BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2022-23/18249-18252]

UNDER SECTION 15-I OF THE 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

Sl. No.	Name of entity	PAN
1	Anita Shyam Mhatre	AKUPM1426A
2	Sanjay Parekh	AAXPP0305J
3	Rakesh Shah	AAZPS7610P
4	Anugrah Stock & Broking Pvt. Ltd.	AAACW2920N

In the matter of "front running by Anita Shyam Mhatre"

(the aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "the Noticees")

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '***SEBI***') had initiated investigation into the trading activity of Anita Shyam Mhatre, during the period of October 1, 2008 to November 30, 2008 (hereinafter referred to as "***the Investigation Period / IP***"), so as to ascertain violation of provisions of Securities and Exchange Board of India Act (hereinafter referred to as "***the SEBI Act, 1992***") and Securities and Exchange Board of

India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "***the PFUTP Regulations***").

2. The said investigation revealed that Anita Shyam Mhatre (hereinafter referred to as ***Notice No. 1/ASM***) allowed her dealer Sanjay Parekh (hereinafter referred to as ***Notice No. 2/Sanjay***) to trade/do front running in her client account maintained with Anugrah Stock & Broking Pvt. Ltd. (hereinafter referred to as ***Noticee No. 4/Anugrah***) based on the information received from Rakesh Shah (hereinafter referred to as ***Notice No. 3/Rakesh***) who was the employee of Reliance Capital Mutual Fund (hereinafter referred to as ***RCMF***).

3. SEBI had, therefore, initiated adjudication proceedings in the captioned matter:

a) under Section 15HA of SEBI Act, against Noticee No. 1, 2 and 3 for the alleged violations of provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and

b) under Section 15HB of SEBI Act, against Noticee No.4 for the alleged violations of provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as ***'Broker Regulations'***).

APPOINTMENT OF THE ADJUDICATING OFFICER

4. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "***AO***") under Section 15I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '***Adjudication Rules***') vide

order dated May 17, 2019 to inquire into and adjudge under section 15HA and 15HB of the SEBI Act, as applicable, for the aforesaid alleged violations against the Noticees as specified in the SCN.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD-4/ADJ/GR/AE/OW/26249/1-4/2019 dated October 04, 2019 (hereinafter referred to as the "***SCN***") was served upon the Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under the provisions of Section 15HA and 15HB of SEBI Act, 1992, for the alleged violations of provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Broker Regulations, as applicable.

6. The findings and allegations levelled against the Noticees in the SCN are summarized as below:

   a) From the integrated trade/order log obtained from NSE, it was observed that ASM (Noticee No. 1) had traded in a total of 86 scrip days (days during the investigation period in which a particular scrip has been traded by Noticee No. 1) during the investigation period. Out of the aforesaid 86 scrip days, 64 scrip days were common with another entity, namely, RCMF. Out of the said 64 common scrip days between ASM and RCMF, there were 26 scrip days where front-running pattern through a BB (buy) or SS (sale) pattern was observed. BB pattern refers to the trading pattern where ASM's Buy order/ trade on a particular scrip day was placed/executed ahead of RCMF's buy order/trade on that scrip day. Similarly, SS pattern refers to ASM's Sell order/trade on a particular scrip day was placed/executed ahead of RCMF's sell order/trade on that particular scrip day. The total profit made by ASM during the investigation period on NSE was Rs.7,38,143.80.

b) Similarly, from the integrated trade/order log obtained from BSE, it was observed that Noticee No. 1 had traded in a total of 127 scrip days during the investigation period, out of which, 60 scrip days were common with RCMF. Out of the said 60 common scrip days, there were 26 scrip days where front-running pattern through a BB or SS pattern was observed and Noticee No. 1 had reversed her position on all those scrip days. The total profit made by ASM during the investigation period was Rs.1,48,805.65

c) In view of the above, it was alleged that Noticee No. 1 had front-run the trades of RCMF during the Investigation Period in NSE as well as in BSE.

d) It was further observed from ASM's statement to SEBI that she allowed Sanjay (Noticee no. 2), her dealer, to operate her client account with Anugrah (Noticee No. 4) and deal in it based on the information received from his friend i.e. Noticee No. 3.

e) Further, Reliance Capital Asset Management Ltd., (**RCAML**), the Asset Management Company of RCMF, vide its letter dated July 23, 2009, made a *suo-moto* admission to SEBI about the conduct of Rakesh Shah (Noticee No. 3), one of their employee. It was stated in the said letter that he had violated his 'Employee Security Dealing Policy' and that they have suspended him with immediate effect.

f) Based on the aforesaid observations, it was alleged that Noticee No. 1 indulged in unfair trade practice in securities by permitting Noticee No. 2 to operate her trading account and front run the trades of RCMF based on the information received from Noticee No. 3. It was further alleged that Noticee No.2 indulged in unfair trade practice in securities by misusing his position as a dealer of Noticee No.4 and front-running the trades of RCMF based on information received from Noticee No.3. Further, it was alleged that Noticee No. 3 indulged in unfair trade practice in securities by misusing his official position as a dealer of a Mutual Fund and passing of the information to Noticee No.2 for trading based on the same. It was also alleged that Noticee No.4 did not have adequate internal controls for execution of trades by dealers and failed to exercise due skill, care and diligence in the conduct of its business.

g) The aforesaid acts on the part of the Noticee No. 1, 2 and 3 have been alleged in the SCN to be in violation of the provisions of Section 12 A of SEBI Act, 1992 and Regulation 3 and 4 (1) of the PFUTP Regulations and the acts on part of Noticee No. 4 have been alleged to be in violation of the provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Broker Regulations.

7. I note from the available records that the SCN was served upon all the Noticees through Speed Post Acknowledgement Due (SPAD). The date of the replies to the SCN made by the Noticees are as below:

Noticee No.	**Date of replies**
Noticee No. 1	October 15, 2019
Noticee No. 2	October 15, 2019
Noticee No. 3	October 15, 2019 February 05, 2020
Noticee No. 4	November 26, 2019 February 03, 2020

8. Subsequently, Noticee No. 1, 2 and 3 filed settlement application with SEBI in the matter on January 14, 2021. SEBI rejected the said settlement application on March 22, 2021.

9. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, vide hearing notice dated March 24, 2021, all the Noticees were granted an opportunity of personal hearing on April 20, 2021. However, because of the then prevailing circumstances owing to Covid-19 pandemic and the lockdown announced by the Government, the said hearing was postponed. Thereafter, vide hearing notice dated April 18, 2022, another opportunity of personal hearing was granted to all the Noticees on April 29, 2022. Except Noticee No. 4, hearing notice was served to all the other Noticees. Submissions were made by Noticee No. 1, 2 and 3 vide mails dated April 28, 2022. The common Authorized Representative of Noticee No. 1, 2 and 3 appeared in the said hearing on behalf of all three of them. Subsequently, Noticee No. 1 and 2 made post hearing submissions vide email dated May 09, 2022 and Noticee No. 3 vide mail dated May 06, 2022.

