. The contentions/ submission of the Noticees are, inter-alia, briefly summarized as below:

Submissions of Noticee 1, 2 & 6

a. That the SCN alleges that noticee no. 1, 2 and 6 have manipulated the scrip of PAL during the period under consideration.
b. That the said allegation has been levied solely on the basis of the alleged connection with the promoter of PAL, i.e. Margarita Alwarez, based on the off market transfer of shares of PAL from Margarita Alwarez to Noticee 1, 2 & 6.
c. That the Noticee 1, 2 & 6 bought shares from the company Pavanaj Mercantile Private Limited (PMPL). Noticee 1, 2 & 6 are not aware as to how the said shares came to be in possession and ownership of PMPL from Ms. Margarita Alwarez.
d. That the physical shares when transacted are done along with the blank executed transfer deed(s).
e. That Noticee 1, 2 & 6 have no connection with Margarita Alwarez and through her with the company or any alleged scheme and that the connection is frivolous.

f. That no finding has been made in the SCN to show that there was connection between buyer and the Noticee 1, 2 & 6.
g. That the buy orders were placed by the buyers much before the Noticee 1, 2 & 6 placed sell orders.
h. That the buy orders were placed above LTP and much after that the sell orders were placed giving time for others to place the buy / sell orders.
i. That the selling of miniscule quantity of shares will not make Noticee 1,2 & 6, ipso facto liable for manipulation as selling miniscule quantity of shares is neither illegal nor manipulative nor violative of PFUTP Regulations unless collusion with others is found.
j. That no connection is shown in the SCN between the said Noticees and buyer or between Noticees and the company.
k. That no proceedings have been initiated against the company or its promoters or directors if they have played any role in the alleged scheme of manipulation.
l. That other than pointing out the fact that Noticees have carried out manipulative trades, no further proof has been provided of any wrong doing.
m. That the SCN is based on the low preponderance of probabilities and therefore bad in law.
n. That the allegation of price rise is put on the sellers even though the contribution to LTP is looked at from buy side.

<u>Submission of Noticee 3</u>

a. That the SCN should be quashed and set aside on the ground of inordinate delay in issuance of the proceedings by SEBI.
b. That the Noticee 3 denies all the allegations levied in the SCN.
c. That Noticee 3 does not have any link/ nexus/ relationship/ connections with any of the entities/ individuals against whom the SCN is issued.
d. That nothing has been brought on record to connect Noticee 3 with the promoters/ directors of PAL or with alleged connected entities.
e. That the Noticee 3 bought shares from the company PMPL and it is denied that PMPL is a promoter of PAL or had any connection with their related entities.

f. That the off-market transaction in the scrip of PAL were bonafide and in the ordinary course of business, dehors sinister intent or design.
g. That Noticee 3 has no link/ nexus/ relationship with the top 10 LTP contributors.
h. That the sale of shares were carried out by broker on the screen based mechanism of the stock exchanges where it is not possible to know the counter party buyer or the counter party broker.
i. That Noticee 3 was not aware of the trades done by the other Noticees.
j. That the allegation of creating positive LTP cannot sustain in view of the miniscule quantum of its alleged trades (42 shares) during the investigation period.
k. That Noticee 3 has not bought even a single share, therefore, it cannot be alleged that it was instrumental in establishing price higher than the last traded price.
l. That the prudent broker or investor would never sell all of his holding on one shot, especially if the price of the scrip is on a bullish trend.

Submissions of Noticee 4

a. That the Noticee 4 denies all the allegations levied in the SCN.
b. That Noticee 4 had not contributed to positive LTP and increased scrip price as alleged.
c. That Mrs. Asha Khadaria being the partner of Global Enterprises & Mr. Krishan Khadaria (husband of Mrs. Asha Khadaria) are either holding directorship or shares in sr. no. 2, 4, 5. Further, it is submitted that all the entities are promoted and founded by Mr. Krishan Khadaria. Therefore, based on the same no adverse inference can be drawn against them.
d. That the clubbing of Noticee 4 with others has resulted in distorted conclusions. The entire grouping is erroneous and misleading.
e. That Mr. Damodar Prasad Kedia had no role whatsoever to play in the trading done by Noticee 4 in the scrip of PAL.
f. That the off-market transfer of shares in the scrip of PAL were bonafide and in ordinary course of business.
g. That Noticee 4 had no off-market transactions with Madhu Jhunthra, Ranjeetsingh T Chhaba & Nitin Marotrao Upare as alleged. The shares were transferred only to Smita Jitendra Jhaveri & Shakira Sharfuddin Shaikh.

h. That Noticee 4 has no link/ nexus/ relationship with the top 10 LTP contributors.
m. That the sale of shares were carried out by broker on the screen based mechanism of the stock exchanges where it is not possible to know the counter party buyer or the counter party broker.
n. That the quantity of alleged trades (255) shares vis a vis our total trade (37000 shares) during the investigation period was exceedingly insignificant to have any kind of impact on either the price or volume of the scrip.
o. That the allegation of creating positive LTP cannot sustain in view of the miniscule quantum of its alleged trades (255 shares) during the investigation period.
i. That the prudent broker or investor would never sell all of his holding on one shot, especially if the price of the scrip is on a bullish trend.

