

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 15-I (3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992- IN RESPECT OF ADJUDICATION ORDER DATED SEPTEMBER 03, 2020 PASSED IN THE MATTER OF FINALYSIS CREDIT AND GUARANTEE COMPANY LIMITED

In respect of:

Sr. No.	Name of the Entity	PAN No.
1.	Sushiladevi N. Didwania	AFTPD5770L
2.	Manju Devi Bothra	ADEPB8752D
3.	Mukesh Ramniranjan Ruia	AAGPR6658B
4.	Kshitiz Nirman Pvt. Ltd.	AACCK5381P
5.	Parita Mit Moradia	AXQPM8716N
6.	Sanjay Gupta	ACGPG3696N
7.	Ektha Goyal	AASPG2733Q
8.	Sunil Kumar Goyal	AAHPG0001C
9.	Anita Goyal	AARPG6973H
10.	Kiranbala Gupta	AHVPG6893K
11.	Sunil Kumar Goyal HUF	AADHG2584E
12.	Praveen Kumar Goyal	AAGPG2320R
13.	Ghanshyam Das Barasia	AEZPB9096A
14.	Shitalben Sanjaybhai Kapadia	AGFPK9380A
15.	Sanjay Kumar Goyal	AAGPG9999L
16.	Rajender Kumar Agarwal	ABSPA0666K
17.	Raghav Garg	AEPPA0239J
18.	Arvindbhai Gordhanbhai Kakadiya HUF	AAHHA4112Q
19.	Deepak Ramniklal Kothari	AAEPK4520F
20.	Prakashkumar P. Mali HUF	AAGHM8746P
21.	Hitesh Kumar Shah	ADIPS9464P
22.	Vimmi Hitesh Shah	BIUPS4979M
23.	Manoj Harkut	AADHM3983R
24.	Chanda Bhagaram Mali	ADSPM1176A

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25.	Girdharilal Seduram Jangir	ACRPJ1859R
26.	Sanjay Atmaram Agarwal	AFPPA2329N
27.	Purnima Mishra	AFAPM6601E
28.	Laxmi S. Mali	AAHPM6077A
29.	Sagar Bothra	ANLPB4505H
30.	Sanjeev Kedia	ADTPK4880A

1. Present proceedings have emanated from a show cause notice dated October 01, 2020 (hereinafter referred to as "**the SCN**") issued under Section 15-I (3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") in respect of trading activities in the scrip of Finalysis Credit and Guarantee Company Limited (hereinafter referred to as the "**Company**"), calling upon the *Noticees* to show cause as to why enhanced penalty should not be imposed on them in terms of Section 15 HA of the SEBI Act, 1992 for the violation as alleged in the show cause notice dated September 25, 2017, which culminated in passing of the Adjudication order dated September 03, 2020.

2. Necessary facts of the case in brief are that an investigation conducted by SEBI in the scrip of the *Company*, revealed that many entities have by trading amongst themselves, created artificial volume in the scrip of the *Company*, leading to alleged violation of various provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**"). Accordingly, an Adjudication Order dated May 22, 2019 came to be passed wherein the Adjudicating Officer ("**AO**") held the 42 Noticees therein to be guilty of creating a misleading appearance of trading in the scrip of the *Company* and creation of artificial volume in the scrip by trading amongst themselves. In the said proceedings, the AO held that the violation of Regulations 3 (a), 3 (b), 3 (c), 3 (d), 4 (1), 4 (2) (a) and 4 (2) (g) of PFUTP Regulations, 2003 are established. However, the AO disposed of the said proceedings against 30 Noticees (*Noticees* herein), without imposing any monetary penalty and imposed penalty of INR 18 Lakh on the remaining 12 entities making them liable joint and several, to pay the said monetary penalty.

3. As the said 12 entities were made liable joint and several for payment of monetary penalty, some of them being aggrieved by the order of the AO, preferred appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**SAT/Tribunal**"); out of which seven such appeals got disposed of by the Hon'ble SAT vide a common order dated March 04, 2020, and one got disposed of vide a separate order dated January 20, 2021. In the

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order dated March 04, 2020, the Hon'ble SAT while disposing of 7 appeal, observed the following while setting aside the order dated May 22, 2019 and remanded the matter to the file of the AO for passing a fresh order in accordance with law within a period of six months:

"...8. We are unable to appreciate the rationale provided in the impugned order. A group of entities have been found to be involved in violating provisions of PFUTP Regulations; all of them were individually and collectively responsible for the fraudulent and manipulative activities and thereby creation of artificial volumes and jacking up of the price of the scrip as per the findings. In this context, 144 entities were let off with an administrative warning based on a criteria of less than 0.75% per entity share in the artificial volume. Thereafter, subsequent to the adjudication 30 entities were let off even without an administrative warning based on a criteria of less than 1.78 % per entity share of the artificial volume. There is a huge contradiction on this differential punishment / treatment. Further, we do not find any logic in adopting the cut off of 1.78% of the artificial volume in deciding to let off people who traded below that level without even a warning and in imposing a monetary penalty on entities who traded even slightly above that level. Test of reasonable classification has to be based on legally sound footings; not based on some arbitrary numbers particularly while imposing a penalty on a segment of the group who are party to the violations. In the instant case, we find that this logic of intelligible differentia is lacking.

9. On the other hand, given the magnitude of artificial trading in the scrip, including the off-market transactions by a few entities, the issues involved in the matter are serious and needs a thorough examination. Similarly, given the contention of the appellants that all of them are not connected to each other or even known to each other a joint and several liability of penalty also needs to be relooked given the practical implementation problem..."

4. The last appeal (8th appeal) out of the 12 persons who were held guilty and were imposed with monetary penalty, came to be disposed vide order dated January 20, 2021, wherein the Hon'ble SAT found that the controversy in the said appeal was squarely covered by its earlier order dated March 04, 2020 and hence remitted the said matter also to the file of the AO.

5. Meanwhile, before the above mentioned appellate order dated January 20, 2021 was passed by the Hon'ble SAT, another Adjudication order dated September 03, 2020 came to be passed by the AO in due compliance with the earlier appellate order of the Hon'ble Tribunal dated March 04, 2020. Vide this order, i.e., order dated September 03, 2020, it is observed that the Adjudicating Authority once again broadly recorded her observations identical to the

observations recorded in the first Adjudication Order dated May 22, 2019 and imposed the same amount of penalties on the same set of 12 persons as earlier imposed in the order dated May 22, 2019. Further, reiterating her earlier order, and the stand taken therein, although the AO had held the remaining 30 persons (*Notices* herein) guilty of the violations of the relevant provisions of PFUTP Regulations for creating artificial volume in the scrip of the *Company*, however, preferred not to impose any monetary penalty on them relying upon a threshold criteria adopted by her for the purposes of imposing monetary penalties. As stated earlier, the present proceedings under Section 15-I (3) were initiated with respect to the said order dated September 03, 2020, calling upon the 30 *Notices* as to why the order dated September 03, 2020 passed by the AO be not called back and enhanced penalty under Section 15 HA be not imposed on them while exercising power under Section 15 –I (3) of the SEBI Act, 1992.