10. **The summary of the replies submitted by Noticee 1, 2 and 3 are as under:**

Common replies of Noticee 1, 2 and 3:

a) The alleged trades in question are of the year 2008 and the SCN has been issued in the year 2019, therefore that has been an unexplainable and fatal delay of 11 years. It is clear that the said matter suffers from extreme delay and laches and on this ground alone, the present SCN is liable to be disposed of as it causes great prejudice to the Noticee.

b) Inspection of certain documents requested as well as the opportunity of cross examination of the other Noticees and of Reliance Capital Mutual Fund as well as any other person/entity whose statements has been recorded in this matter or evidence given by them have been relied upon/or forms a part of the record has not been granted to the Noticee in violation of the principles of Natural Justice.

c) The decision rejecting request for inspection has not been communicated by Quasi-Judicial Authority but by a subordinate officer. The decision on whether inspection should be given or not is a Quasi-Judicial decision and cannot be taken by anyone else apart from the Quasi-Judicial Authority.

d) SEBI has not provided the rationale for not initiating any action against of Reliance Capital Mutual Fund or AMC in the matter.

Reply of Noticee No. 1:

e) In support of the allegation of front running the trades of RCMF, the SCN relies on the statement made by the Noticee before the Investigating Authorities admitting to the allegation. However, the same was done under coercion of RCMF and the Investigating Authority. The said statement has been subsequently retracted by the Noticee vide Affidavit dated December 12, 2018.

f) The Noticee states that as per the trade log there are many instances where Reliance Capital Mutual Fund (RCMF) has traded before the said Noticee. By SEBIs logic it can be said that RCMF has front run her trades. Further, in many instances where RCMF has traded after the Noticee there has been a huge time gap this time. This time gap ranges from a few minutes to a few hours and therefore it cannot be termed to be front running. In front running the person who is doing the front running will never take market exposure for such a long period of time in liquid stocks as several trades happen every minute and the price can easily move due to market forces/factors.

g) The Noticee states that the trades undertaken by her are normal market transactions and anyone can do the same with the help of live market softwares that are readily available. These softwares are capable of identifying institutional activities and are in general public domain. All activity done by the Notices is a part of normal trading and the Noticee cannot be said to have indulged in any fraudulent practises of front running.

Reply of Noticee No. 2:

h) In support of the allegation of front running the trades of RCMF, the SCN relies on the statement made by the Noticee before the Investigating Authorities admitting to the allegation. However, Noticee No. 1 retracted her statement vide Affidavit dated December 12, 2018 stating that her trades were done by her in consultation with her husband and not him and that the earlier statement was given under coercion of RCMF and the Investigating Authority.

i) He is known to Noticee No.1, however knowing is not sufficient to allege the serious allegation of front running. The allegation of front running is not based on any cogent evidence as he has never acted as dealer for the trades of Noticee No.1.

Reply of Noticee No. 3:

j) In support of the allegation of indulging in unfair trade practises in securities by misusing his official position as a dealer of a mutual fund and passing of information to Noticee No.2 for trading based on the same, the SCN relies on the purported letters of RCMF. In respect of the same the Noticee denied existence of any such letter by RCMF.

k) The statement given by the Noticee to the Investigating Authority of SEBI admitting to the allegation was done under coercion of RCMF and the fear of losing his job. The said statement was subsequently retracted by him vide Affidavit dated July 4, 2012.

l) There exists no time gap for all practical purposes between the receipt of the order from the fund manager and the placement of the order with the broker and there is no room in terms of time gap for any fraudulent/malice activity to be concluded.

m) Whenever an order of the fund is carried out in Exchange, there is a sharp and sudden increase in the volumes of those company shares. There are many softwares available which can track this on a real-time basis. So, it's easy to find out, using such softwares, whether some institutional activity in a company has begun.

n) He has no connection whatsoever with either Mr. Sanjay Parekh neither with Ms. Anita Mhatre. The SCN also ASSUMES a connection, and there is no iota of proof or evidence provided therein.

11. **The summary of reply submitted by Noticee No. 4 are as under:**

a) There is no reason for Anugrah to indulge in the alleged front running. Anugrah has made meagre amount of Rs.70999/- (Rs. Seventy Thousand Nine hundred and Ninety Nine only) as total amount of brokerage from the trading activity in cash segment from Ms. Anita Shyam Mhatre in financial year 2008 -2009 while total brokerage of Anugrah for same period in cash segment was more than Rs. 6 Cr. (Rs. Six Crore). Brokerage received form

Ms. Anita Shyam Mhatre in cash segment in financial year 2008 — 2009 was only 0.12% (approx) of total brokerage amount received by Anugrah in cash segment. So there is no reason for a reputed and substantial entity like Anugrah to indulge in allegedly incorrect activities for such a meagre amount of brokerage.

b) There is nothing in the Show Cause Notice to allege or demonstrate that the systems implemented by Anugrah for regulating the trading by its clients was in any manner inadequate or non complaint with requirement prescribed by SEBI or the exchanges.

c) In relation to Ms. Anita Shyam Mhatre, Anugrah had carried out the requisite due diligently by conducting stringent know your client checks and taking requisite details as required under the law. In the present case, given the nature of trading by Ms. Anita Shyam Mhatre, there was no reason to believe any wrong doing on her part.

d) The allegation in question pertain to one of the employee of the Anugrah. The Show Cause Notice do not demonstrate any wrong doing specifically attributed to Anugrah in relation to allegation against Ms. Anita Shyam Mhatre. On the other hand, Anugrah has demonstrated that it has system in place to curb illegal trading.

e) All the payments related to purchase and sale of shares were received and paid on a regular basis. There was no default on part of the client in meeting their payment obligations. There was delivery taken of the shares purchased by the Client and there was no other circumstance or event to arouse suspicion about any trading irregularity by the Client.

12. As the hearing notice to Noticee No. 4 returned undelivered, opportunity of hearing was once again granted to it, vide mail dated May 02, 2022 and again vide mail dated June 28, 2022 on two different mail ids, as available on record. However, both the mails returned undelivered as well. Thereafter, the hearing notice was served to Noticee No.4 by way of affixture at the address available, on June 30, 2022 giving another opportunity of hearing on July 07, 2022. It was also mentioned in the said notice that if it fails to appear for the hearing, then the matter would be decided on the basis of documents available on record. However, it is noted that Noticee No. 4 did not availed the opportunity of personal hearing despite service of notice upon it.

13. In view of the above, I am of the view that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

CONSIDERATION OF ISSUES AND FINDINGS

14. Considering the findings of Investigation, the allegations made out in the SCN and the documents / material available on record, I find that following issues require consideration in the present case:

    (a) Whether Noticee No. 1 to 3 have violated the provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and

    Whether Noticee No. 4 has violated the provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Broker Regulations?

    (b) Does the violation, if any, attract penalty under Section 15HA and 15HB of the SEBI Act, 1992, as applicable?

