BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AK/BS/2022-23/21606-21607)

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

1	**Shanta Rathi** (PAN- AEGPR1136Q) House No. 3-5-6/A, Ramkote, Hyderabad – 500 001.
2	**Biradar Khande Rao** (PAN- AMPPB3934M) 14-1-346/C, Mangalhat, Seetharampet, Hyderabad – 500 012.

IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had carried out investigation in the scrip of Sawaca Business Machines Limited (hereinafter referred to as **"Sawaca/ SBML/ the Company"),** to ascertain violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and Securities and Exchange Board of (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations")**, if any, in the trading in the scrip of SBML during the period January 05, 2012 – May 09, 2017 (hereinafter referred to as **'Investigation period or IP'**)

2. It was observed that Shanta Rathi **(Noticee No. 1)** and Biradar Khande Rao **(Noticee No. 2)**, (hereinafter, Noticees No. 1 and 2 shall be collectively referred to as "**Noticees**") allegedly violated Section 12A (a), (b) and (c) of SEBI Act r/w

Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) and (e) of PFUTP Regulations in the matter of SBML.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the violation of provisions of the SEBI Act and PFUTP Regulations by the Noticees, SEBI, in exercise of powers u/s 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), r/w section 19 of the SEBI Act appointed Ms. Geetha G., as the Adjudicating Officer **(**hereinafter referred to as the "**AO"),** vide order dated April 25, 2022, to inquire into and adjudge u/s 15-I r/w section 15 HA of SEBI Act, the alleged violation of Section 12A(a),(b), (c) of SEBI Act r/w Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations by the Noticees. Pursuant to transfer of Ms. Geetha G, SEBI appointed undersigned as AO, vide order dated August 29, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (SCN) ref. no. EAD-6/AK/BS/48781, 48790/1/2022 dated September 16, 2022 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, 1995 r/w Section 15-I of SEBI Act, requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under the provision of Section 15 HA of SEBI Act for the alleged violations. I note that SCN was issued to the Noticees, vide Speed Post Acknowledgement Due (SPAD). I note that SCN was delivered to Noticee No. 1, however the SCN issued to Noticee No. 2 returned undelivered. Hence, the SCN was sent to Noticee No. 2 through his stock Broker and was delivered to Noticee No. 2.

5. Upon non-receipt of any reply from the Noticees, vide Hearing Notice dated October 03, 2022, Noticees were granted an opportunity of hearing on October 12, 2022. I note that the hearing notice was delivered to Noticee No. 1 by SPAD and to family member of Noticee no. 2, through his stock broker. The Noticees were given an option to appear personally or through online meeting. However, the Noticees did not avail the opportunity of hearing. Another opportunity of hearing was granted to Noticees, vide Hearing Notice dated October 12, 2022 and Noticees were granted an opportunity of hearing on October 19, 2022. I note that the hearing notice was duly received by the Noticee No. 1 by email and Noticee No. 2, through his stock broker. However, the Noticees neither requested for adjournment nor availed the opportunity of hearing.

6. In view of the above, I proceed to conclude the proceedings ex-parte.

7. The allegations levelled against Noticees in the SCN is that during the IP, Noticees had indulged in an act to create misleading appearance of trading in the scrip of SBML and contributed to price manipulation in the scrip of SBML.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether Noticees have violated provisions of section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (a) and (e) of PFUTP Regulations?

   II. If yes, whether the violations, if any, attract monetary penalty u/s 15HA of the SEBI Act?

III. If so, what should be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

Issue I. Whether Noticees have violated provisions of section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (a) and (e) of PFUTP Regulations?

9. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

SEBI Act

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

Section 12A. No person shall directly or indirectly—

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

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

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

PFUTP REGULATIONS

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: —

(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. I have perused the available records in respect of the allegations made in the SCN and note from the UCC data that Noticees are connected to each other on the basis of mobile number 9391093870. I note the following with respect to the trades carried out by the Noticees;

10.1 During the Investigation, inter alia, Last Traded Price (LTP) analysis was carried out for the IP in six patches, where significant price movement was observed;

a) Patch1(Period Starting from January 05, 2012 to September 25, 2012)

b) Patch 2 (Period Starting from September 26, 2012 till May 15, 2013)

c) Patch 3 (Period Starting from May 16, 2013 till February 20, 2014)

d) Patch 4(Period Starting from February 21, 2014 till January 20, 2015)

e) Patch 5 (Period Starting from January 21, 2015 till May 05, 2015)

f) Patch 6 (Period Starting from May 06, 2015 till May 09, 2017)

10.2 I note that during Patch 3 i.e. Period (Period Starting from May 16, 2013 till February 20, 2014), the Noticees were the top two contributors to the increase in LTP as buyers, as given hereunder;

PAN No	**Client Name**	**All trades**			**LTP Diff. >0**			**LTP Diff. < 0**			**LTP Diff. =0**		**% of pos. LTP to Total Market Pos. LTP**
		Sum of LTP Diff (Net LTP)	**Traded Qty.**	**No of Trades**	**Sum of LTP Diff**	**Traded Qty.**	**No of Trades**	**Sum of LTP Diff**	**Traded Qty.**	**No of Trades**	**Traded Qty.**	**No of Trades**	
AEGPR1136Q	Shanta Rathi	52.10	30815	274	60.70	4261	62	-8.60	881	16	25673	196	21.91%

PAN No	Client Name	All trades			LTP Diff. >0			LTP Diff. < 0			LTP Diff. =0		% of pos. LTP to Total Market Pos. LTP
		Sum of LTP Diff (Net LTP)	Traded Qty.	No of Trades	Sum of LTP Diff	Traded Qty.	No of Trades	Sum of LTP Diff	Traded Qty.	No of Trades	Traded Qty.	No of Trades	
AMPPB3934M	Biradar Khande Rao	14.05	9416	27	14.05	2903	16	0.00	0	0	6513	11	5.07%
Market Total		**57.20**	**5036177**	**13542**	**277.05**	**142165**	**630**	**-219.85**	**168422**	**579**	**4725590**	**12333**	**100.00%**

10.3 The Noticee no. 1 was the top LTP contributor with contribution of Rs.52.10 to net LTP and Rs.60.70 to total market positive LTP.

10.4 Noticee no. 2 was observed to be trading through member HSE Securities Limited (HSESL) had bought 9,416 shares of Sawaca at value of Rs.2,55,932.75 and sold 9,416 shares of Sawaca at a value of Rs.4,62,678. Noticee no. 2 earned a profit of Rs.2,06,745.

10.5 Noticee no. 1 traded through member PCS Securities Limited (PCSSL) and bought 30,815 shares of Sawaca at value of Rs.9,65,270.55 and sold 29,929 shares of Sawaca at a value of Rs.9,94,213.40. Noticee no. 1 squared of 97.13% of shares bought and earned a profit of Rs.56, 697.

10.6 There were 68 unique sell counterparties to the buy trade of the Noticee No. 1. There were 14 trades between Noticee No. 1 and Counterparty seller Noticee No. 2. Of these 14 trades there were 8 trades which contributed a positive LTP and these trades contributed a Positive LTP of Rs.13.15 (constituting 4.74% of market positive LTP). The remaining trades had no LTP contribution.

10.7 There were 3 self-trades by Noticee No. 1 resulted in contributing positive LTP of Rs.5.75 (constituting 2.08% of market positive LTP). Cumulatively

Noticee No. 1 allegedly artificially inflated the price of the scrip SBML through self-trades as well as trades with connected counterparty Noticee No. 2 and contributed to positive LTP of Rs.18.90 (constituting 6.82% of market positive LTP).

10.8 I also note that there were 15 unique sell counterparties to the buy trades of the Noticee No. 2 and out of the top 10 counterparties/sellers to the buy trades of Noticee No. 2 in the scrip of SBML, Noticee No. 1 was one of the counterparty.