6. It is noted from the records that the show cause notices dated October 01, 2020 were duly served to all the *Notices* through Speed Post-AD. All the *Notices* except Ms. Parita Mit Moradia (*Notice no.5*), Mr. Deepak Ramniklal Kothari (*Notice no.19*) and Mr. Manoj Harkut (*Notice no. 23*), have filed their respective written replies to the SCN. Further, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to all the *Notices*, however, three *Notices* viz., Ms. Manju Devi Bothra (*Notice no.2*), Arvindbhai Gordhanbhai Kakadiya HUF (*Notice no.18*), and Mr. Sagar Bothra (*Notice no.29*) waived their right to attend the personal hearing. It is further noted from the records that one of the *Notices* namely Mr. Sanjay Kumar Goyal has since expired on July 21, 2021. A group of *Notices* viz., viz., Ms. Ektha Goyal, Mr. Sunil Kumar Goyal, Ms. Anita Goyal, Sunil Kumar Goyal HUF, and Mr. Praveen Kumar Goyal has expressed their inability to attend the hearing scheduled on September 02, 2021 and requested SEBI to consider their written reply already filed in the matter. Further, Hitesh Kumar Shah (*Notice no. 21*) and Vimmi Hitesh Shah (*Notice no. 22*), vide their letters dated September 01, 2021, inform that they would not be attending the hearing. The personal hearing of the rest of the *Notices* have been conducted on the following days:

Table no. 1

Sr. No.	Date of hearing	Noticees
1.	September 02, 2021	Mr. Mukesh Ramniranjan Ruia, Kshitiz Nirman Pvt. Ltd., Mr. Sanjay Gupta, and Ms. Kiranbala Gupta
2.	September 07, 2021	Ms. Sushiladevi N. Didwana, Mr. Ghanshyam Das Barasia, Prakashkumar P Mali HUF, Ms. Chanda Bhagaram Mali, Mr. Girdharilal Seduram Jangir, Mr. Sanjay Atmaram Agarwal, Ms. Laxmi S Mali, and Mr. Sanjeev Kedia
3.	November 09, 2021	Ms. Shitalben Sanjaybhai Kapadia, Mr. Rajendra Kumar Agarwal, Mr. Raghav Garg, and Ms. Purnima Mishra

7. It is noted from the records that various *Noticees* have filed replies in response to the aforesaid SCNs and in their defence, they have advanced various arguments in such replies. The said replies are being summarised in the following paragraphs.

8. Ms. Sushiladevi Didwana (*Noticee no.1*) and Mr. Sanjay Atmaram Agarwal (*Noticee no. 26*) have vide their separate letters dated October 27, 2020, have made identical submissions which are being summarised hereunder:

- I. The shares were received by them in normal course of trading in securities market. One Mr. Govind Patodia had acted as an intermediary for the off-market transfer and the transaction was executed through a SEBI registered stock broker. No adverse inference should be drawn based on such a transaction.
- II. Off-market transactions are permissible under the extant legal framework.
- III. The order passed by the Hon'ble SAT cannot be used to reopen the case against the *Noticees* who had not filed any appeal before the Hon'ble SAT and therefore the order passed by the Hon'ble SAT is not binding on him. As the proceedings under Section 15-I (3) were not initiated against the order dated May 22, 2019, no such proceedings can emanate from the order dated September 03, 2020. Further, the conclusion recorded in its order dated May 22, 2019 was reiterated by SEBI before the Hon'ble SAT, as recorded in the order dated March 04, 2020 of the Hon'ble SAT as: "7. *We have also heard Mr. Anubhav Ghosh, the learned counsel for the respondent SEBI who tried to convince us that the*

criteria adopted by the AO is sound as entities who traded in low volumes and on a single day were though let off in terms of penalty they are not exonerated from the charge; rather the finding in the impugned order itself is that they were parties to the violations but because of the low magnitude of their violations no penalty has been imposed. Therefore, not imposing a penalty is not tantamount to leaving them scot-free.”

IV. The present SCN has been issued without any authority under law and is also barred by limitation.

9. Ms. Manju Devi Bothra (*Noticee no. 2*) vide her letter dated July 24, 2021 and Mr. Sagar Bothra (*Noticee no. 29*), vide his letter dated July 23, 2021 requested to consider their earlier replies already filed during the adjudication proceedings. In the said replies, the following key points have been raised:

- I. The shares of the *Company* were purchased as a long term investment through SEBI registered stock broker and valid contract notes were issued for the said transactions. The shares were purchased on market platform through SEBI registered stock broker and not in off-market, as alleged.
- II. The said shares were sold by the *Noticees* as the price had increased.
- III. SCN wrongly alleges that Ms. Manju had sold 67159 shares and Mr. Sagar had purchased 102500 shares. Infact, Ms. Manju had purchased 80,000 shares and Mr. Sagar had purchased 57500 shares. Around 22500 shares were wrongly transferred to the demat account of Mr. Sagar and the same were returned to Religare Securities on their request. Further, both of them had sold all the shares of the *Company*.
- IV. Shares were sold on market and as the demat account is not with the broker, there is no question of manipulation.
- V. The sale of shares by the *Noticees* was negligible to have an impact the price or market position of the scrip.

10. Mr. Mukesh Ranmikiranjan Ruia (*Noticee no.3*) vide his letter dated October 23, 2020 has made the following submissions:

- I. The SCN dated October 01, 2020 is bad in law for want of jurisdiction as well as barred by limitation prescribed under Section 15-I (3) of SEBI Act, 1992. The present SCN is also hit by the principles of res judicata and double jeopardy.

- II. As the Adjudication order dated May 22, 2019 was not challenged by the *Noticee* and thus the same has attained finality.
 - III. The shares were purchased from the exchange through the broker Sharukh N. Tara and were sold through another broker namely Choice Equity Broking Pvt. Ltd.
 - IV. The *Noticee* is not connected with the other *Noticees* with whom they have been alleged to be connected due to purchase/receipt of shares in off-market.
 - V. The allegation of creation of artificial volume is wrong as all the trades have been executed on the market platform. Copy of demat account statement and Contract Notes have been filed.
 - VI. If nature of allegation against all entities is similar, equal treatment of issuance of warning ought to have been extended to all entities.
 - VII. Reliance has been placed on the order of SEBI passed in the matter of Crazy Infotech Limited.
11. Kshitiz Nirman Pvt. Ltd. (*Noticee no. 4*) vide its letter dated October 14, 2020 has made certain submissions which are briefed herein below:
- I. In usual course, it had purchased 65000 shares of the *Company* through Vijay Bhagwandas & Co. for an amount of INR 2.60 Lakh and payment was made on May 05, 2012. 10,000 shares came to the demat account on May 07, 2012 and 55,000 shares came on May 09, 2012.
 - II. The said shares were sold on two trading days in usual course of trading. All transactions have been reflected in the demat account statement, copy of which has been filed in support.
 - III. BSE Ltd. vide its letter dated April 04, 2014 had intimated the *Noticee* that the trading in the scrip of the *Company* does not seem to be normal, however, no reply was sent by the *Noticee* as they had executed trades in normal course of business activities.
 - IV. The *Noticee* does not have any connection with any entity named in the SCN.
 - V. No specific allegation has been made in the show cause notice issued in the order passed by the AO. In the said show cause notice, the main allegation appears to be against Noticee nos. 4 and 44 (as per the show cause notice issued by the AO), who

have allegedly transferred shares to it. However, there is no connection of the *Noticee* with the said *Notices* and there is nothing on record to show that shares were purchased from the said two *Notices*. Even if it transpires that the shares were transferred by the aforesaid two entities (*Noticee* nos. 4 and 44 of the SCN of AO proceedings), the *Noticee* is not part of any fraudulent transaction which may have taken place nor did the *Noticee* have knowledge of any such fraudulent act. There has not been any fraudulent transaction on the part of the *Noticee*.