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

15. Before moving forward, I find it relevant to refer to the above-stated provisions of the SEBI Act, 1992 and the PFUTP Regulations, which have a bearing on the allegations made against the Noticees. These relevant provisions are reproduced hereunder for facility of reference:

SEBI Act, 1992

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

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 recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

SEBI (Stock Brokers and Sub-brokers) Regulations, 1992

SCHEDULE II

Code of Conduct for Stock Brokers [Regulation 9]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

16. Before proceeding to deal with the merits of the case, I wish to settle the following preliminary objections raised to this proceeding by Noticee No. 1 to 3:

a) The alleged trades in question are of the year 2008 and the SCN has been issued in the year 2019, therefore that has been an unexplainable and fatal delay of 11 years.

b) Inspection of certain documents requested as well as the opportunity of cross examination of the other Noticees and of Reliance Capital Mutual Fund as well as any other person/entity whose statements has been recorded in this matter or evidence given by them have been relied upon/or forms a part of the record has not been granted to the Noticee in violation of the principles of Natural Justice. Further, the decision rejecting request for inspection has not been communicated by Quasi-Judicial Authority but by a subordinate officer. The decision on whether inspection should be given or not is a Quasi-Judicial decision and cannot be taken by anyone else apart from the Quasi-Judicial Authority.

17. With regards to the contention of the Noticees regarding delay in the proceeding and that it caused great prejudice to the Noticees, I note that the Noticees at no point of the present proceedings, have demonstrated successfully as to how exactly their interest in defending their case stands prejudiced due to any delay in the matter. SEBI initiated the investigation as soon as information regarding *mala fide* actions came to its notice. Further, under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Further, theses do not prescribe any fixed limitation period for completion of the proceedings. Without prejudice to the above, I note that pursuant to the completion of investigation, SCN has been issued on October 04, 2019. I also note that after service of the SCN on the Noticees, Noticee No. 1, 2 and 3 filed settlement application

with SEBI which subsequently got rejected on March 22, 2021. Soon thereafter, hearing notices ware send to the Noticees on March 24, 2021. However, the proceedings in the present matter have been affected due to spread of Covid-19 Pandemic. Further, I note that the investigation as regards violation of PFUTP Regulations, 2003, is an exhaustive and time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same".*

I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) held that, *"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".*

In view of the above, and considering the facts and circumstances, the contention of the Noticees does not hold any ground for granting discharge from the serious charges as alleged in the SCN, so the contentions of the Noticee in this regard are without merits.

18. Further, with regards to the contention of the Noticees that inspection of certain documents requested as well as the opportunity of cross examination of the other Noticees and of Reliance

Capital Mutual Fund have not been provided, I note that the copies of all the documents relied upon in the SCN to make the allegations, have been duly made available to the Noticees in the form of annexures to the SCN and the Noticees have also duly filed their written replies to the allegations made in the SCN. I further note that, the Noticees have not explained as to how the copies of documents provided to them have caused prejudice to them in defending their interest and contesting the allegations made against in the SCN by producing evidence if any to the contrary. As far as the contention of the Noticees against not providing a copy of the investigation report is concerned, I note that the Noticees having already been provided with all the relevant findings of investigation against them in the body of the SCN itself alongwith supporting annexures, have not been able to explain as to what prejudice has been caused to their interest by not receiving the entire copy of the investigation report. Since the SCN has extracted and incorporated all the findings of the investigation report based on which the charges have been made against the Noticees, it is for the Noticees to examine, analyse and respond or rebut those findings and charges based on the explanations and evidences they have in their possession.

19. Hence, asking for the entire copy of investigation report is entirely irrelevant unless the Noticees specifically show that non-receipt of the said report has caused prejudice to their interest in defending themselves in the present proceedings. Further, as has been held by the Hon'ble Supreme Court in the matter of **SEBI Vs. Monarch Networth** (C.A. no. 282/2014), providing relevant extract of trade logs showing the offending transactions is a sufficient compliance of principles of natural justice. In the present case, the integrated order/trade log containing extracts of the trades have already been served upon on the Noticees. Since all relevant and requisite facts on the basis of which charges have been crystallised against the Noticees are contained in the SCN and Annexures thereto, and no reliance has been placed on any fact

extraneous to the SCN (alongwith Annexure thereto) while levying the charges against the Noticees, I find that principles of natural justice, equity and good conscience have been met with. In view of the above, I do not see any violation of principles of natural justice qua the Noticees in this regard, as contended by the Noticees.

20. As regards the cross-examination of other Noticees is concerned, I note that only the statement recorded from Noticee No. 1 before the investigating officer during the investigation by SEBI has been relied upon in the SCN in respect of the allegations against all the Noticees in the present proceedings. I further note that during the 11B proceedings in the same matter, an opportunity to cross-examine Noticee No. 1 was duly provided to both the other Noticees i.e. Noticee No. 2 and 3. Further, with regards to cross-examination of RCMF, I note that RCMF has not recorded any statement before SEBI stating something against the Noticees which needs to be confronted by the Noticees by cross examining. Further, the copy of the aforementioned letter dated July 23, 2009 of RCMF have already been furnished to the Noticees alongwith the SCN and it is for the Noticees to respond, rebut or explain the contents of the said letter by presenting their own set of facts and evidences and under no circumstances the said letters warrant a cross examination of RCMF or the officials of RCMF.

In view of the above observations, I note that the contention of the Noticees complaining against not being granted opportunities of cross-examination of other Noticees and RCMF is devoid of any merit and does not require any further deliberation.

21. With regards to the contention of the Noticees that the decision rejecting request for inspection and cross-examination has not been communicated by Quasi-Judicial Authority but by a subordinate officer, I note that upon receipt of request of inspection of documents and cross-

examination, mail dated April 29, 2022 was communicated to Noticee No. 1, 2 and 3 by the officer under direction of the undersigned along with a copy to me. This is obvious from the content of the said email which states that:

"Hence, I am directed to inform you that your request for inspection and furnishing of documents and cross-examination has not been accepted by the Ld. Adjudicating Officer (AO)."

Therefore, I found no merit in the aforesaid contentions of the Noticees.

22. Now that all the preliminary objections raised to this proceeding are settled, I would proceed to deal with the merits of the case.

Issue (a): Whether Noticee No. 1 to 3 have violated the provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and

Whether Noticee No. 4 has violated the provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Broker Regulations?

<u>Anita Shyam Mhatre (Noticee No. 1)</u>:

23. As mentioned earlier, Notice No.1 has been allegedly found to have indulged in front running the trades of RCMF on both NSE and BSE on several scrip days. Out of all her trades, the SCN has recorded illustration of her trading in 3 scrips each on the NSE and the BSE, where such a trading pattern of apparent front running has been observed to have been indulged in by Noticee No. 1 and those trades executed by Noticee No. 1 by way of front running have allegedly resulted into Noticee No.1 unlawfully gaining approximately Rs.8.86 Lakh [Rs. 7,38143.80 on NSE and Rs.1,48,805.65 on BSE].