Submissions of Noticee 5

a. That the Noticee 5 denies all the allegations levied in the SCN.
b. That the clubbing of Noticee 4 with others has resulted in distorted conclusions. The entire grouping is erroneous and misleading.
c. That the trades in the scrip of PAL were bonafide and in the ordinary course of business, dehors sinister intent or design.
d. That my trading in the scrip of PAL is limited to and restricted to 2 days wherein broker of Noticee 5 had sold shares in her account.
e. That Noticee 5 has traded independently and has no connections/ nexus with any of the entities/individuals against whom the SCN has been issued.
f. That I had purchased shares as per the advice of her friend, in the context of some investments from Asha Khadaria, partner of Global Enterprise.
g. That the sale of shares were carried out by broker on the screen based mechanism of the stock exchanges where it is not possible to know the counter party buyer or the counter party broker.
h. That the allegation of creating positive LTP cannot sustain in view of the miniscule quantum of alleged trades (8 shares) by Noticee 5 during the investigation period.
i. That Noticee 5 has not bought even a single share. Noticee 5 was not instrumental in establishing a price higher than the last traded price.

j. That the prudent broker or investor would never sell all of his holding on one shot, especially if the price of the scrip is on a bullish trend.

Submissions of Noticee 7

a. That Noticee 7 denies all the allegations levied in the SCN.
b. That Noticee 7 had not contributed to positive LTP and increased scrip price as alleged.
c. That all trades of Noticee 7 in the scrip of PAL were bonafide and in ordinary course of business.
d. That the trading of Noticee 7 is limited to and restricted to 9 days wherein his broker had sold 540 shares.
e. That Noticee 7 has traded independently and has no connections/ nexus with any of the entities/individuals against whom the SCN has been issued.
f. That the Noticee 7 bought physical shares from the company PMPL and it is denied that PMPL is a promoter of PAL or had any connection with their related entities.
g. That the off-market transfer of shares in the scrip of PAL were bonafide and in ordinary course of business.
h. That during patch I, broker of the Noticee 7 had sold shares on 9 days.
i. That the sale of shares were carried out by broker on the screen based mechanism of the stock exchanges where it is not possible to know the counter party buyer or the counter party broker.
j. That the allegation of creating positive LTP cannot sustain in view of the miniscule quantum of alleged trades (40 shares) by Noticee 7, during the investigation period.
k. That Noticee 7 has not bought even a single share and was not instrumental in establishing a price higher than the last traded price.
l. That the prudent broker or investor would never sell all of his holding on one shot, especially if the price of the scrip is on a bullish trend.

Case laws referred by Noticees

a. *Judgement of the Punjab and Haryana High Court in the matter of Ravindra Singh vs. Kishan Lal Panwar*
b. *Order dated 20/01/2017 of Hon’ble SAT in the matter of Sudha Commercial Ltd. vs. SEBI*
c. *Order dated 16-01-2020 of Hon’ble Securities Appellate Tribunal passed in the matter of M/s Nishith M Shah (HUF) v/s SEBI in Appeal 97 of 2019*
d. *Order dated 29-07-2011 of Hon’ble Securities Appellate Tribunal passed in the matter of Narendra Ganatra vs. SEBI (Appeal no. 47 of 2011)*
e. *Order dated 31-01-2020 of Hon’ble Securities Appellate Tribunal passed in the matter of Ashlesh Gunvantbhai Shah Vs. SEBI (Appeal no. 169 of 2019)*
f. *Order dated 27-05-2019 of Hon’ble Securities Appellate Tribunal passed in the matter of Mr. Rakesh Kthoia & Ors. Vs. SEBI (Appeal no. 7 of 2016)*
g. *Adjudicating Officer, SEBI Vs. Bhavesh Pabari (2019) SCC Online SC 294*
h. *Jagruti Securities Ltd. Vs. SEBI (Appeal No. 102 of 2006 decided on October 27, 2008)*
i. *Vikas Ganeshmal Vs. WTM, SEBI (Appeal No. 225 of 2009 decided on February 25, 2010*
j. *Order dated 26-08-2020 of Hon’ble Securities Appellate Tribunal passed in the matter of Rajesh Jivan Patel Vs. SEBI*
k. *Order dated 21-01-2010 of Hon’ble Securities Appellate Tribunal passed in the matter of Rajendra G. Parikh Vs. SEBI (Appeal no. 44 of 2009)*
l. *Order dated 22.10.2001 of Hon’ble Securities Appellate Tribunal passed in the matter of Sterlite Industries v/s SEBI (Appeal No. 20/2001)*
m. *Judgement in Bater v/s Bater ([1950]2 All E.R. 458)*
n. *Union of India v/s Chaturbhai M. Patel (AIR 1976 SC 712)*
o. Order of the Hon’ble Supreme Court in the case of Varanasaya Sanskrit Vishwa Vidyalaya & Anr. v/s Dr. Rajkishore Tripathi and Anr.
p. Order of the Hon’ble Supreme Court in the case of Bank of India v/s Degala Surya Narayana (AIR 1999 SC 2407)
q. *Order dated 15.02.2016 of Hon’ble Securities Appellate Tribunal passed in the matter of Babubhai Desai v/s SEBI (Appeal No. 81 of 2014)*

r. *Order dated 30.07.2010 of Hon'ble Securities Appellate Tribunal passed in the matter of Smitaben N. Shah v/s SEBI*
s. *Razik ram v/s JS Chauhan- AIR 1975 SC 667: (1975) 4 SCC 769*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have perused the SCN dated December 13, 2017, the replies filed by the Noticees before hearing, submissions made during the course of hearing and written submissions filed post-hearing and find that the pertinent issues that require consideration in this matter are as under:

(i) *Whether the Noticees have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI PFUTP Regulations, 2003?*

(ii) *If violations are established then whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act, 1992?*

(iii) *If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992?*

ISSUE No. 1-Whether the Noticees have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI PFUTP Regulations, 2003?