- VI. As no proceedings were initiated by SEBI in pursuance of the first AO order dated May 22, 2019 and as no appeal was filed by the *Noticee* against the said order, the present proceedings are not tenable under law.
 - VII. AO has rightly not imposed any penalty on the *Noticee* in both the orders.
 - VIII. As no appeal has been filed challenging the order dated September 03, 2020, the same has attained finality and SEBI does not have any jurisdiction to reopen the matter.
12. Mr. Sanjay Gupta (*Noticee no. 6*) and Ms. Kiranbala Gupta (*Noticee no. 10*), vide their separate letters dated July 07, 2021 and September 11, 2021, respectively have filed identical replies, with the following key submissions:
- I. No monetary penalty was imposed by the AO as the alleged creation of artificial volume was less than 1.78%.
 - II. The purchase of the shares of the *Company* was executed through and on the advice of the stock brokers Ami Securities. The shares were purchased in off-market in the year 2011 whereas the records of SEBI indicate that such shares were purchased in 2012. Payments were made to the stock broker and not to the seller of shares. In this regard, copy of contract notes issued by the said stock broker have also been filed.
 - III. The shares of the *Company* were purchased in ordinary course of trading so as to earn long term capital gain and the shares were sold after holding for more than 12 months. Taxes have been paid on the gains so made out of the sale of those shares.
 - IV. The shares were sold on the online platform, therefore, the identities of the buyers were not known. Any matching of trades with other entities is purely coincidental. The shares were sold on the advice of the stock broker BHH Securities.

- V. Apart from alleged trades, *Notices* have sold other shares also which have been purchased by entities which are not part of the present proceedings.
- VI. The Adjudication order dated May 22, 2019 did not impose any penalties on the *Notices* and the Adjudication order dated September 03, 2020, took a lenient view by observing that administrative warning has been issued to other entities for lesser culpability.
- VII. The aforesaid two *Notices* have not challenged the AO's order dated May 22, 2019, therefore, the findings of the Hon'ble SAT remanding the matter back for adjudication shall operate only against the Appellants before the Hon'ble SAT.
- VIII. The connection with the other entities is based on the off-market transfers and on-market trades, which was a mere coincidence. The off-market transfers took place in the year 2011, before the investigation period. As the alleged connection is not established, the charges of creation of artificial volume are also falsified.
- IX. As the shares have been sold on market platform to entities other than the two *Notices*, the same is evident that matching of trades was purely co-incidental.
13. Ms. Ektha Goyal (*Noticee no. 7*), Mr. Sunil Kumar Goyal (*Noticee no. 8*), Ms. Anita Goyal (*Noticee no. 9*), Sunil Kumar Goyal HUF (*Noticee no. 11*), Praveen Kumar Goyal (*Noticee no. 12*), and Mr. Sanjay Kumar Goyal (*Noticee no. 15*) have filed their written replies, all dated October 08, 2020 in which they have raised the following grounds in their defence:
- I. The copy of the investigation report and other documents relied upon by SEBI have not been provided.
- II. No document to show that the shares were received from Mr. Pankaj Jayantilal Dave or Sagar Kadam in off-market have been provided along with the SCN nor any other document to show connection has been given. The Hon'ble SAT has held in various matters that documents forming basis of SCN needs to be given along with the SCN. [*Rajendra G. Parikh Vs. SEBI, Appeal no. 44/2009; H B Stockholding Ltd. Vs. SEBI, Appeal no. 114 of 2012 etc.*]
- III. The trades have been executed on screen based trading which does not provide the details of the trading parties and only the details with respect to the price, quantities etc., are available. Reliance has been placed on the order of the Hon'ble SAT passed in

the matter of *Jagruti Securities Limited Vs. SEBI* (date of decision: October 27, 2008), *Ketan Parekh Vs. SEBI* (date of decision: July 14, 2006), so as to buttress the said argument.

- IV. No allegation of collusion between the Noticees as buyers and the respective seller entities has been made with supporting evidence.
 - V. The delivery of shares was given by the Noticees.
 - VI. The total volume contributed by the aforesaid group of Noticees is only 1.70% of the total market volume. As the total artificial volume alleged in the SCN is of 23.05%, the same shows that the scrip was having sufficient liquidity. SEBI ought to have considered the volume contributed by the Noticees and not the volume contributed by their trades to the alleged artificial volume. Reliance has been placed on the order passed by the Hon'ble SAT in the matter of *Babulal Desai Vs. SEBI* (date of decision: February 15, 2016).
 - VII. There is no allegation of price manipulation made in the SCN. Reliance has been placed on the order of the Hon'ble SAT passed in the matter of *Rajendra G. Parikh Vs. SEBI*.
 - VIII. There does not appear to be any reason for an entity to manipulate the volume of a scrip which is already liquid.
 - IX. SEBI has without giving any reason and basis applied the criteria for issuance of administrative warning. As the volume contributed by the aforesaid Noticees was also less than 0.75%, the benefit of issuance of such administrative warning should have extended to them also.
 - X. The principle of issuance of administrative warning, as followed in the SEBI's order passed in the matter of Crazy Infotech Limited, should have been applied in the present case.
14. Mr. Ghanshyam Das Barasia (*Noticee no. 13*) vide his letter dated December 02, 2020; Prakashkumar P. Mali HUF (*Noticee no. 20*), Ms. Chanda Bhagaram Mali (*Noticee no. 24*) and Ms. Laxmi S. Mali (*Noticee no. 28*) vide their separate letters dated September 06, 2021 have made identical submissions. The said submissions are summarised hereunder:
- I. The AO's order dated May 22, 2019 has attained finality qua them as they were not aggrieved by the said order.

- II. The said order was challenged before the Hon'ble SAT by 7 entities out of the 12 entities on whom (12 entities), penalty was imposed by the order. The Hon'ble SAT vide its order dated March 04, 2020 quashed the said order dated May 22, 2019 *qua* those appellants and remanded the matter back to SEBI. In pursuance of the same, another order dated September 03, 2020 has been passed and the same ought to be confined and limited to the persons who had appealed before the Hon'ble Tribunal against the AO dated May 22, 2019. The aforesaid Noticees were not provided with any opportunity as no fresh hearing notice was issued before passing of the said order dated September 03, 2020 nor any further opportunity of making submission was afforded to them by the concerned authority before passing of the subsequent order dated September 03, 2020. Therefore, the matter *qua* them has attained finality with the passing of the order dated May 22, 2019 itself.
- III. The aforesaid Noticees were not having any knowledge of the subsequent order dated September 03, 2020, however as the findings in the said order were same as were in the earlier order dated May 22, 2019, there was no occasion for them to challenge the said order.
- IV. By the SCN dated October 01, 2020, SEBI is attempting to review the AO order dated May 22, 2019 and such an action is time barred by virtue of the second proviso to Section 15-I (3) of SEBI Act, 1992.
- V. Without prejudice to the same, the order dated September 03, 2020 was without any authority of law as the remand of the matter was *qua* only those entities who had filed appeals before the Hon'ble SAT and Adjudicating Authority had become *functus officio* qua those entities who had not filed appeals. The same is apparent from the fact that for another appellant (Mr. Sagar Kadam), appeal was allowed by the Hon'ble SAT by its order dated January 20, 2021 and the matter was remanded back to SEBI for passing of fresh order only against Mr. Sagar Kadam, even though by the time, the subsequent order has already been passed by the Adjudicating Authority, in compliance with the order dated March 04, 2020 passed by the Hon'ble Tribunal.
- VI. As the AO transgressed the authority by passing a fresh order against 42 entities, the subsequent order dated September 03, 2020 *qua* the aforesaid Noticees is untenable.