24. The SCN detailed the acts of front running executed by Noticee No. 1 by providing the details of the trades executed by Noticee No. 1 as well as RCMF, the Big Client (BC), whose trades are alleged to have been front run by the Noticee No.1. In order to explain the said allegation, the SCN provides the details of the buy quantity, average buy price, turnover, timing of placement of orders as well as execution of trades, pattern of such trades (Buy-Buy or Sell-Sell) observed in all scrips, quantity of trades that was matched between Noticee No. 1 and RCMF, total gains so made by trading in a particular scrip and the timing during which the trades of the Noticee No.1 matched with RCMF etc.

<u>Trades at NSE</u> :-

25. From the integrated trade/order log obtained from NSE, it was observed that Noticee No. 1 had traded in a total of 86 scrip days during the investigation period. Out of the said 86 scrip days, there were 64 common scrip days with RCMF and out of these 64 common scrip days, front-running pattern were observed in were 26 scrip days through a BB (buy) or SS (sale) pattern. It was further observed that the total profit made by ASM during the investigation period on NSE was Rs.7,38,143.80.

26. Analysis of 2 scrip days out of the aforesaid 26 scrip days, where BB(buy)/SS (sale) pattern was observed, are provided below:

Abbreviations Used -

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

Analysis 1: Scrip Name: Gujarat State Fertilizers & Chemicals Ltd. (GSFCL) (Date: October 31, 2008)

	FR (ASM – Noticee No. 1)				BC (RCMF)			
	Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)		Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)	
	11031	76.07	8,39,131.80		50000	81.11	40,55,971.50	
	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)
From	3:19:16	78.00	3:19:16	75.00	3:19:18	80.00	3:19:18	78.35
To	3:19:16	78.00	3:19:16	78.00	3:19:56	82.00	3:21:54	82.00
	Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)		Pattern observed: BB Matched Qty: 11025 % of matched qty w.r.t BC's trade: 99.95% Gain: Rs. 46348.20 Time: 3:19:32 to 3:20:06			
	11031	80.27	8,85,480.00					
	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)				
From	3:19:32	80.00	3:19:32	80.00				
To	3:20:06	80.00	3:20:06	82.00				

27. From the above, I note the following:

a) A buy trade of 11031 shares of GSFCL was placed by Noticee No.1 at 03:19:16 pm.

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

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

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

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

Analysis 2: Scrip Name: Alok Industries Limited (AIL) (Date: October 15, 2008)

	FR (ASM)				BC (RCMF)			
	Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)		Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)	
	105853	23.35	24,72,286.20		466000	22.45	1,04,62,432.40	
	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)
From	9:58:06	23.45	10:02:14	23.50	10:01:50	23.50	10:01:50	23.75
To	11:20:41	23.25	11:20:41	23.25	3:06:55	21.50	3:06:55	21.50
	Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)		Pattern observed: SS Matched Qty : 98,841 % of matched qty w.r.t BC's trade: 93.38% Gain: Rs. 1,43,520.20 Time: 15:07:04 to 15:07:29			
	105853	22.00	23,28,766					
	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)				
From	11:32:27	22.00	12:12:02	22.00				
To	11:32:27	22.00	12:14:11	22.00				

28. From the above, I note the following:

a) Noticee No. 1 placed sell orders for 1,05,853 shares of Alok Industries Limited on October 15, 2008 between 9:58:06 AM to 11:20:41 AM.

b) RCMF placed sell order in this scrip on the same day between 10:01:50 AM to 3:06:55 PM.

c) Subsequently, Noticee No. 1 placed reversal buy orders for entire 1,05,853 shares on the same day at 11:32:27 AM.

d) Out of buy order of such 1,05,853 shares by Noticee No. 1, a major chunk amounting to 98,841 shares got matched with the sell order of RCMF and thereby fetching a profit of Rs.1,43,520.20 to Noticee No. 1.

<u>Trades at BSE</u> :-

29. From the integrated trade/order log obtained from BSE, it was observed that Noticee No. 1 had traded in a total of 127 scrip days during the investigation period out of which there were 60 common scrip days with RCMF. Out of the said 60 common scrip days between Noticee

No. 1 and RCMF, front-running pattern through a BB or SS pattern was observed in 26 scrip days. The total profit made by ASM during the investigation period was Rs.1,48,805.65. It was further observed that Noticee No. 1 had not traded in 48 common scrips on any day prior to the common scrip day in these respective scrips.

30. Analysis of 2 scrip days out of the aforesaid 26 scrip days, where BB(buy)/SS (sale) pattern was observed, are provided below:

Analysis 1: Scrip Name: Tata Power Co. Ltd. TPCL) (Date: November 05, 2008)

	FR (ASM)				**BC (RCMF)**			
	Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)		Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)	
	4840	754.97	36,80,229		40,000	747.22	2,98,01,436.30	
	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)	S.O. T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)
From	10:03:20		10:03:20	780.00	10:09:58		10:13:37	775.00
To	2:08:30		2:08:30	744.00	2:18:37		2:20:49	745.00
	Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)		Pattern observed: SS Matched Qty: 677 % of matched qty w.r.t BC's trade: 13.98% Gain: Rs.103151			
	4840	739.41	35,77,078.05					
	BO.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)				
From	10:43:57		11:04:04	736.00				
To	2:16:57		2:16:58	745.00				

31. From the above, I note the following:

a) Noticee No. 1 placed sell orders for 4,840 shares of TPCL on November 5, 2008 between 10:03:20 AM to 2:08:30 PM.

b) RCMF placed sell order in this scrip on the same day between 10:09:58 AM to 2:18:37 PM.

c) Subsequently, Noticee No. 1 placed reversal buy orders for entire 4,840 shares on the same day between 10:43:57 AM to 2:16:57 PM.

d) Out of buy order of such 4,840 shares, 677 shares got matched with the sell order of RCMF and thereby fetching a profit of Rs. 1,03,151 to Noticee No. 1.

Analysis 2: Scrip Name: Jindal Steel and Power JSP) (Date: October 15, 2008)

	FR (ASM)				BC (RCMF)			
	Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)		Total Buy Qty	Avg. Buy Price (Rs.)	Turnover (Rs.)	
	3000	771.23	23,13,885.30		13600	779.34	1,05,97,366.10	
	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)	B.O.T	B.O.P (Rs.)	B.T.T	B.T.P (Rs.)
From	3:19:56		3:19:56	768.80	3:20:38		3:20:38	773.90
To	3:20:02		3:20:46	772.00	3:29:49		3:29:49	789.90
	Total Sell Qty	Avg. Sell Price (Rs.)	Turnover (Rs.)		Pattern observed: BB Matched Qty: 2,752 % of matched qty w.r.t BC's trade: 91.73% Gain: Rs. 17,114.70			
	3000	777	23,31,000					
	S.O.T	S.O.P (Rs.)	S.T.T	S.T.P (Rs.)				
From	3:20:15		3:20:45	777.00				
To	3:21:01		3:21:30	777.00				

32. From the above, I note the following:

a) Noticee No. 1 placed buy orders for 3,000 shares of Jindal Steel and Power Limited on October 15, 2008 between 3:19:56 PM to 3:20:02 PM.

b) RCMF placed buy order in this scrip on the same day between 3:20:38 PM to 3:29:49 PM.

c) Subsequently, Noticee No. 1 placed reversal sell orders for entire 3,000 shares on the same day between 3:20:15 PM to 3:21:01 PM.

d) Out of buy order of such 3,000 shares by Noticee No. 1, a major chunk amounting to 2,752 shares (91.73%) got matched with the sell order of RCMF and thereby fetching a profit of Rs. 17,114.70 to Noticee No. 1.