9. Before I proceed to examine the aforesaid issue and decide as to whether on the facts of the matter the Noticees have violated the provisions of Regulations of SEBI PFUTP Regulations, 2003, it would be appropriate to reproduce hereunder, the relevant provisions of SEBI PFUTP Regulations, 2003 as alleged to have been violated by the Noticees in the instant matter. The same are reproduced below:

SEBI PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices-

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

……………………………..

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

10. After having perused the replies of the Noticees and before proceeding to deal with the case on merit basis, I note that the Noticee 3 has filed certain technical submission in the form of delay in initiation of Adjudication Proceedings and has sought for quashing of SCN and setting aside of the Adjudication Proceedings on

the ground of inordinate delay in issuance of the proceedings by SEBI. In this regard, I note that charges levelled against the Noticees are of manipulative and fraudulent nature for which the Noticees have been provided with the findings qua them from the investigations. The allegations in the SCN dated December 13, 2017 have been premised on the trades executed during the investigation period which is spread over October 20, 2014 to March 31, 2015. It has to be understood that in order to ascertain prima facie culpability of any delinquent, the trade data and other documents needs to be thoroughly examined during the investigation, which no doubt needs considerable time. After crystallization of the factual aspects pertaining to the case, the proceedings move further towards issuance of show cause notice. Thus, when I consider the factual aspects of the case on the basis of which the SCN has been issued in December, 2017, I do not find any reason or infirmity to drop the charges on the ground of delay as claimed by the Noticees. I further note that the Noticee has also not stated what prejudice has been caused to him due to delay in initiation of Adjudication Proceedings against him. I also note that the SCN contained annexures relevant to the findings and charges levelled against the Noticees, such as basis of connection, details of transactions/ trades by the Noticees etc. Except for making a bald allegation of inordinate delay in the proceedings, the Noticee has failed to establish any prejudice caused to them on account of his allegation of inordinate delay.

11. I also note here that the extant framework of SEBI Act, 1992 and PFUTP Regulations do not prescribe any limitation period for initiation of action against any wrong doer for the violations of the said enactment and rules and regulations made thereunder. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in the matter, which could be held as so inordinate that it results in causing prejudice and continuation of same tantamount to miscarriage of justice, in my view, the date when the violation came to the notice (of SEBI), would be the relevant point and not the date of actual commission of the said violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. vs. SEBI (Appeal no. 97/2014; Order dated*

December 16, 2015): *“....................Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, as it is also settled that delay itself may not be fatal in each and every case.* Moreover, the Apex Court in case of *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C)* has held that:

“1. The Tribunal in an appeal arising under the Central Excise Act held that the adjudication made after a lapse of nearly nine years after the issue of show cause notice is not permissible and set aside the same.

2. There is no statutory bar to adjudicate the matter even after lapse of nine years after the issue of show cause notice and the adjudication pertains only to the actual levy of the duty which is due to the department and not to any levy of interest or penalty. In these circumstances we think the view taken by the Tribunal is not justified and we set aside the order made by the Tribunal and remit the matter to the Tribunal for fresh disposal in accordance with law after restoration of the appeal to its original number…....”

12. In view of the above, the contention of the Noticee 3 that there was inordinate delay in initiation of Adjudication Proceedings and the SCN should be quashed and Adjudication Proceedings should be set aside, cannot be accepted.

13. Now, after having addressed the technical submissions, I proceed to deal with the case on merit basis. In this regard, I note that SEBI has conducted investigation for the alleged price manipulation in the scrip of PAL on BSE to ascertain whether there was any violation of any provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, upon receipt of a reference from Income Tax Department alleging price manipulation to have taken place to generate bogus long term capital gains. For the purpose, an analysis of LTP has been done by the SEBI Investigation and the Investigation Period has been divided into four patches. It is noted that during the Patch-1 (from 20/10/2014 to 19/12/2014), the price of the scrip of the company

opened at Rs. 47.45 (on 20/10/14), which was the lowest during patch-1, reached a high of Rs.172.3 (on 18/12/14) and closed at Rs.171.95 on 19/12/14 with a net LTP of Rs.124.5 and a market positive LTP of Rs.133.05 with a total traded volume of 82850. It was alleged that the Noticee 1 to 7 were responsible for manipulation in price of PAL inter alia, during the first patch ('Patch-1') i.e. period from 20/10/2014 to 19/12/2014.

14. For LTP analysis of different patches during Investigation Period, three groups of entities were identified. These groups were formed on the basis of connections, amongst the constituents of the group. I note that the Noticees were clubbed in Group 1 which was consisting of 34 entities. The alleged connections of Noticees at Sr. no. 1 to 7 with the directors/promoters of PAL, or with other entities in Group 1 which are related to PAL, or related with the directors/promoter of PAL, are as stated below:

Sr. No.	Name of the Noticee	Connection details
1.	Mr. Girish Kumar Agrawal	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
2.	Girish Kumar Agrawal & Sons (HUF)	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
3.	Mr. Sankalp Garg	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares.
4.	Suryapratap Gupta (HUF)	As per RTA data, noticee received by promoter of PAL – Mrs. Lakshmi Partani