- VII. As SEBI did not initiate proceedings to review the order dated May 22, 2019, the principles of Issue Estoppel and Res judicata would apply. Reliance in this regard has been placed on the order dated May 19, 2021 passed by the Hon'ble SAT in the matter of *Nirmal N. Kotecha Vs. SEBI*.
- VIII. As the proceedings pertain to the acts committed during 2012-13, Noticees are not able to adequately respond to the SCN since the documents pertaining to the said period are not available. Reliance has been placed on the order passed by the Hon'ble SAT passed in the matter of *Rajeev Bhanot & anr. Vs. SEBI*.
- IX. In order to exercise the jurisdiction under Section 15-I (3) of SEBI Act, 1992, both the test of the impugned order being “erroneous” and “not to be in the interest of the securities market” needs to be cumulatively satisfied.
- X. A provision similar to Section 15-I (3) is present in the Income Tax Act, 1961 (Section 263). The powers under Section 15-I (3) would have to be exercised based on the principles analogues to the provisions of Section 263 of Income Tax Act, 1961 and once the AO recorded a reasoned conclusion based on the reply of Noticee, the powers under Section 15-I (3) ought not be invoked. The Adjudication order dated May 22, 2019 has arrived at a reasonable conclusion and there is no ambiguity that requires the order to be called for under the exercise of power vested through Section 15 –I(3) of the SEBI Act, 1992. The following judgments have been relied upon so as to buttress the aforesaid argument of satisfaction of both the tests: (i) *Commissioner of Income Tax Vs. Green World Corporation* [(2009) 7 SCC 69]; (ii) *Malabar Industrial Co. Ltd. Vs. CIT* [(2000) 1 SCR 744]; and (iii) *Commissioner of Income Tax Vs. Gabriel India Limited* [(1993) 203 ITR 108 (Bom)]
- XI. The present SCN does not give the details as to how the order is not in the interest of securities market nor any error has been pointed out. Mere illegality of the trades or the trades not being in the interest of the securities market would not confer jurisdiction for invocation of Section 15-I (3) of SEBI Act, 1992.
- XII. For the purpose of Section 15-I (3), there has to be “some” penalty that could be enhanced. As no penalty has been imposed by the AO, power under Section 15-I (3) cannot be exercised. Reliance has been placed on the judgment of the Hon'ble Madras

High Court in the matter of *State of Tamil Nadu Vs. Jakthi Veliyeekatakam* [Tax Case no. 92 of 1997 Revision no. 17 of 1977].

- XIII. The sale trades were executed on the market platform through a registered stock broker. The Noticees do not know the entities with whom connection has been alleged. The shares purchased in off-market were purchased by the Noticees through a stock broker.
- XIV. Out of the investigation period of 300 days, Prakashkumar Mali HUF's trades were executed only on 8 days. Ms. Chanda Bhagaram Mali's and Ms. Laxmi S. Mali's trades were executed on only 7 days each. All of them have offloaded entire 40,000 shares (held by each of them). Mr. Ghanshyam Das Barasia's trades have been executed on 5 days and he has offloaded 85500 shares.
- XV. The sale of 38,461 shares by Prakashkumar Mali HUF, 35,483 shares by Ms. Chanda Bhagaram Mali, 30,975 shares made by Ms. Laxmi S. Mali and 85500 shares by Mr. Ghanshyam Das Barasia contributed to the alleged artificial volume by only 0.99, 0.91%, 0.79% and 1.15% of the total quantity of shares purchased back by the 5 entities. The said sale of shares was not significant in view of the total 515640 shares traded on BSE during those days.
- XVI. The sales were made after holding shares for considerable period of time.
- XVII. The shares were not sold at the maximum price and there was no continuous trading by the *Noticees*. No shares were purchased by the *Noticees*.
- XVIII. There is significant time gap between the orders placed by the *Noticees* and the counter party orders and there is no pattern of order placement indicating any kind of collusion with any entity.
- XIX. There is no conclusive evidence to prove the intent to match the sale orders with any specific entity in a pre-decided manner.
- XX. The trades have been executed on anonymous trading platform which matches the trades automatically and alleviates any possibility of fixing of trades.
- XXI. The *Noticees* have been wrongly clubbed with certain entities solely on account of matching of trades.

XXII. As the scrip of the *Company* was in T group on BSE, there were appropriate regulatory restrictions like 100% delivery and thus the trades were genuine.

15. Ms. Sheetal Kapadiya (*Noticee no. 14*) vide her letter dated September 08, 2021, has made the following arguments in her defence:

- I. The off market trades are legal and were executed through registered stock broker.
- II. The Noticee is not having any direct or indirect connection with any of the Noticees.
- III. No reversal or synchronized trades have been executed.
- IV. The shares were sold after holding them for around 1.5 years.
- V. The trades on the market platform are executed on price time priority and the identity of traders is not available.
- VI. No new fact has come into picture to initiate the present proceedings.
- VII. Other entities who have indulged in synchronised trades/reversal trades/circular trades have been let off by issuance of administrative warning.
- VIII. The price of the scrip went to as high as INR 188.45, however, the Noticee had sold her shares in the price range of INR 77.20 to INR 105.70. The profit that accrued to the Noticee came from genuine trading activity and no disproportionate gain or unfair advantage which is detrimental to the securities market have been made.

16. Mr. Rajendra Kumar Agarwal (*Noticee no. 16*) vide his letter dated October 04, 2021 has made the following points in his defence:

- I. He doesn't know the details of the buyer from whom the shares were purchased. The motive behind the transaction was for settlement of pending dues.
- II. AO does not impose any penalty on him in both the orders.
- III. No report detailing the error (s) in the impugned order so as to create grounds for invocation of Section 15-I (3) have been provided.
- IV. The allegation of connection has been made without any evidence. There is no substantive evidence to show meeting of minds. Reliance has been placed on decisions of the Hon'ble SAT passed in the matters of *Jagruti Securities Vs. SEBI [(2008) SCC Online SAT 184]* etc.

- V. The allegation of having contributed 0.24% to the artificial volume is wrong and the exact calculation will reflect that it was 0.12%.
- VI. The reasoning of SEBI in the matter is wrong as the effect on the price and volume is higher when the concentration of trading is more on single day as compared to concentration spread over several days.
- VII. No case is made out when the facts are seen from the tests laid down by the Hon'ble Supreme Court in the matter of *SEBI Vs. Kishore R. Ajmera (Civil Appeal no. 2818/2009)*
- VIII. The transactions executed in the scrip of the *Company* are genuine as beneficial ownership has been changed.
- IX. Onus was on SEBI to show that the underlying transactions are not legitimate.
- X. There has been delay on the part of SEBI to initiate the proceedings, which ought to have been conducted in a reasonable time, as laid down by the Hon'ble Supreme Court of India in the matter of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari [(2019) SCC Online SC 294]*
- 17. Mr. Raghav Garg (*Noticee no. 17*) vide his letter dated October 07, 2021, has made certain submissions, which are summarised as under:
 - I. Copy of investigation report has not been furnished.
 - II. The trades were executed 10 years back and it is not justified to question them at belated stage. Reliance has been placed on the following judgments/order:
 - i. *Adjudicating Officer, SEBI Vs. Bhavesh Pabari [(2019) SCC Online SC 294]*;
 - ii. *Sambhaji Shripati Bankar and Ganpat Shripati Bankar Vs. Keshav Ranganath Ekbote. (Bombay High Court)*;
 - iii. *Ashlesh Shah Vs. SEBI (SAT) (date of decision: January 31, 2020)*; and
 - iv. *Rakesh Kotharia Vs. SEBI (SAT) (date of decision:*
 - III. The *Noticee* was not well versed with the technicalities of the market at the time of execution of the alleged trades.
 - IV. The investment made in the scrip of the *Company* was done in normal course of trading without any *malafide* intent. The investment was made on the advice of a stock broker

and 40,000 shares were purchased on market platform. Copy of the contract note in support of the submission has been filed.