33. With the help of the above examples, let's examine the main charge of the SCN which is that Noticee No. 1 indulged in front running has been executed by her to the impending trades of RCMF.

34. From the information submitted during the investigation, it is observed that the annual income of Noticee No.1 was approximately Rs.1.40 Lakh and Rs.1.68 Lakh for the financial year 2007-

08 and 2008-09 respectively. In this regard, Analysis 1 at para 23 above, I note that for a person having annual income of barely around Rs.1.40 to Rs.1.68 lakhs a year, it is quite unusual to note that the value of each trade executed by Noticee No. 1 in the aforesaid example was Rs.8,39 lakhs (in other example it is even higher i.e. around Rs.36.80 lakhs), which indicates that Noticee No.1 was knowing very well that unless she is able to square off her buy trade during the day, she would have paid aforesaid amounts to the broker to take delivery of those shares, which was certainly beyond her financial capacity or known sources of annual income. It further indicates that while placing the buy order for a purchase amount that was way beyond her annual income, Noticee No.1 was pre-determined to square off her trade by selling those shares during the trading hours of that very day itself. Therefore, if the Noticee was knowing in advance that she will offset her buy trade by a sell trade and vice versa, she would have most likely expecting a predictably profitable exit since a person of her stature and means, would not take the risk of intra-day losses which could be of any uncertain amount.

Given the aforesaid observations, the Noticee's action of taking an exposure in equity market in multiple times to her annual income, when analysed together with several peculiarities noticed in the trades executed by Noticee No.1 like that though the timing of placing the buy order was chosen towards the closure of market hours, Noticee no. 1 was still able to sell more than 99% of the quantity purchased by her to the Big Client (RCMF) and exit her purchases in the scrip profitably on that trading day, lends support to the charges made in the SCN. It clearly indicates that the aforesaid intra-day offsetting trade executed by the Noticee was not borne out of any *bona fide* act made in the normal course of dealing in securities but by way of executing a pre-conceived plan to choose a time to buy the shares to front-run the buy orders placed by RCMF and then square off the said purchases by selling at a higher price available in the system due to large demand created in the scrip by the buy orders of RCMF.

Similarly, in another instance, while front running the trades of RCMF on October 15, 2008 in the scrip of Jindal Steel and Power Limited (JSPL), Noticee no. 1 purchased 3000 shares of JSPL between 03:19:56 pm to 03:20:02 pm at an average price of Rs.771. The total buying turnover in the said trades was approximately Rs.46 Lakh. Immediately after buying the said scrip, Noticee no. 1 placed selling order at 03:20:15 pm, which got executed into trade at 03:21:30 pm, with 91.73% of the shares being sold to RCMF at the said time. It is again pertinent to note that the buy trades were placed by RCMF from 03:20:38 pm to 03:29:49 pm, i.e., after hardly a gap of only few seconds of buy trades of Noticee no. 1 as a result of which the Noticee could offset her buy trades by matching her sell trades with the buy trades of RCMF and was able to make a profit of Rs. 17,114.70. From the above observation, it can be deduced that the Noticee was able to take the risk of buying the shares towards the fag end of trading hours as she was sure about her chances to square off her trades profitably because of her front running activities which were based on the information received about RCMF's plan along with the proposed timing to buy the said shares in large quantities on the same trading day.

35. I further note that the above mentioned pattern of buying or selling shares ahead of the trades of RCMF was not the one-time incident but has been observed repeatedly in 52 number of instances in BSE and NSE.

36. Thus, looking at the trading pattern adopted by Noticee No.1 as an investor of the Securities Market, her average annual income, abnormal trading volumes that were highly disproportionate to her income, the surgical precision of timing with which the trades were placed just before RCMF placed its orders, and last but not the least the qualification and skills possessed by her, it is very obvious that such humungous trading transactions would not be

carried out by any prudent person that too, towards the closure of trading hours unless the person is pretty sure and confident of squaring of her position and making profit out of it. The aforesaid factual analysis provides overwhelming preponderance of probabilities to hold that Noticee no.1, in the instant proceedings, was successfully trading by employing her front-running strategy based on prior information regarding the trading plans of RCMF.

37. I further note that, by following a Buy-Buy or Sell-Sell pattern, i.e. first executing trades in the direction of the impending trades of the Big Client and eventually squaring off the said trade when the order of the Big Client comes to the market platform, Noticee No.1 has clearly indulged into an act of front running the trades of RCMF. It was not a case of matching of one or two trades which could be ignored by painting them as co-incidence, but a whole series of trades where Noticee No.1 was found visibly influenced by the impending trades of RCMF. It is also important to note that the Noticee No.1 has neither filed any document to substantiate her claim that her trades were executed in normal course of her trading activities contrary to the allegations made against her nor has she been able to justify that she was habitually executing trades in this manner or that she has been executing such types of trades in other scrips as well over the period during which she was a regular investor/trader in the Securities Market.

38. In this regard, I seek reliance on the judgment of Hon'ble Supreme Court, passed in the matter of ***SEBI Vs. Shri Kanaiyalal Baldevbhai Patel and Ors.*** (MANU/SC/0096/2018), relevant extract of which is reproduced hereunder:

> *"…As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:*
> *Front running -Buying or selling securities ahead of a large order so as to benefit from the subsequent price move.*
> *This denotes persons dealing in the market, knowing that a large transaction will take place in the near future and that parties are likely to move in their favour.*

The illegal private trading by a broker or market-maker who has prior knowledge of a forthcoming large movement in prices. (Investment)

The Black's Law Dictionary (Ninth Edition) defines the term 'front running' as under:

Front running, n. Securities. A broker's or analyst's use of nonpublic information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in many ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares…

.. ...It comprises of at least three forms of conduct. They are: (1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running"); and (3) transactions where a intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead")..."