5.	Mrs. Shakira Sharfuddin Shaikh	As per CDSL/NSDL data, noticee received shares in off market transfer from Mrs. Asha Khadaria (partner of noticee at Sr. no. 7)
6.	Mr. Sajjan Kedia	As per RTA data, noticee received physical shares transferred from promoter of PAL – Ms. Margareta Alvares. Further, as per DIN/ PAN details available on MCA website, Sajjan Kedia is the brother of Mrs. Asha Khadaria – partner of noticee at S. No. 7.
7.	M/s. Global Enterprises	As per RTA data, physical shares were brought by Asha Khadaria (partner of Global Enterprises) from promoters of PAL viz. Ms. Margareta Alvares and Mr. Ramesh Partani. Further, Asha Khadaria sold shares in off market to Noticee at Sr. no. 5. As per DIN/ PAN details available on MCA website, Sajjan Kedia (Noticee no. 7) is the brother of Asha Khadaria. Common address of Noticee no. 4 with certain entities of Group -1, namely Forever Flourishing Finance & Investments Pvt. Ltd., Golden Medows Exports Pvt. Ltd. and Laxmiramuna Investments Pvt. Ltd. Funds transfer observed via bank account between Golden Medows Exports Pvt. Ltd. and PAL, and also Laxmiramuna Investments Pvt. Ltd. and PAL.

15. During Patch- 1, the price of the scrip rose from Rs.47.45 to Rs.171.95. It is noted from the analysis of the 38 trades that contributed Rs.133.05 to positive LTP that 28 trades carried out by the Noticees on the sell side contributed Rs.103.90 (i.e., 78.09% to market positive LTP). Out of the 28 trades, for 25 trades buy orders were

available for large quantities (ranging from 50 to 28000 shares), however, six entities of group-1 i.e. all Noticees except Noticee 4 were placing sell orders in small quantities or single digits i.e. mostly 2 or 3 or 5 or 10 shares. One entity of group-1 i.e. Noticee 4, placed sell orders in the range of 5 to 250 shares while the buy orders were available in the range of 50 to 28000 shares. By executing such trades, the connected counterparties matched the price of prevailing buy orders which were placed at a higher price than the last traded price and thus contributed to the increased scrip price with each of their trades. It was also noted that these 25 trades were done on 25 different trading days between 21/10/2014 to 8/12/2014 and each trade resulted in a higher LTP, thereby contributing Rs.103.75 to positive LTP (i.e., 77.98% to market positive LTP). The following table summarizes 25 trades executed and quantity of shares held by the 7 Noticees, as sellers in Patch-1 which contributed to price rise:-

Sr. No.	Date of transaction	Seller name	Sell order volume	Buy order volume	LTP contribution (Rs)	LTP contribution (% to market positve LTP)	No of shares held before trade	Balance no of shares after trade
1	28/11/2014	GIRISH AGARWAL & SONS HUF (Noticee 1)	3	50	5.65	4.25	30000	29997
2	03/12/2014		2	250	6.55	4.92	29997	29995
		Total	**5**	**300**	**12.20**	**9.17**		
1	27/11/2014	GIRISH KUMAR AGRAWAL (Noticee 2)	2	250	5.40	4.06	30000	29998
2	02/12/2014		3	250	6.25	4.70	30000	29997
		Total	**5**	**500**	**11.65**	**8.76**		
1	08/12/2014	GLOBAL ENTERPRISES (Noticee 4)	5	28000	2.95	2.22	133000	132995
2	11/12/2014		250	9000	3.10	2.33	106000	105750
		Total	**255**	**37000**	**6.05**	**4.55**		
1	28/10/2014	SAJJAN KEDIA (Noticee 7)	5	100	2.85	2.14	14500	14495
2	30/10/2014		5	500	3.15	2.37	14495	14490
3	10/11/2014		5	1000	3.65	2.74	14490	14485
4	11/11/2014		5	1000	3.80	2.86	14485	14480
5	14/11/2014		5	1000	4.20	3.16	14480	14475
6	18/11/2014		5	500	4.40	3.31	14475	14470
7	20/11/2014		5	250	4.65	3.49	14470	14465
8	24/11/2014		5	250	4.90	3.68	14465	14460
		Total	**40**	**4600**	**31.60**	**23.75**		
1	01/12/2014	SANKALP GARG (Noticee 6)	5	250	5.95	4.47	30000	29995
		Total	**5**	**250**	**5.95**	**4.47**		
1	04/12/2014	SHAKIRA SHARFUDDIN SHAIKH (Noticee 5)	5	250	6.85	5.15	15000	14995
2	05/12/2014		3	250	2.85	2.14	14995	14992
		Total	**8**	**500**	**9.70**	**7.29**		
1	21/10/2014	SURYAPRATAP GUPTA HUF (Noticee 3)	10	1600	2.45	1.84	50000	49990
2	22/10/2014		5	300	2.60	1.95	49990	49985
3	27/10/2014		5	1000	2.70	2.03	49985	49980
4	29/10/2014		5	100	3.00	2.25	49980	49975
5	31/10/2014		5	100	3.30	2.48	49975	49970

6	07/11/2014		5	1000	3.45	2.59	49970	49965
7	12/11/2014		5	1000	4.00	3.01	49965	49960
8	25/11/2014		2	1000	5.10	3.83	49960	49958
		Total	**42**	**6100**	**26.60**	**19.99**		
		Total of 7 connected entities	**360**	**49250**	**103.75**	**77.98**		

16. Further, I note from the transaction statements from depositories (NSDL/CDSL), that all the entities in the above table were holding substantial quantity of shares during the period of their respective sale transactions. Despite holding substantial quantity of shares, these entities released limited number of shares and matched the buy orders which were above LTP with volume in small quantities or single digit in instances as detailed above.