- V. The shares were sold as the *Noticee* was getting good returns.
- VI. The role of the *Noticee* was insignificant so as to create artificial volume, as alleged.
- VII. The shares were sold in two tranches at average price of INR 47.57 and INR 74.72, whereas the highest price that the scrip of the *Company* witnessed during the investigation period was INR 182.10.
- VIII. The factual data in the SCN issued by the AO is erroneous as at one place it mentions that the *Noticee* has received shares from Mr. Mahadev Zilu Gawade, however, at another place, it mentions that Mr. Mahadev had transferred shares in off-market only to Noticee no. 21 therein. Further, the SCN has only considered the net value of the total no. of shares traded in the market instead of the gross no. of shares traded. By taking the gross volume, the percentage of the volume traded by the *Noticee* would reduce from 0.24% to 0.12%.
- IX. As the transactions in the shares of the *Company* were executed by the brokers, the *Noticee* is not aware of the counter parties. There is no connection of the *Noticee* with Mr. Pankaj Dave, as alleged in the SCN. Reliance has been placed on the order of the Hon'ble SAT passed in the matter of *M/s Bubna Stock Broking Services Vs. SEBI (Appeal no. 41 of 2009)*
- X. The presumption of knowing the counter party in off-market transaction is belied due to the contract note.
- XI. In many other cases, SEBI has issued administrative warning due to the fact that volume of trading is miniscule.
- XII. The trades cannot be alleged to be "reversal" as only those trades can be termed so where the beneficial ownership is not changed. Further, as per SEBI's own case, the beneficial ownership of the shares has changed as the entities from whom shares were purchased and the one to whom shares were sold are different.
- XIII. The charges must be specific and not vague, as made in the present case. Reliance has been placed on the judgment passed by the Hon'ble Supreme Court of India in the matter of *Gorkha Security Services Vs. Government (NCT of Delhi) (2014) 9 SCC 105*.

- XIV. The report detailing the errors in the AO's order and other records have not been furnished. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *Securities and Exchange Board of India Vs. Price Waterhouse & Co. (Civil Appeal no. 6003-6004/12)* and order of the Hon'ble SAT as passed in the matter of *Ms. Smitaben N. Shah vs. SEBI (date of decision: July 30, 2010)*
- XV. The only charge made in the SCN is of creation of artificial volume and no charges of synchronized trades etc., have been made so as to show that the alleged trades were fraudulent in nature.
18. Arvindbhai Gordhanbhai Kakadiya HUF (*Noticee no.18*) vide its letter dated October 26, 2020, has made the following submissions:
- I. Almost 8 years have passed from the alleged transactions, therefore, it is difficult to trace the documents, information etc.
 - II. Since, the order dated May 22, 2019 had not levied any penalty, consequently, no appeal was preferred by majority of the entities. The remand by the Hon'ble SAT was confined to those who had approached the Hon'ble Tribunal and the said remand order has been directed to pass an order against all the *Noticees*. Assuming without admitting, even though it was not a party before the Hon'ble SAT and the remand was not specific to those appealed but against all, the impugned order dated September 03, 2020 is bad in law as it has not provided opportunity to present the case to the entities and adverse impact in form of initiation of present proceedings has been made, making the present proceedings unfair and illegal.
 - III. Even on the 12 entities who have committed serious violations, a total penalty of INR 18 Lakh has been imposed. By the said principle, no penalty should be imposed on the *Noticee*.
 - IV. The trading in the scrip of the *Company* was done in the regular course of trading activity. The trading was done through the broker and therefore such transactions cannot form basis of alleging connection with the counter party. Copy of bill of broker recording sale of shares to *Noticee*, ledger account of the broker, stock ledger showing movement of shares and copy of passbook showing payments made to the broker have been filed in support.

- V. Without prejudice to the stand that the shares were purchased through broker, it is submitted that off-market transfers are legal and based on one “off market” transaction, relationship of two persons cannot be alleged.
- VI. There is no allegation of LTP contribution against the *Noticee*.
- VII. *Noticee* is not having any connection with other *Noticees*, the *Company*, its Directors etc. In absence of any connection, joint proceedings are bad in law and joint order too would also be illegal.
- VIII. The beneficial interest in the shares has been changed as the delivery has been given after the trades.
- IX. As trades have been executed on market platform, the *Noticee* is not aware of the identity of the counter parties to the trades.
- X. There is no action taken against the stock broker by SEBI nor any concern was raised by the stock exchanges.
- XI. The SCN has wrongly alleged the acts and omissions of a large number of persons on the *Noticee* also. Reliance has been placed on the order of the Hon’ble SAT passed in the matter of *Sanman Consultanta Vs. SEBI* [(2001) 30 SCL 45], wherein it was inter alia held that *en masse* action cannot be made covering a large number of persons without looking into their actual involvement.
- XII. There is no evidence in the proceedings to show the alleged connection.
- XIII. The trades of the *Noticee* are wholly insignificant when compared to the market volumes.
- XIV. In certain other cases, SEBI has dropped the charges against the entities who were facing similar allegations.
- XV. The Hon’ble SAT in its order dated March 04, 2020 passed while dealing with the appeal filed by AO’s 1st order has rendered a finding that bunching unrelated persons for levy of penalty is a wrong approach. Noticee is not connected with any of the other Noticees who are located all over India.
- XVI. It has been alleged in the SCN that same person first sold the shares and subsequently purchased them back. While denying the said allegations, it can be seen that if same set

of persons have purchased and sold shares and none of them has complained, there does not appear any case of fraud.

XVII. To prove serious charges of manipulation, high level of proof and establishment of *mens rea* is required. As held by the Hon'ble Supreme Court in the matter of *Union of India vs. Chaturbhai M. Patel* (AIR 1976 SC 712), even in civil proceedings, fraud must be established beyond reasonable doubts. Reliance has also been placed on the orders of the Hon'ble SAT passed in the matters of *Parsoli Corporation Vs. SEBI* (date of decision: August 12, 2011), *Sterlite Industries Vs. SEBI* (date of decision: October 22, 2001) etc.

19. Mr. Hitesh Kumar Shah (*Noticee no. 21*) and Ms. Vimmi Hitesh Shah (*Noticee no. 22*), vide their separate letters dated October 21, 2020 and September 01, 2021, have requested to consider the points of arguments earlier made by them during the AO proceedings. In essence, the following submissions have been made by the said two *Noticees*:

- I. The SCN does not precisely state as to how the *Noticees* have violated the provisions of PFUTP Regulations.
- II. The allegation made in the SCN regarding existence of *inter-se* relationship due to off-market transfer is erroneous. Mere off-market transaction cannot be used as *inter se* relationship in absence of any specific law.
- III. The shares of the *Company* were purchased in off market transaction and the same were sold on the market platform at different prices after holding for more around 12-16 months.
- IV. The matching of trades as alleged in the SCN would be a pure coincidence as the online trading platform does not disclose the identities of the parties to the trades.
- V. As the delivery of shares has been given, it cannot be alleged that the artificial volume has been created through such trades.
- VI. Large numbers of shares have also been purchased by entities who are not *Noticees* in the present proceedings.
- VII. SEBI ought to have provided the details of shares purchased by the each of the *Noticee nos. 3 to 6*, instead of providing the cumulative number of shares. Incomplete information has precluded the *Noticees* from providing reasonable opportunity to answer the allegations.