39. I note that, Noticee No.1 in this regard has contended that all the trades undertaken by her are normal market transactions and anyone can do the same with the help of live market softwares which identify institutional activities and are in general public domain. The same contention with regards to softwares is also made by Noticee No.3. In this regard, I note that neither Noticee No.1 and 3 have named any such software being available during that period when she did the alleged trades nor has furnished any detail as to how the so called softwares provided specific information about the impending transactions of specific institutional clients in advance, helping her to know about the impending trading activities of RCMF on those common scrip trading days. I further note that, Noticee No.1 and 3 have also not provided any details of any subscription made by her for the usage of any such software during the relevant time, based on which she was able to front run the trades of only one institutional investor, i.e. RCMF. There may be trading softwares providing market details of trades already executed by institutional clients, however, any software providing advance knowledge of any impending trades of specific institutional clients is neither feasible nor permissible under the securities

market regulations. Therefore, I don't find any merit in the aforesaid contention of Noticee No.1 and 3.

40. Noticee No.1 as well as Noticee No. 2 has contended that vide Affidavit dated December 12, 2018, Noticee No.1 had retracted the statement made by her before the Investigating Authorities admitting to the allegation as the same was done under coercion of RCMF and the Investigating Authority. At the outset I note that the statement so made under oath on February 12, 2011 cannot be retracted simply because of the fact that retraction from the deposition made by her during the investigation was done after an inordinate delay of more than 7 years of making the said statement. It is trite law that retraction from any statement given before any authority should be done at the earliest and such retraction should be supported by convincing and tangible evidence to suggest that the statement which was recorded on oath was factually incorrect. However, I note that, in the instant matter. Noticee No.1 stuck to her statement given by her during investigation and remained silent on the same for more than 7 years, but she decided to retract from her statement taking various general pleas in an affidavit filed by her only when proceedings were initiated against her. In this regard, I seek guidance from the following judgments on the issue of recording statements under oath and evidentiary value of subsequent retractions:

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

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

41. I further note that the husband of Noticee No.1 was present along with her during her statement recording and this rules out any possibility of her being under any pressure or confusion or any other mental state so much so that she had to make statements before the investigating officer which she did not consider to be factually correct. Further, she made herself voluntarily available to be cross examined by the other Noticees during the 11B proceeding in the same matter which does not add to the fact that she made the statements under any kind of pressure which she was ready to be questioned upon. I further note that Noticee No. 1 did not provide any evidence so as to indicate any factual inaccuracy in her original statement recoded during the investigation period. I also note that Noticee No. 1 has not disputed the trades executed by her or the trades executed in her trading account.

42. In view of the above, I note that the retraction by Noticee No.1 cannot be accepted as a valid retraction and the attempt made by Noticee No.1 to retract from her original statement recorded on oath have no substance to stand on merit. In view of the above observations, the contention made by Noticee No. 1 and 2 with regards to her retraction of statement are rejected being sans merit and not maintainable in law.

43. Without prejudice to the above, I note that the Noticee No.1 has not disputed the trades executed by her or the trades executed in her trading account. While retracting from the statement that she made in presence of her husband before the investigating officer, it has been submitted in her affidavit that the statement she had made under oath asserting that the trades were actually executed by Noticee No.2 in her trading account is not correct. In the said

retraction affidavit, it has been submitted by the Noticee No.1 that the trades in her trading account were executed by herself in consultation with her husband only and not by Noticee No. 2 as stated by her earlier in her original statement. Having considered the same, I proceed to analyse the allegations made in the SCN against the Noticees so as to adjudge the charges so levelled in the SCN.

44. Moving ahead, I note that Noticee No.1 has further contended that, as per the trade log there were many instances where Reliance Mutual Fund (RCMF) had traded before the said Noticee. In many instances where RCMF had traded after the Noticee there was a huge time gap and this time gap ranges from a few minutes to a few hours and therefore it cannot be termed to be front running. I would like deal with above contention with illustration of following impugned trades of Noticee No. 1 as already provided at para 23 above:

<u>Trades in the scrip of Alok International Ltd. on October 15, 2008.</u>

a) Noticee No. 1 first sold 1,05,853 shares of the said company through the trades executed between 10:02:14 am and 11:20:41 am (Order placement time: 9:58:06 am to 11:20:41 am). The average sell price for Noticee No. 1 was INR 23.35.
b) Immediately after the Noticee placed her sell order, RCMF entered its sell order from 10:01:50 am till 03:06:55 pm. The total quantity of RCMF's order was 4,66,000 shares and average sell price was INR 22.45.
c) Noticee No. 1, whose sell trades were being executed till 11:20:41 am [ref para (i) above], started reversing her position by placing buy orders from 12:12:02 pm onwards.
d) Noticee No. 1 sold a total of 1,05,853 shares till 11:20:41 am, and was able to buy all of them upto 12:14:11 pm at an average price of INR 22 making a profit of Rs.1,43,520.20.

Out of said buy of 1,05,853 shares, trades of 98,841 shares were matched with RCMF i.e. 93.38%, during the period of 12:12:02 pm to 12:14:11 pm.

<u>Finding</u>:

45. Noticee No. 1, in her submission, tried to portray that there was a huge time difference ranging from minutes to few hours between her and trades of RCMF. However, from the above mentioned trade details, the said assertion is found to be erroneous. As can be seen from above, Noticee No.1 had taken a sell position (a SS pattern) around 3 minutes 45 seconds before RCMF placed its sell order as the time of first sell order of Noticee No. 1 is 9:58:06 am, whereas first sell order of RCMF was executed at 10:01:50 am. Further, the huge time gap of few hours that has been shown as a factor to claim exoneration seems to be the time when the buy trade of RCMF is first matched with the buy trade of the Noticee No. 1 (while squaring off her position), which in this case was around 40 minutes. I note that citing this time gap is of no help to Noticee No. 1, as in reality, the time gap of front running trade (BB) executed by the Noticee was merely 3 minutes 45 seconds. Moreover, it is also pertinent to note here that 93.38% of her trades matched with those of RCMF, leaving no iota of doubt that she was well having the clear-cut knowledge of the impending large sell orders of RCMF coming into the system.

46. Based on the aforementioned factual findings and observations made in the preceding paragraphs, I find that the trades of Noticee No.1, as alleged in the SCN to be unfair and fraudulent trades, have been executed in a manner so as to front run the impending orders of RCMF and therefore I hold Noticee No. 1 guilty of the violations of provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations.

47. Now that the trades executed by Noticee No.1 are established to be unfair and being executed with a motive to front run the trades of RCMF so as to derive undue and unlawful gains, I shall move on to decide the complicity of the other Noticees in the present matter.

Sanjay Parekh (Noticee No. 2) and Rakesh Shah (Noticee No. 3):

48. As stated in para 6 above, the SCN alleged that Noticee No. 2, was an employee of the stock broker called Anugrah, where Noticee No. 1 was having her trading account and he misused his position as a dealer of Noticee No. 4 and front-run the trades of RCMF based on information received from Noticee No. 3.

49. In this regard, I note from his submission during the investigation that Noticee No. 1 and 2 are next door neighbours and Noticee no. 1 was introduced as a client to Anugrah (Noticee No. 4) by Noticee no. 2. Further, Noticee No. 3 was working as Equity Dealer with Reliance Capital AMC/RCMF at relevant point of time. There is no dispute over these facts.