17. While replying to the SCN, I note that Noticee 1, 2 and 6 have submitted that SEBI is not expected to make roving and fishing enquiry just to implicate the noticees based on the reference from the income tax department and on the pre-drawn conclusions, surmises and conjectures by the income tax department. I further note that in support their contention Noticees have relied upon the judgement of the Punjab and Haryana High Court in the matter of Ravindra Singh vs. Kishan Lal Panwar and the order of Hon'ble SAT in the matter of Sudha Commercial Ltd. vs. SEBI (order dated 20/01/2017).

18. In this regard, I note that, the investigation in the present matter was not a roving and fishing enquiry. After the receipt of the reference from income tax department, wherein the department had forwarded list of some scrips being traded on the stock exchange (PAL was one such scrip that was referred in the list), in which price manipulation was alleged to have been carried out to generate bogus Long Term Capital Gains, an independent investigation was carried out by SEBI to identify whether there has been any manipulation in the price of the scrip of PAL and whether the same was in violation of SEBI (PFUTP) Regulations, 2003. In fact the investigation has observed that the price of scrip of PAL rose from Rs. 47.45 to Rs. 171.95 during Patch-1 and that the 28 trades carried out by the Noticees during Patch-1 contributed to 78.09% of market positive LTP during Patch-1. Further, on perusal of the SCN and the finding of the investigation contained therein, I observe that the purpose of this proceeding is not in connection with the LTCG issue, but

to deal with those who manipulated the price of scrip of PAL and whether the same was in violation of SEBI (PFUTP) Regulations, 2003. Therefore, the contention of the Noticees has no merit.

19. Further, I note that the Noticees have submitted that the allegations levelled in the SCN are not supported by any evidence and that the allegations of serious violations like PFUTP Regulations, 2003 should not be on the basis of mere preponderance of probabilities, surmises and conjectures. I also note that the Noticees have referred to various case laws in support of their contention. In this regard, I note that the facts of the cases as referred by the Noticees are different from the circumstances of the present case. Further, it is also noted that the evidence available in the present matter is in the form of Unique Client Code details, bank account statements, data from RTA, records from depositories, records from MCA 21 portal, details of trading by the noticees during the Investigation Period, pattern of trading, magnitude of impact of such trading on LTP etc. and are sufficient to substantiate the allegations in the SCN. Therefore, I note that the case under consideration is not based on surmises and conjectures.

20. Further, in this regard, reference is also drawn to the observations of the Hon'ble Supreme Court in the matter *SEBI v. Kishore R. Ajmera (2016) 6 SCC 368*, dealing with the standard of proof while imposing civil liabilities under SEBI Act, 1992 or the regulations framed there under:

"…………………facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion………………..."

"……………………While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising

out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt………….”

21. It is also argued that the grouping of the entities for the purpose of investigation is erroneous and misleading. It is contended that unrelated and unconnected entities have been lumped together to draw adverse inferences. I do not agree with this argument of the Noticees as I have noted that in the instant matter the alleged connections established amongst the noticees as forming part of Group-1 is based on the purchase of shares in off-market from the promoter/ persons related to the promoters and have sold it on the stock exchange in a similar manner, which has artificially impacted the LTP. The purpose of classification of entities into groups is to narrow down the investigation to a few who may further be probed for inquiry into the alleged violation. It merely aids the investigation to focus on the identified groups and avoids any roving and fishing enquiry. Generally, the entities are classified into groups based on common parameters observed amongst the constituents such as common address, common directorship, common partnership, funds transfer between constituents, linkages with promoter, director or KMP of the company, similar trading pattern in the same scrip etc. Therefore, from the above, I do not find any unreasonable and unconnected classification in grouping of the entities.

22. Further, it is noted that it has been alleged that shares of the PAL were bought Noticee no. 1, 2 and 6 through off market physical transfer from promoters/ promoter related entities of PAL, namely Margareta Alvares. However, the Noticees have submitted that they didn't know about the identity of the transferor of these shares since they had purchased the shares from PMPL by way of blank transfer. In this connection, the followings are observed:
i. In terms of section 2(i) of Securities Contract Regulation Act, 1956 which defines a 'spot delivery contract' as under:

"spot delivery contract" means a contract which provides for,-

actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;……………………………………………………………

23. In view of the above provision, the payment for the securities and the delivery of the securities alongwith the share transfer form must be completed within the same day or by the next working day in a transaction of share transfer in the off market physical mode. In the instant matter, I note from the records that the purported transfer of shares of PAL between PMPL and the Noticee 1, 2 & 6 should have been completed at the most by 26/07/2013 as payment of consideration (Rs. 3 lacs by each of the said noticees) towards the purchase of the said shares of PAL appears to have been made on 25/07/2013. Further, the said noticees have also annexed with their replies dated 10/07/2018, copies of bills as issued by PMPL to the said noticees for the purported purchase of shares of PAL (by way of blank transfer). The said bills are dated 27/07/2013. Thus if the contention of the said Noticees are to be accepted, then it would fall foul to the provisions of section 2(i) of the SCRA Act, 1956, whereby the purported transaction ought to have been concluded by 26/07/2013.