20. Mr. Girdharilal Seduram Jangir (*Notice no. 25*) vide his letter dated October 24, 2020 has made the following submissions:

- I. Entire order log of the scrip for the period of investigation ought to have been provided during the proceedings.
- II. No monetary penalty has been imposed by the AO.
- III. After the Hon'ble SAT had remanded the matter, no fresh show cause notice or hearing notice was issued by the concerned authority and in the order of AO passed in compliance of the said directions of the Hon'ble SAT, no penalty has been imposed on the Noticee.
- IV. The initial SCN issued had made bald and sweeping allegations. Further, the present SCN does not have any credible evidence to justify the allegations made therein.
- V. No details have been provided to show as to how the *Noticee* was acting in furtherance of any preconceived understanding with other entities.
- VI. The trades of 34,875 shares of the *Company* in 5 different trades during the investigation period constituted a meagre 0.21% of the market volume, which cannot have impacted the market.
- VII. There is no allegation in the SCN regarding any impact on the price of the scrip of the *Company* caused by the trades of the *Noticee*.
- VIII. Merely because the *Noticee* has received the shares from Mr. Pankaj Jayantilal Dave is not a sufficient fact to prove that the said entities are connected to each other and had any intention of creating any artificial volume in the market.
- IX. Mere purchase of shares in off-market cannot lead to inference of fraudulent activity. No evidence has been brought on record to show that the *Noticee* was part of or was having knowledge of manipulative scheme.
- X. Apart from the trades alleged in the SCN, *Noticee* has sold shares to other entities also which shows that there was no manipulative intent on his part. In one instance, sell order placed by the *Noticee* which coincidentally got partly matched with one of the *Noticee* and partly with a third party who is not a *Noticee* in the present matter.

- XI. Out of 34, 875 shares sold by the *Noticee*, counter party to trades of 19, 875 shares was Mr. Pankaj Dave and for 15,000 shares was Mr. Sagar Kadam. No connection with Mr. Sagar Kadam has been alleged/shown in the SCN. Matching of trades with Mr. Sagar Kadam would show that there was no intent of the *Noticee* to not change the beneficial ownership of such shares. If the trades executed with Mr. Sagar Kadam are ignored, the remaining shares will be only 0.509% of the total artificial volume instead of 0.89%, and the case of *Noticee* would qualify for administrative warning, as has been issued to other entities. Many entities who have contributed more than 0.75% but have traded on a single day have been given administrative warning and entities, who have traded in lesser number of shares (as compared to the entities who had been issued administrative warning), have been confronted with adjudication proceedings.
- XII. As no allegation for the trades being manipulative has been made, the volume generated from such trades cannot be alleged to be artificial.
- XIII. No evidence, direct or indirect has been brought on record to make the allegations. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *SEBI Vs. Kishore R. Ajmera (Civil Appeal no. 2818/2008)*.
- XIV. Serious allegations of fraud require stronger proofs. Reliance has been placed on various decisions of the Hon'ble SAT like *Parsoli Corporation Vs. SEBI (Appeal no. 146/2011)* etc.
- XV. The factors listed out in Section 15 J of the SEBI Act, 1992 are tilted in favour of the *Noticee*. As held by the Hon'ble Supreme Court of India in the matter of *Adjudicating Officer Vs. Bhavesh Pabari (Civil Appeals no. 11311 of 2013)*, the factors enlisted under Section 15 J are only illustrative in nature. Further, as held by the Hon'ble Supreme Court of India in the matter of *Ex-Naik Sardar Singh Vs. Union of India [(1991) SCC 212]*, penalty should be commensurate with the gravity of misconduct.
21. Ms. Purnima Mishra (*Noticee no. 27*) vide her letter dated October 27, 2020, has made the following submissions:
- I. The AO had accepted the submissions and no penalty were imposed on her.
- II. The trading in the scrip of the *Company* was done in regular course of trading activities as done in the capacity of an ordinary trader without any expertise. Copy of contract note, demat account statement etc., has been filed.

- III. As the transactions are more than 9 years old, the details of the source on whose recommendation, the investment was made in the *Company* is not able to be recollected.
- IV. *Noticee* had purchased 41,000 shares on April 05, 2011 and out of the said shares, 40,000 shares were demated on June 09, 2012 and 1,000 shares were demated on July 17, 2012. The said shares were sold in two tranches: 15,000 on June 21, 2012 and 1,000 shares on July 25, 2012.
- V. *Noticee* is unaware of the counter party sellers/buyers nor is connected with the *Company* or its Promoters/Directors.
- VI. The alleged connection based on the off-market transfer is merely co-incidental as the shares purchased by the broker were belonging to another *Noticee*.
22. Mr. Sanjeev Kumar Kedia (*Noticee no. 30*) vide his letter dated December 12, 2020 has filed his reply to the SCN in which the following are his main contentions:
- I. The SCN has made baseless, bald and sweeping allegations. The SCN does not specifically mentions as to how his two trades have violated the provisions of PFUTP Regulations. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *Gorkha Securities Services Vs. Govt. of (NCT of Delhi)* [(2014) 9 SCC 105]; *Commissioner of Central Excise, Bangalore Vs. M/s Brindavan Beverages (P) Ltd. and ors.* [Civil Appeal no. 3417 of 2002]; and *Nandkishore Prasad Vs. State of Bihar* [(1978) 3 SCC 366] etc.
- II. Only selective data/documents have been furnished along with the SCN and copy of investigation report has not been provided. Reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *SEBI Vs. Price Waterhouse* (Civil Appeal no. 6003-6004/2012) to buttress the said submission.
- III. All the trades of the *Notices* were executed on the market platform and orders were matched by anonymous order driven trading system based on price time priority.
- IV. As 8 years have passed since the transactions were executed, its beyond remembrance to recollect the exact details regarding the trades.
- V. The *Noticee* has sold 34400 shares on only two days and such sale constituted 0.18% of the total volume, which is miniscule as compared to the total volume of trading.