50. From the statement of Noticee No. 1 recorded on February 12, 2011 during the investigation by SEBI, I note that her trading account was being operated by Noticee No. 2 and on several occasions, Noticee No. 2 used to place trades in her account based on the information received by him from Noticee No. 3. Noticee No. 1 further had stated during investigation that due to certain trades (executed prior to the alleged front running trades) executed by Noticee No. 2 in her account, there was a huge loss caused to her by Noticee no.2 and upon her resistance to bear those losses, Noticee No. 2 had assured her that such losses would be covered soon.

51. I further note that the Reliance Capital Asset Management Limited (Asset Management Company of RCMF), vide its letters dated July 23, 2009 and March 03, 2011, had informed SEBI that:

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

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

52. In this regard, I note that in order to decide the charges against Noticee No. 2 and 3, the first and foremost task is to assess whether there could be any possible link between all the aforesaid three Noticees. In this connection, as noted earlier and as also admitted in his reply by Noticee No. 2 to the SCN, there is no dispute over the fact that Noticee Nos. 1 and 2 know each other as both of them are next door neighbours. Further there does not appear to be any denial to the fact that Noticee No. 1 was introduced as a client to Noticee No. 4 by Noticee No. 2, who was working with Noticee No. 4 at the relevant point of time.

53. It is also noted from the records, more particularly, the replies and submissions filed by the Noticees, that apart from the Noticee No. 1, statement of Noticee Nos. 2 and 3 were also recorded by SEBI during the investigation and the same were retracted by the Noticee 2 and 3 from the statements so recorded by SEBI during the investigation vide affidavit dated June 06, 2012 (Noticee No. 2) and July 04, 2012 (Noticee No. 3), respectively. However, in this regard,

I note that the said statements are not part of the present proceedings as the same have not been relied upon while issuing the SCN.

54. I further note that Noticee No. 2 in his aforesaid affidavit filed before SEBI, had denying and retracting from a number of other things/aspects of the matter. However, he had not denied knowing Noticee No. 3. Similarly, Noticee No. 3 in his aforementioned affidavit has acknowledged that he knows Noticee No. 2. However, in his reply dated May 06, 2022, Noticee No. 3 denied having any connection with Noticee No. 1 and 2 which is opposite to what he submitted vide an affidavit 10 years ago and cannot be relied upon, as reasoned earlier in this order. Noticee No. 2 has further stated in the said affidavit that: "I further state that I used to advice trading in the account of Anita Shyam Mhatre merely as a friend, while I was working with Anugrah Stock and Broking Limited as a Dealer."

55. From the above, it is very well established that all the Noticees are tied up to a common thread wherein Noticee No. 2 is the common link between Noticee No. 1 and Noticee No. 3, as he is known to both of them. In this regard, I note that Noticee No. 2 has contended that knowing is not sufficient to allege and he never acted as Dealer on behalf of Noticee No. 1. Despite of the above assertion by Noticee No. 2, there is no dispute to the facts that Noticee No. 1 was introduced to Noticee No. 4 through Noticee No. 2, who was working as Dealer with Anugrah. It is already noted above that Noticee No. 2 in his own affidavit has admitted that he was advising Noticee No. 1 on the aspects of trading. Further, when all the aforementioned facts and circumstances are evaluated holistically, it becomes eminently clear that it was Noticee No. 2, who was either dealing with trades of Noticee No.1 or at least was guiding Noticee No.1 (as admitted by him in his affidavit) in executing trades in her trading account during the relevant time when the alleged trades were executed. I would like to further note that merely because of the fact that the records do not specifically indicate that Noticee No. 2 was actually acting as a

Dealer of Noticee No. 1, the other compelling factors and factual evidences as discussed above at length cannot be ignored with regards to establishing the complicity of the all the Noticees in executing those front-running trades in the trading account of Noticee No. 1.

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

Further, as mentioned at para 46 above, RCAML vide its letter to SEBI has mentioned that Noticee No. 3 has admitted to them of inadvertently passing certain information with respect to trades of RCMF to one of his friends and such sharing of information could have been abused and used in certain trades. All these facts together along with the evidence on records, suggests that such insider information about the impending trading strategy of RCMF was shared by Noticee No. 3 with Noticee No. 2, on the basis of which front running trades were executed in the account of Noticee No. 1 so as to make profit by indulging in such trading malpractices.

57. In this regard, I note that Noticee No. 3 has denied existence of any such letter from RCMF/RCAML and have tried to seek exoneration from the instant proceeding on this ground without giving any reasons as to why the existence of a letter issued by a registered intermediary and contents thereof should not be believed to have existed despite the same having been used by SEBI as one of the evidences in the SCN itself. I also not that the aforesaid communication of RCMF also contains reference to a letter dated July 21, 2009 vide which Noticee No. 3 had acknowledged before RCAML that inadvertently he might have passed on certain information to one of his friends and such information could have been used in the trades executed by Noticee No. 1. Under the circumstances, by not confronting and rebutting the contents of the said letter and instead objecting the existence of the letter, it is evident that the Noticee does not have anything to defend himself against the contents of the said letter.

58. It is also noted that Noticee No. 3 has further submitted that the acknowledgement of having inadvertently passed on certain trade information as attributed to him in the said letter of RCAML, was made by him under coercion of RCMF and in fear of losing his job. However, from above submission itself it is obvious that Noticee No. 3 is accepting the existence of an acknowledgment made by him before his employer about the communication of information made by him and even if the said confession was made by him under coercion or undue influence or under whatever other circumstances, the fact that the Noticee has made an acknowledgement before RCMF (copy of which is a part of the communication received from RCAML), the validity of the same cannot be disputed by Noticee No. 3. I also note that Noticee

No. 3 has not explained as to what kind of coercion was applied to him or the reason therof to force him to give the aforementioned acknowledgement to RCMF and why he mentioned only the name of Noticee no. 1 as to whom he communicated the sensitive information relating to investment decisions of RCMF. Under the circumstances, I find no merit in the submission of Noticee No. 3 that the said statement of acknowledgement was made by him under duress and I find it mere a tactic to escape the consequences of such confession made before RCMF, as no details of the so called duress which he was subjected to has been furnished nor any plausible reasons as to why someone will put him under such duress and the likely benefit that may accrue to such person/entity exerting such duress on him.