24. I further note from the records that five out of the seven Noticees to this proceeding i.e. Noticee 1, 2, 3, 6 and 7 claim that they have bought the shares of PAL from one common entity i.e. PMPL. Further, I note from the records that, PMPL is a company whose name has been struck off from the register of companies as maintained by RoC. It is also noted that Noticee 1, 2 and 6 have made the payment for purchase of shares of PAL on 25/07/2013 to PMPL and that PMPL had issued bills dated 27/07/2013, for the said purchase to the said Noticees. The copies of the said bills have been annexed with their replies dated 10/07/2018 by the said

Noticees. Further, I note from the records that the date of execution of share transfer relating to the purchase of the shares in question was 28/08/2013. I note that, if the claims of the Noticee no. 1, 2 and 6 were to be true, then why the said share transfer forms were executed approximately one month after the purported payment of consideration to PMPL? This contradicts another claim by the said Noticees in their replies, that they had purchased the shares of PAL for long term investment as generally, when an investor who intends to hold shares for the long term, he would execute the share transfer form and lodge the same with the company for registering the transfer in their name, at the earliest occasion soon after the payment of the consideration to the seller, since he would avoid losing any entitlements associated with those shares in the interim.

25. Further, I note from the records that the copies of the three invoices dated 27/07/2013 as furnished by Noticee 1, 2 and 6, does not contain any payment details such as date of payment, mode of payment etc., particularly, when the payment, as claimed by the said Noticees, was already made for the purported purchase of shares of PAL to PMPL on 25/07/2013 itself. The non-inclusion of such a fundamental detail in an invoice, further raises suspicion as to its genuineness of the claim of the Noticees. Furthermore, shares of PAL were infrequently traded. Investigation revealed that there was no trading in the scrip of PAL from 2001. I note from records that the share certificates of PAL (bearing no. 994 to 1011) were issued to Mrs. Margareta Alvares on 05/07/2013. The said shares in question were transferred directly to the said noticees from Ms. Margareta Alvares on 20/09/2013. i.e. approximately 75 days after the date of issue of the said share certificates. However, the noticee at sr. no. 1, 2, and 6 claim to have paid to PMPL for the acquisition of shares on 25/07/2013 i.e. within 20 days from the issue of share certificates by the company to Mrs. Margareta Alvares. I find the claim of the said Noticees suspicious since, in an infrequently traded scrip, without any significant corporate announcements or change in fundamentals of the company, the shares of PAL, as per the claims of the said Noticees, underwent multiple transfers in a span of 20 days i.e. from Ms. Magareta Alvares to PMPL and later from PMPL to Noticee no. 1, 2 and 6.

26. It is further noted from the replies of the Noticees 1, 2 and 6 that they have argued that the SCN and investigation has failed to prove that Ms. Margareta Alvares was the promoter/promoter related entity of PAL. In this regard, I note that Ms. Margareta Alvares was disclosed in the shareholding pattern as part of promoter/promoter group for the quarter ending September 2013 and December 2013 by PAL. Hence, the contention of the said Noticees as aforesaid, has no merit.

27. W.r.t. the contention of the Noticee 1, 2 and 6 that there was a significant time gap between the time when the buy orders were placed and the sell orders were punched in and if they were to collude and jack up the price in the scrip of PAL, the buy and the sell orders would have been placed simultaneously or within very little time gap. In this regard, I am of the view that manipulators may not always punch orders at the same time to manipulate the scrip. It has been observed in number of cases that manipulation has been found to be operating in many different ways. Therefore, time gap of order punching between buy side and sell side may not always be the deciding factor. Further, generally, in a liquid scrip with a large investor base and greater public float, the trades take place frequently within short time gap (often time gap of split second), hence the manipulators in such scrips choose to place their orders within proximate time gaps. However, in an infrequently traded scrip, which is the case of PAL, where the no. of investors participating in the trading of the scrip is less, it is not necessary that the orders are placed simultaneously/ within proximate time gap, since orders can be matched in such infrequently traded scrip, even when there is significant time gap between buy order and sell order.

28. Further, w.r.t. the Noticees contention that for allegation of price manipulation there has to be establishment of connection between buyer and seller, I note that Hon'ble SAT, in numerous orders have laid down that an entity in isolation can be booked for its unilateral act of manipulation of price of the scrip if analysis of trade log and order log reflects malafide intention even without any collusion with the other

entities. In this regard, reference may be drawn to the following judgments of Hon'ble SAT:

i. In the matter of *Mrs Kalpana Dharmesh Chheda vs. SEBI (Appeal no. 454 of 2019 decided on February 25, 2020)*, while dealing with a similar issue, Hon'ble SAT has, inter alia, held that *"looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. This behavior cannot be justified in terms of normal rational expectations of a seller."*

ii. In the matter of Tanuj Khandelwal Vs SEBI (Appeal No. 357 of 2020) decided on January 4, 2021, Hon'ble SAT has, inter alia, made observations as: *"7. Having heard the learned counsel for the appellant and upon perusal of the impugned order we are of the opinion that the case of the appellant is distinguishable and consequently the decision in M/s. Nishith M. Shah HUF (supra), Rajesh Marchya (supra) and Mr. Jayant Indulal Sethna (supra) cases are not applicable and are distinguishable on facts. We find that except on three occasions the appellant only sold one share at a time on a daily basis. This trading pattern created misleading appearance with intention to manipulate the market if not the price. Thus, even if there is no connection with the buyer the trading pattern shows a concerted effort to manipulate the market and therefore, we are of the opinion that the appellant was not acting as a genuine seller. We also find that the appellant had no bonafide intention to sell because inspite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons".*

29. Thus, in light of the afore-stated judicial observations, one can firmly state that the acts of the Noticees are unique and unusual in the instant matter considering the factors such as pattern of trading, the repetitive nature of orders, the volume of trades, the illiquid nature of scrip, the magnitude of impact of trading on LTP etc. as all such factors are the relevant factors for consideration while drawing an inference with regard to the case of manipulation and fraud. Even the contention of the Noticees that the trades were executed by their broker on screen based trading platform wherein it is not possible to know the counterparty buyer or counterparty broker, would not come in their rescue considering the element of the aforesaid factors as involved in the matter.