- VI. The said 34400 shares were purchased by the *Noticee* before the investigation period. Out of the said number of shares, 33000 shares were purchased from the market on April 02, 2011 through M/s Vijay Bhagwan Dass & Co., a stock broker. A contract note was also issued by the said broker, copy of which has been filed in support. The said broker had retained the said shares in the running account, as per the prevalent market practice and they were transferred to the demat account of the *Noticee* later on. The said receipt of shares was certainly an off-market transfer however it cannot be alleged to anything other than member-constituent relation.
- VII. The trades of the *Noticee* have not generated substantial volume nor created new price of the scrip so as to show any kind of manipulation.
- VIII. The highest price of the scrip went upto INR 182, however, the *Noticee* has sold the shares at an average price of INR 62 only.
- IX. Any matching of trades with other entity is coincidental.
- X. No off market transaction has been executed with the *Noticee no. 4* as alleged. The shares were received by the *Noticee* in capacity of constituent of the broker.
- XI. No prior meeting of minds has been established in the SCN nor any such evidence is available. In order to establish charges of fraud, collusion of parties to the trade is necessary. Reliance has been placed on the orders passed by the Hon'ble SAT in the matters of *Jagruti Securities Vs. SEBI (Appeal no. 184/2008)* and *Sanjay Agarwal Vs. SEBI (date of decision: May 18, 2012)*
- XII. Adverse inference has been drawn based on erroneous assumptions and SCN fails to make even a *prima facie* case.
- XIII. The trades of the *Notices* cannot be termed as artificial as all obligations arising thereto like delivery etc., have been complied with. No loss to any of the investor of securities market has been caused by the alleged trades. The ingredients of a non-genuine transaction in securities, as laid down in the judgment of the Hon'ble Supreme Court in the matter of *Rakhi Trading Private Limited Vs. SEBI* are not present in the facts of the present case.
- XIV. It is not mandatory to impose monetary penalty even if violation has been established and if the violation is found to be unintentional, minor, the authority may not impose

penalty for justifiable reasons. To buttress the said submissions, reliance has been placed on judgments of: (i) *Superintendent and Remembrancer Legal Affairs to Government of West Bengal Vs. Abani Maity* [(1979) 4 SCC 85] and (ii) *SEBI Vs. Cobot International Capital Corporation Limited* [(2004) 51 SCL 307 (BOM)].

23. Before advertng to the facts of the case, it is apposite to refer to the relevant provisions of law, which are reproduced hereunder for ready reference:

SEBI Act, 1992

Power to adjudicate.

15- I (3): *The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:*

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

“Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- (a) *buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made 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;*

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(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;

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

24. Before I proceed to examine the matter on merit, I find it necessary to recapitulate the crucial facts that have necessitated the initiation of the instant proceedings. In this respect, having gone through the records, it is observed that pursuant to an investigation conducted by SEBI regarding the trading activities in the scrip of Finalysis, an adjudication proceeding was initiated against the 42 entities, *inter-alia*, alleging that they were responsible for the creation of artificial volume in the scrip by combination of their off market and on market trades. It was further alleged that the entities were enjoying connections in terms of KYC connections and off-market share transactions, and were part of large group of entities, allegedly involved in the fraudulent trading activities in the scrip of FCGCL. During the proceedings, it was alleged that all the 42 entities including the present *Noticees* have collectively traded amongst themselves and have created artificial volume of 39,14,301 shares constituting 23.14% of the total market volume through a combination of off-market and on-market transactions in the scrip, during the investigation period, and, therefore, have violated the stated provisions of the PFUTP Regulations. The Adjudicating Officer having heard the entities, has found them guilty of the violations alleged in the show cause notice. However, while imposing penalty, the AO preferred to impose penalty only upon the 12 entities and allowed the remaining 30 entities to be let off without any penalty. Further, the AO has premised its decision on a threshold criteria of contribution of 1.78 % or less per entity to the artificial trading volume in the scrip of the *Company* during the relevant period and has considered those entities for imposition of

monetary penalty whose contribution to the artificial trading volume in the scrip was more than 1.78% of the total volume.

25. In the appeals preferred by some of the entities on whom monetary penalty was imposed, the Hon'ble Tribunal, after hearing the counsels for the parties has set aside the order passed by the AO. While allowing the appeals, the Hon'ble Tribunal has observed that given the magnitude of artificial trading in the scrip, including the off-market transactions done by a few entities, the issues involved in the matter are serious and need a thorough examination, hence, the Hon'ble SAT remanded the matter to the file of the AO. Subsequent to the remand as pointed out above, the AO has disposed of the matter vide its order dated September 03, 2020, wherein again, it has affirmed its earlier position. On the issue of joint and several liabilities, the AO has referred and relied upon two decisions passed by the Hon'ble Tribunal to justify its decision for fastening of joint and several liabilities on 12 entities. However, with respect to its decision to leave out the rest 30 entities, no new justifications have been furnished in the said order dated September 03, 2020, citing any specific reasons for keeping them out of purview of monetary penalties. It is against this order and the aforesaid background, the present proceedings have been initiated asking the 30 *Notices* herein to explain as to why penalty under Section 15 HA of SEBI Act, 1992 should not be imposed on them, while exercising power under Section 15-I (3) of the SEBI Act, 1992.

26. Having heard the parties and having perused the records including the replies filed on their behalf, I am of the view that the present proceeding is a fit case for exercise of power vested under Section 15-I (3) of the SEBI Act, 1992 as the AO has committed error in law while not imposing the penalty even after holding the entities guilty of the violations of PFUTP Regulations as alleged against them. The said finding of the Adjudicating Authority is not only contrary to the findings held in the matter of *SEBI Vs Shriram Mutual Fund [(2006) 68 SCL 216]*, but also is extraneous to the power vested on the Adjudicating Authority. The decision of the AO for not imposing any penalty on those entities despite having held them guilty of contributing to the trading volume of the scrip of the *Company* by way of manipulative trades, and letting them off on the ground of contributing less than 1.78 % of the artificial volume by each of such entities can't be held to be justified as a rightful exercise of power vested by the Adjudicating Authority. It is noted that after completion of investigation in this matter, SEBI has issued administrative warnings even to those entities who have contributed less than 0.75% in the artificial volume of the scrip. However, the AO in her own wisdom

deemed it proper to let off without any penal action to all those entities who have contributed to the artificial trading volumes of the scrip even more than 0.75% upto 1.78% of the total volume in the scrip, for no justifiable reasons. Considering the above anomaly in the AO's order, i.e., holding a person guilty of violation of various provisions of law but not imposing any monetary penalty on him/her and again, exercising certain power that is not vested with the Adjudicating Authority while letting off entities found to have contributed less than 1.78 % to artificial volume in the scrip of the *Company*, can't be by any stretch of justification held as a legally tenable exercise of power and such an order is liable to be termed as erroneous and detrimental to the interest of securities market.

27. Notwithstanding the above, I am of the considered view that given the facts peculiar to the matter, the instant proceedings deserve to be disposed of without any directions *inter alia* on the following grounds:

- A. I note that a contention has been made by the *Notices* assailing the initiation and continuation of the instant proceedings on the ground that since no appeal was preferred by the *Notices* (as no penalty was levied on them in the order dated May 22, 2019); the remand of the proceedings by the Hon'ble SAT was not applicable *qua* the *Notices*. In this regard, I observe that the general rule is that a matter is remanded only *qua* the persons who have approached the appellate authority. Since, there were no reasons for these *Notices* to approach the Hon'ble Tribunal, there were no occasions for the Hon'ble Tribunal to have heard these parties concerned, hence, there was no occasion for the Hon'ble SAT to remand the entire proceedings, including *qua* the parties who had not even appealed against the order dated May 22, 2019.
- B. In this respect, it is worthwhile to note that even though the *Notices* have not assailed the order dated May 22, 2019 before the Hon'ble Tribunal nor were they present before the Hon'ble Tribunal in any other capacity, the Hon'ble Tribunal has still made the following observation: "*Further, we do not find any logic in adopting the cut off of 1.78% of the artificial volume in deciding to let off people who traded below that level without even a warning and in imposing a monetary penalty on entities who traded even slightly above that level.*"
- C. The aforesaid observations made by the Hon'ble SAT with respect to the decision of the AO *qua* the non-Appellants (*Notices* herein) indicate that the AO's order was remanded back by the Hon'ble SAT in its totality. However, the aforesaid inference and conclusion stand overruled when one considers the fact that the Hon'ble Tribunal passed its order

dated January 20, 2021 while disposing of the appeal filed by Mr. Sagar Kadam, wherein the Hon'ble Tribunal has held the following: *"Having heard the learned counsel for the parties, we find that the controversy involved in the present case is squarely covered by the judgment of this Tribunal in the case of Jigna Vipul Vora vs. SEBI and other connected appeals (Appeal No. 93 of 2020 decided on March 4, 2020). In view of the aforesaid, the impugned order in so far as it relates to the appellant cannot be sustained and is quashed."*