59. Noticee No. 3 has also furnished a write up on the functioning of the RCMF in which it has been claimed that he was hardly getting a minute's time to place orders on behalf of RCMF upon receipt of instructions from his Fund Manager and therefore it was not feasible for him to pass on such trade information to any person including Noticee no. 1, who has executed her trades with huge time gaps. In this regard, I note that the said submission by Noticee No. 3 is only a self-certified narration without any verifiable basis. Notwithstanding the same, when the aforesaid claim of Noticee No. 3 is seen with the overall facts and circumstances of the case, more particularly the close proximity of time in placement of reversal orders in the account of Noticee No. 1 to match with the trades of RCMF, as detailed above, it is very obvious that irrespective of the procedure narrated by Noticee No. 3, the facts & circumstances in the matter clearly establish that Noticee No. 3 was sharing the details of impending trade of RCMF with Noticee No. 2 whom he knew and based on this the trades of RCMF were front run by Noticee No. 1 with the help of the Noticee No. 2. I further note that the repeated instances of such types of trades wherein Noticee No. 1 was seen to be first executing the Buy/Sell transaction and then reversing her position exactly at the time when the trades of RCMF are being entered

into the system, when observed in totality, speak volumes about the malicious conduct of the Noticees and leaves no reason to disregard the allegations levelled in the SCN. In view of the same, it establishes the charge of front running of trades indulged in by Noticee No.1 acting in concert with Noticee No.2 and Noticee no.3 in violation of the alleged provision of the PFUTP Regulations.

60. To conclude, I observe that Noticee No. 3 was working with RCMF as a Dealer and had knowledge of the impending large trades to be executed on behalf of RCMF. He passed on those information pertaining to the said trades to Noticee No. 2, who utilised such information and helped in executing those front running trades in the trading account of Noticee No. 1 which, eventually enriched her unlawfully by INR 8,86,805.65, which she could not have earned, had the other two Noticees not helped her indulging in those unfair trades as demonstrated in the preceding paragraphs.

61. Therefore, by indulging in such an artificial device and scheme of front-running, it is clearly established that the Noticee No. 1, 2 and 3 have clearly indulged in fraudulent and unfair trade practices and all the acts of Noticee 1, 2 and 3 were in violation of Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulation 3 (a), (b), (c) and (d) and 4 (1) of PFUTP Regulations.

<u>Anugrah Stock & Broking Pvt. Ltd. (Noticee No. 4):</u>

62. It was alleged in the SCN that Noticee No. 4 did not had adequate internal controls for execution of trades by dealers and it failed to exercise due skill, care and diligence in the conduct of its business.

63. I note that this is an admitted fact that Noticee No. 2 was employed as a Dealer with Noticee No. 4 during the relevant time when the alleged trades were executed and it is also an established fact that Noticee No. 2 utilised such information received from Noticee No. 3, regarding the impending large trades to be executed on behalf of RCMF, in executing front running trades in the trading account of Noticee No. 1 maintained with Noticee No. 4.

64. Noticee No. 4 has submitted that it had no reason to indulge in alleged incorrect activities for such a meagre amount of brokerage. It has further submitted that it had carried out the requisite due diligent by conducting stringent know your client checks and taking requisite details from Noticee No. 1 and that all the payments related to purchase and sale of shares were received and paid on a regular basis and there was no other circumstance or event to arouse suspicion about any trading irregularity by Noticee No. 1 and there was no reason to believe any wrong doing on her part.

65. In this regard, I note that the above submissions made by Noticee No. 4 does not deny the fact that Noticee No. 2, being its dealer, executed front running trades in the trading account of one of its client. I further note that it was the responsibility of Noticee No. 4 to exercise due skill, diligence and care and have internal controls with regards to execution of trades by its dealers to avoid such misconduct as done in its client's account by Noticee No. 2.

Further, I couldn't lose sight of the fact that this was also not one of incident but the same was done on several occasions where Noticee No. 2, its dealer, executed front running trades in the account of Noticee No. 1, its client. Therefore, I find no merit in the above contentions made by Noticee No. 4.

66. I note that in terms of Clauses A(1) and A(2) of code of conduct as specified in Schedule-II of Broker Regulations, Noticee No. 4, being a broker, has to maintain high standards of integrity and fairness and has to act with due skill, care and diligence at all times. By not preventing the aforesaid front running trades done by its Dealer in one of its client's account, I find that Noticee No. 4 has failed to demonstrate integrity and due care and diligence in respect of the same and thereby violated Clauses A(1) and A(2) of Code of Conduct as specified in Schedule-II of Broker Regulations.

Issue (b): Does the violation, if any, attract penalty under Section 15HA and 15HB of the SEBI Act, 1992, as applicable?

67. I note that the Hon'ble Supreme Court of India in the matter of **SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** held that *"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…."*

68. Therefore, I am of the view that monetary penalty needs to be imposed upon:

a) Noticee No. 1, 2 and 3 under Section 15HA of SEBI Act for violations of provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and

b) Noticee No. 4 under Section 15HB of SEBI Act, violations of provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Brokers Regulations.

69. The texts of Section 15A (b) and Section 15HA of SEBI Act, 1992 are reproduced hereunder:

SEBI Act, 1992

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* [3] *[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].*

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue (c) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

70. While determining the quantum of penalty under Section 15A(b) and 15HA of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read as under:

SEBI Act, 1992

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.

71. I find that the profit earned by Noticees 1, 2 and 3 have been mentioned in the preceding paragraphs. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI, I note that vide order dated May 24, 2021, Whole Time Member of SEBI has debarred Noticee 1, 2 and 3 for a period of 6 months. Further, a disgorgement direction was passed against Noticee No. 1 to disgorge the wrongful gain made by her of Rs.8,86,949.45 with simple interest of 4%. I have considered the above disgorgement order dated May 24, 2021, while arriving at the penalties to be levied.

72. In the present matter I note that by indulging into front running trades executed in the account of Noticee No. 1 by Noticee No. 2 based on the information received from Noticee No. 3, Noticee 1, 2 and 3 have violated the provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and by not having adequate internal controls for execution of trades by its dealers and by failing to exercise due skill, care and diligence in the conduct of its business, Noticee No. 4 has violated the provisions Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Brokers Regulations.

ORDER

73. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under (a) Section 15HA of SEBI Act on Noticee No. 1, 2 and 3 for violations of provisions of Section 12A of SEBI Act, 1992 and Regulations 3 and 4(1) of the PFUTP Regulations; and (b) Section 15HB of SEBI Act on Noticee No. 4 for violations of provisions of Clauses A(1) and A(2) of Code of Conduct specified in Schedule-II to Brokers Regulations:

Name of the Noticees	Penal provisions	Penalty
1. Anita Shyam Mhatre **(Noticee No. 1)**	Section 15HA of SEBI Act	Rs. 3,00,000/- (Rupees three lakhs only)
2. Sanjay Parekh **(Noticee No. 2)**	Section 15HA of SEBI Act	Rs. 3,00,000/- (Rupees three lakhs only)
3. Rakesh Shah **(Noticee No. 3)**	Section 15HA of SEBI Act	Rs. 3,00,000/- (Rupees three lakhs only)
4. Anugrah Stock & Broking Pvt. Ltd. **(Noticee No. 4)**	Section 15HB of SEBI Act	Rs. 1,00,000/- (Rupees one lakh only)

74. The aforesaid 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

75. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
4. Date of payment:	
5. Amount paid:	
6. Transaction no.:	
7. Bank details in which payment is made:	
8. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

76. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

77. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: July 29, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**