10.9 I note that out of the total 27 buy trades executed by Noticee No. 2 in Patch 3, 9 trades were executed between Noticee No. 2 & Noticee No. 1 (the Counterparty Seller) (constituting 33.33% of Noticee No. 2's buy trades). Out of these 9 trades, there were 7 trades which contributed a positive LTP and these trades contributed a Positive LTP of Rs.7.70 (constituting 2.78% of market positive LTP). The remaining trades had no LTP contribution.

10.10 On the basis of the above, it was alleged that Noticees by trading in the aforesaid manner generated a positive LTP of Rs.26.60 which is 9.60% of total market LTP. Cumulatively the Noticees earned a combined profit of Rs.2,63,442 (i.e. an amount of Rs.56,697/- only earned as Profit by Noticee No. 1 and an amount of Rs.2,06,745/- only earned as Profit by Noticee No. 2 respectively) out of their transaction at BSE during the Patch 3. I note that the trade details of the Noticees were also sent to the Noticees alongwith the SCN.

11. The trading pattern of Noticees indicated preponderance of probability of meeting of minds between the buyers and sellers and their intention to trade exclusively between themselves without intending to change the ownership of the shares thereby creating artificial volume and increase the price of the scrip of SBML.

12. Although sufficient opportunities were given to the Noticees, they failed to respond to the SCN and Hearing Notices. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of Sanjay Kumar Tayal Vs. SEBI (Appeal No. 68 of 2013 Order dated February 11, 2014), regarding the significance of filing the reply to the SCN, in which it stated that

> *"appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices."*

13. From the foregoing paragraphs, it is conclusively established that Noticee No.1- Shanta Rathi and Noticee No. 2- Biradar Khande Rao indulged in act to create misleading appearance of trading in the scrip of SBML and contributed to price manipulation in the scrip of SBML and have violated provisions of section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (a) and (e) of PFUTP Regulations.

Issue IV. If yes, whether the violations, if any, attract monetary penalty u/s 15HA of the SEBI Act?

14. Before moving forward, it is pertinent to refer to the relevant provisions under which penalty is attracted. The said provisions are provided hereunder:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA.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.

15. Since it has been established that Noticee No. 1 and Noticee No. 2 have violated Section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (a) and (e) of PFUTP Regulations, the Noticees are liable for monetary penalty u/s 15HA of SEBI Act.

Issue IV. If so, 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 r/w Rule 5(2) of the Adjudication Rules?

16. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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.

17. The act of Noticees is serious in nature, as their trades do not reflect the true picture of forces of supply and demand and give a false impression with respect to market liquidity. It is on account of such trades, resulting in artificial volumes, that the lay investors may get trapped and effects the integrity of securities market. This sort of activity is, therefore, rightly considered to be illegal and justifiably so and hence a reasonable penalty must be imposed in order to check repetition of such activities.

18. I note from the available records that Noticee No. 1 earned an amount of Rs.56,697/- as Profit and Noticee No. 2 earned an amount of Rs.2,06,745/- as

Profit. However, the records do not specify the specific loss suffered by the investors due to such violations.

19. I note that the Noticees by executing fraudulent trades, created artificial volumes and manipulated the price of the SBML scrip, thereby sending wrong signal to the lay investors about trading in the scrip. Further, such trades invariably often interfere with the integrity of securities market, even though miniscule in quantity. Therefore, taking into consideration the facts/ circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

20. Considering all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees;

Name of the Noticee	**Provisions Violated**	**Penalty u/s of SEBI Act**	**Penalty**
Shanta Rathi (PAN- AEGPR1136Q)	Section 12A(a),(b),(c) of SEBI Act r/w Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations.	Section 15HA of the SEBI Act	Rs. 5,00,000/- (Indian Rupees Five Lakhs Only)
Biradar Khande Rao (PAN- AMPPB3934M)			Rs. 7,00,000/- (Indian Rupees Seven Lakhs Only)

I find that the said penalty is commensurate with the violations committed by the Noticees in this case.

21. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

22. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department-1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” The Noticees shall also provide the following details while forwarding DD / payment information:

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	Penalty

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai	**AMIT KAPOOR**
Date: November 29, 2022	**ADJUDICATING OFFICER**