D. It is also noted that the above order dated January 20, 2021 of the Hon'ble Tribunal was passed subsequent to the passing of the Adjudication order dated September 03, 2020, which was passed in compliance with the directions of the Hon'ble Tribunal. In this regard, it is brought to my notice that the facts of passing of a subsequent Adjudication order dated September 03, 2020 in compliance with the earlier order dated March 04, 2020 of the Hon'ble Tribunal was specifically brought through an affidavit, to the notice of the Hon'ble Tribunal. Under the circumstances, I am constrained to observe that when no appeal has been directed against the above order dated January 20, 2021 of the Hon'ble Tribunal, it can be stated that the remand was specific to the persons who appealed against the AO's order and not in its entirety and therefore, I find merit in the contention that the instant proceedings against the *Notices* would not be sustainable.

28. It has also been contended that the instant proceedings are not maintainable as the same have been initiated beyond the period of limitation provided under Section 15- I (3) of the SEBI Act, 1992. To buttress the above contention, it has been vehemently argued that the order dated September 03, 2020 does not differ from the previous order dated May 22, 2019 either in facts, evidence, or findings *qua* the *Notices* herein and in all material aspects, both the orders carry identical observations. Since, no decision to exercise the powers under Section 15- I (3) of the SEBI Act, 1992 for the said earlier order dated May 22, 2019 was taken, the decision for initiating proceedings under Section 15-I (3) with respect to the subsequent order dated September 03, 2020 is prohibited, as the same has not been initiated within the period provided under the relevant provision of law. It has been vehemently submitted that if the first order dated May 22, 2019 was not erroneous and detrimental to the interest of the securities market, the subsequent and identical order dated September 03, 2020 cannot be alleged to erroneous. The subsequent order dated September 03, 2020 was passed only in compliance with the directions of the Hon'ble SAT, and that order does not give rise to any new facts or grounds, which were not available at the time of the previous order dated May 22, 2019.

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Hence, the instant proceedings can't be initiated under the garb of a remand order of the Hon'ble Tribunal, as it does give rise to any new or fresh cause of action so as to justify the initiation of the instant proceedings thereby giving it a fresh lease of life of limitation. In this respect, I am of the view that undisputedly, the two orders i.e. dated May 22, 2019 and September 03, 2020 are similar in content and substance and there is also no quarrel to the fact that no proceedings were initiated against the first order, i.e., May 22, 2019 (wherein the AO had erroneously let off the *Notices* from the purview of monetary penalty), even though the same was equally erroneous and detrimental to the interest of Securities Market. I also find merit in the submission that the subsequent order was passed in compliance of the order dated March 04, 2020 of the Hon'ble Tribunal and considering the admitted position that no proceedings under Section 15-I (3) of SEBI Act, 1992 were initiated against the first order dated May 22, 2019, it would not be right to grant a fresh life of limitation on the basis of the subsequent order dated September 03, 2020 and hold the instant proceedings as justified, barely on that count.

29. The *Notices* have also assailed the instant proceedings by submitting that pursuant to the remand order dated March 04, 2020, the Adjudicating Authority has passed the subsequent order without even issuing any notice of hearing to the *Notices* or granting any opportunity to them to make submission so as to address the concerns raised by the Hon'ble Tribunal. It has been submitted that the subsequent order has not deviated from its earlier findings *qua* the *Notices*, therefore, in essence, no patent difference exists between the two orders. Based on the said factual aspects, it has been argued that there does not appear any justifiable reason to invoke Section 15-I (3) with respect to the order dated September 03, 2020, when no such proceedings were initiated by SEBI with respect to the earlier order dated May 22, 2019 which apparently suffered from same deficiencies as noted by SEBI in the subsequent order. It has been contended that even presuming that the directions of remand passed by the Hon'ble SAT vide its order dated March 04, 2020 were also applicable to the present *Notices*, some 'new aspects' in the order dated September 03, 2020 which were not part of the earlier order dated May 22, 2019, ought to have been brought on record to justify the initiation of the instant proceedings. The said distinguishing aspect/new facts/findings/evidence, which were not present in the earlier order, is essential before alleging that the order dated September 03, 2020 is erroneous or not in the interests of the securities market. Therefore, in absence of any such new aspect or new facts/grounds and in view of the fact that no proceedings under Section 15-I (3) were initiated with respect to the order dated May 22, 2019, SEBI is estopped from

alleging/terming the order dated September 03, 2020 as erroneous, in so far as the *Notices* are concerned.

30. Having carefully considered the submissions of the *Notices* as recorded above, I observe that there is no factual dispute to the arguments that have been canvassed by the *Notices*. As noted above, no proceedings under Section 15-I (3) were initiated after passing of the order dated May 22, 2019 and the subsequent order dated September 03, 2020 which is the fallout of the order passed by the Hon'ble SAT, is also not distinguishable in facts from the earlier order of the AO with respect to the findings *qua* the *Notices*. Under the facts of the matter, I find merit in the submission that the Hon'ble Tribunal has remanded the matter with a specific objective by recording that in the light of the contention of the Appellants therein that all of them are not connected to each other or even known to each other, a joint and several liability of penalty also needs to be relooked given the practical problem to implement the order of monetary penalty imposed by the AO. However, the Adjudicating Authority in its subsequent order has not only failed to give due consideration to this aspect but repeated its earlier findings in the said subsequent order as well. The above, at the most could be viewed as non-adherence to the order of the Hon'ble Tribunal, however, the same can't be a ground for invocation of proceedings under Section 15-I (3) of the SEBI Act, 1992.

31. I observe that the arguments of the *Notices* have a persuasive value. After considering the above mentioned factors where, none of the *Notices* herein was in appeal before the Hon'ble Tribunal against the order dated May 22, 2019, the order of the Hon'ble Tribunal dated January 20, 2021, whereby the appeal was disposed of directing the AO to pass a fresh order after holding that the order of AO does not sustain *qua* the appellant therein, despite the fact that subsequent order of AO dated September 03, 2020 was already issued by that time, and the fact that no appeal had been preferred by any of the parties before the Hon'ble Supreme Court of India against the Hon'ble Tribunal's orders dated March 04, 2020 and January 20, 2021 and the fact that no proceedings under Section 15-I (3) were invoked against the order dated May 22, 2019, I observe that considering the totality of the peculiar facts of the present matter, it would be sufficient and the ends of justice would be met if the present proceedings are disposed of without any further directions *qua* the *Notices*. Under the circumstances, I am constrained to dispose of the instant proceedings as not being maintainable for the reasons and facts specific to the matter as stated above. Accordingly, even though the issues raised under the instant proceedings qualify invocation of powers under

Section 15-I (3) of the SEBI Act, however, for the reasons stated above, the proceedings emanating from the SCN dated October 01, 2020 against the *Notices* deserve to be disposed of without any directions.

-Sd-

DATE: MAY 27TH, 2022

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Order in the matter of Finalysis Credit and Guarantee Company Limited