30. In the present case, the findings of investigation as stated in the SCN observes the following:

Seller Name (1)	**Date of transaction (2)**	**Sell order volume (3)**	**Buy order volume (4)**	**LTP contribution (% to market positive LTP) (5)**	**No. of shares held before trade (6)**
Noticee 4 (Global Enterprises**)**	08/12/2014	5	28000	2.22	133000
	11/12/2014	250	9000	2.33	106000
Total		**255**	**37000**	**4.55**	
Noticee 7 (Sajjan Kedia)	28/10/2014	5	100	2.14	14500
	30/10/2014	5	500	2.37	14495
	10/11/2014	5	1000	2.74	14490
	11/11/2014	5	1000	2.86	14485
	14/11/2014	5	1000	3.16	14480
	18/11/2014	5	500	3.31	14475
	20/11/2014	5	250	3.49	14470
	24/11/2014	5	250	3.68	14465
Total		**40**	**4600**	**23.75**	
Noticee 5	04/12/2014	5	250	5.15	15000

(Shakira Sharfuddin Shaikh)	05/12/2014	3	250	2.14	14995
Total		**8**	**500**	**7.29**	
Noticee 3 (Suryapratap Gupta HUF)	21/10/2014	10	1600	1.84	50000
	22/10/2014	5	300	1.95	49990
	27/10/2014	5	1000	2.03	49985
	29/10/2014	5	100	2.25	49980
	31/10/2014	5	100	2.48	49975
	07/11/2014	5	1000	2.59	49970
	12/11/2014	5	1000	3.01	49965
	25/11/2014	2	1000	3.83	49960
Total		**42**	**6100**	**19.99**	

31. An analysis of the above trade data of Noticee no. 3, 4, 5 & 7 reveals that despite having large/sufficient buy volume (column 4 above) and large holdings before trade (column 6 above), the said Noticees chose to sell quantities only in single digits (column 3 above). Further, Noticee no. 7 and 3 appear to exhibit a consistent repetitive single digit sell order placing pattern for 8 trading days (column 3 above), despite having relatively large/ sufficient buy order volume (column 4 above) and large holdings (column 6 above). I also note that, despite sell order quantity being miniscule, the impact of the trades by the said Noticees on the market positive LTP during patch-1 has been significant (column 5 above) i.e. Noticee no. 4 contributed 4.55 % to market positive LTP, Noticee 7 contributed 23.75 % to the market positive LTP, Noticee 5 contributed 7.29 % to the market positive LTP and Noticee 3 contributed 19.99% to market positive LTP. Noticees 3, 4, 5 & 7 have contended that the allegations of creating positive LTP cannot sustain in view of the miniscule quantum of their alleged trades during the Investigation Period- such miniscule quantum of alleged trade cannot result in price rise. However, it is to be noted that the trade quantity has to be seen in reference to factors such as the total volume in the scrip vis-à-vis the traded quantity, the repetitive nature of trades, the liquidity in the stock, magnitude of impact of the traded quantity on the last traded price etc. I note that the trading pattern of the Noticees to this proceeding as stated in

aforesaid paras have resulted in 77.98% to market positive LTP during Patch-1. Thus, the quantity of trades may not be the sole deciding factor in many of the cases.

32. In respect of allegations made in the SCN that the Noticees were offering minuscule quantity of shares in sell orders at prevailing buy orders which were already at higher than the LTPs, I, note from the table produced in para 15 above that the Noticee 1, out of its two sell trades during Patch-1, executed on different dates, for three shares and two shares each, even when it was holding 30,000 and 29,997 shares, respectively, at the time of placing those two sell orders. Similarly, Noticee 2 has executed two sell orders on different dates and sell orders were placed for two shares and three shares each time even when it was holding around 30,000 shares, at the time of placing those two sell orders. Noticee no. 4, has executed two sell orders for 5 shares (even when having 28,000 buy volume) and 250 shares (even when having 9000 buy volume) on different dates, even when holding 1,33,000 and 1,06,000 shares, respectively, at the time of placing the two sell orders. Noticee 6 has executed one sell orders for 5 shares (even when buy volume of 250 shares was available) when it had 30000 shares in holding, at the time of placing the sell order. Noticee 3, had placed 8 sell orders on different dates during Patch-1, out of which 6 sell orders were repeatedly placed for 5 shares each, even when it was holding 49990, 49985, 49980, 49975, 49970 and 49965 shares respectively, at the time of placing those six sell orders. Similarly, Noticee 7 had placed 8 sell orders on different dates repeatedly for 5 shares each during Patch-1, even after holding 14500, 14495, 14490, 14485, 14480, 14475, 14470 and 14465 shares respectively, at the time of placing the sell orders and having buy order volume as 100, 500, 1000, 1000, 1000, 500, 250, 250 respectively, at the time of placing these 8 sell orders. Noticee 5 had placed two sell orders on different dates, for 5 shares and three shares each, even after holding 15000 and 14995 shares respectively, at the time of placing the two sell orders. In the aforementioned 25 trades, the Noticees have placed miniscule quantities of sell orders on different dates matching the available buy price which were placed at higher price than the last traded price contributing to the increase in scrip price with each of their trades.

It is also noted that far lesser quantities of sell orders were placed by the Noticees even when buy orders were available for higher quantities and the Noticees were also holding relatively higher quantities of shares in the scrip as detailed at para 15 above. It has also been argued by the Noticees that their sale transactions were bonafide. In this regard, if the Noticees were the bonafide sellers, they should have sold substantial/equivalent number of shares held by them, corresponding to the buy order volume available. However, as seen from the table at para 15, the Noticees have placed sell orders only for single digit shares repeatedly one after the other for almost 25 trading days in 40 days period to consistently set a New High Price in the scrip for each trading day. Had the Noticees did not intervene by putting the single digit sell orders the price of the scrip would not have risen to give rise to a New High Price for each trading day.

33. In view of the above, I am of the view that the trades done by the Noticees in the instant matter, were manipulative and in violation of Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (PFUTP) Regulations, 2003. I further note that, the proof of fraudulent and manipulative transactions is rarely found by direct evidence rather it always depends upon the given circumstances from which inferences are drawn from the factual details, the nature of transactions, conduct of the parties etc. In this regard, It would be relevant to refer to the Order of the Hon'ble Securities Appellate Tribunal ("SAT") passed in the matter of Ketan Parekh Vs. SEBI (Appeal No. 2 of 2004 decided on 14.07.2006) observing as under:

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

34. It is observed from the findings as given above, by entering into manipulative trades, the noticees were instrumental in establishing a price higher than the last traded price and thus contributed to increased scrip price with each of their trades. Thus, out of 38 trades that contributed to positive LTP in Patch-1, as a group, these seven Noticees placed orders for 25 trades as enumerated at para 15 above, on 25 different days and contributed to price rise by Rs.103.75 i.e., 77.98% of market positive LTP.

35. Further, reference is also drawn to the case law i.e. Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013) decided by the Hon'ble Securities Appellate Tribunal ('SAT') on February 11, 2014), where an entity was found to have raised the New High Price (NHP) by placing just 1 share in buy order, in each of nine transactions, when sell orders were available for higher quantity (contributing to 9.17% of NHP), the Hon'ble SAT while upholding the findings and penalty imposed by the Adjudicating Officer, vide its Order dated February 11, 2014, inter alia observed as under:

> *" 9………… Very fact that the appellant had indulged in self trades/ LTP/ NHP without giving justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades.*
>
> *10. . …………In the facts of the present case, in our opinion, no fault can be found with the decision of the AO that the trades executed by the appellant were manipulative trades and hence, the appellant was guilty of violating the SEBI Act and the PFUTP Regulations.*

36. Therefore, in view of the above, I find that the Noticees to this proceeding have violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d) and Regulation 4(1), 4(2) (a) & 4(2) (e) of SEBI (PFUTP) Regulations, 2003.

ISSUE No. II: If violations are established then whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

37. In this context, It is pertinent to refer the observation of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

38. It is established from the above findings that the Noticee 1 to 7 by way of their acts and trades, which are clearly established to be manipulative and unfair, have violated the provisions of the Regulations as aforesaid in above paras. Therefore, as the alleged violation against the Noticees 1 to 7 stand established, the Noticees are liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices:
"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher".

ISSUE No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

39. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15J of SEBI Act, which read as under:

Factors to be taken into account by the adjudicating officer
15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

40. In the present matter, the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees 1 to 7 and also the loss suffered by the investors as a result of these Noticees' default. The consequences resulting from violations committed by the said Noticees are of serious nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market.

41. The Hon'ble SAT, in its order dated August 02, 2019 in the matter of *P G Electroplast vs SEBI*, has held that the Order passed in corresponding proceedings before the Whole Time Member should be factored in while fixing the quantum of penalty.

42. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticees under the provisions of Sections 11, 11(4) and 11B of SEBI Act under the same facts. In the said proceedings, vide Order dated November 28, 2018, Hon'ble Whole Time Member of SEBI has inter-alia restrained the Noticees from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of four (04) years from the date of the said order.

ORDER

43. Therefore, in view of the findings mentioned in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15 –I of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, 1995, I hereby impose a penalty on the Noticee 1 to 7 as under:

Name of the Noticee	Penalty amount in `	Imposition of penalty under
Girish Agarwal & Sons (HUF)	5,00,000/- (Five Lakh)	Section 15HA of SEBI Act, 1992 for violation of Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a) and (e) of the SEBI PFUTP Regulations, 2003
Girish Kumar Agrawal	5,00,000/- (Five Lakh)	
Suryapratap Gupta (HUF)	5,00,000/- (Five Lakh)	
Global Enterprises	5,00,000/- (Five Lakh)	
Shakira Sharfuddin Shaikh	5,00,000/- (Five Lakh)	
Sankalp Garg	5,00,000/- (Five Lakh)	
Sajjan Kedia	5,00,000/- (Five Lakh)	

44. The said penalty imposed on the Noticees, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

45. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link :**ENFORCEMENT → Orders →Orders of AO → PAY NOW**

46. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I

of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

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

47. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India, Mumbai.

Date: March 31, 2021 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**