BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/2018-19/2289-2295

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES,1995

In respect of:

1. Confidence Finance & Trading Ltd., *(PAN: AABCC5629F)* 9, Botawala Building, 3rd Floor 11/13, Horniman Circle, Fort Mumbai – 400001.	2. Manoj Kumar Naginlal Jain *(PAN: AADPJ5617R)* 602/A, Mangal Murthi Liberty Garden, Road No. 1 Above Sai Sarover Restaurant Malad West, Mumbai – 400064.
3. Amruth Joachim Coutinho *(PAN: AABPC3254D)* 16, Maryknoll, Lourdes Colony Orlem, Malad West Mumbai – 400064.	4. Lalitkumar Roshanlal Maroo *(PAN: AAGPM4771N)* Flat No. 3, Amar Apartment COD Road, Off Manchhubhai Road Malad East, Mumbai – 400097.
5. Swati Panchal *(PAN: BMIPP7631K)* Hari Om Society, Karath Road Limdi, District Dahod Gujarat – 389180.	6. Ghanshyam Kamlesh Kacchawa *(PAN: ARYPK8621Q)* G/4/5, Abhinandan Apartments Near Cross Garden Bhayander (W), Thane – 401101.
7. Daulat Laxmilal Chandraliya *(PAN: AAAPC7685H)* 42/A-103, Kranti CHS Ltd., S G Barve Marg Near Abhudaya bank, Kurla (East) Mumbai – 400024.	

(*The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees")*

In the matter of Confidence Finance and Trading Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation in the scrip of Confidence Finance & Trading Ltd., *(hereinafter referred to as* ***"CFTL" / "Company")*** during the period September 4, 2012 to March 28, 2014 *((hereinafter to be referred to as* **"investigation period"**) to ascertain any possible violation of the provisions of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 *(hereinafter referred to as "PFUTP" Regulations)* by certain connected entities.

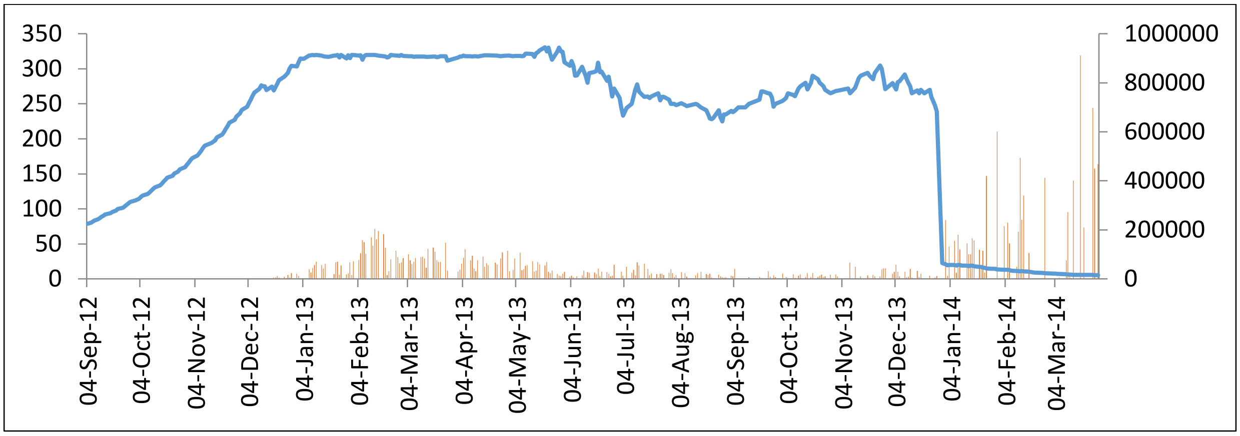
2. The shares of CFTL were traded in BSE. The price movement of CFTL scrip in BSE, before, during and after the investigation period is summarized below:

Period	Date		Opening Price (volume) on first day of the period (₹)	Closing price (volume) on last day of the period (₹)	Low price (volume) during the period (₹) / Date	High Price (volume) during the period (₹) / Date	Average no. of shares traded daily during the period
Pre-Investigation*	01/04/2012 to 03/09/2012	Price	52.5 (03/04/2012)	77.3 (03/05/2012)	52.5 (03/04/2012)	77.3 (03/05/2012)	50
		Volume	50	50	50	50	
Investigation Patch 1	04/09/2012 to 08/01/2013 (price rise)	Price	78.8 (04/09/2012)	319.6 (08/01/2013)	78.8 (04/09/2012)	320 (08/01/2013)	2268
		Volume	20 (04/09/2012)	25871 (08/01/2013)	12 (12/12/2012)	39450 (07/01/2013)	
Investigation Patch 2	09/01/2013 lo 22/05/2013 (price rise)	Price	318 (09/01/2013)	330.5 (22/05/2013)	300.3 (02/04/2013)	332 (22/05/2013)	75695
		Volume	45000 (09/01/2013)	29002 (22/05/2013)	50 (18/01/2013)	202967 (13/02/2013)	
Investigation Patch 3	23/05/2013 to 27/12/2013 (price fell) Pre-Stock Split	Price	315 (23/05/2013)	238.95 (27/12/2013)	225 (22/08/2013)	330.25 (28/05/2013)	18888
		Volume	24000 (23/05/2013)	11414 (27/12/2013)	01 (13/11/2013)	68425 (11/07/2013)	
Investigation Patch 4	28/12/2013 to 28/03/2014 (price fall) post- stock split)	Price	24 (28/12/2013)	5.04 (28/03/2014)	5.04 (28/03/2014)	24 (28/12/2013)	166268
		Volume	1335 (28/12/2013)	468000 (28/03/2014)	01 (27/03/2014)	911600 (18/03/2014)	
Post Investigation	31/03/2014 to 3W06/2014	Price	4.79 (30/03/2014)	6.2 (30/06/2014)	4.79 (31/03/2014)	9.08 (18/06/2014)	51932
		Volume	223350 (31/03/2014)	601 (30/06/2014)	01 (27/05/2014) (16/06/2014)	363500 (02/05/2014)	

***** *There were 9 single trades of 50 shares each on 9 trading days during April 01, 2012 to May 3, 2012. There was no trading during May 4, 2012- September 3, 2012*

3. During the investigation period, price of the scrip moved from ₹ 78.8 to ₹ 330.50 during March 27, 2012 to May 22, 2013. Subsequently, the price of scrip has fallen from ₹ 330.50 to ₹ 238.95 during May 23, 2013 to December 27, 2013. On December 28, 2013, there was a stock split of existing equity shares from 1 one equity share of ₹ 10/- per share into 10 equity shares of ₹ 1/- per share. After the stock split, stock price was ₹ 22.73 and price fell further to close at ₹ 5.04 as on March 28, 2014. It was observed that the increase in share price between September 4, 2012 and May 22, 2013 was not supported by the financials of

CFTL, as the Company registered negligible profits for the financial year 2012-13 and loss during the quarter ended March 2013. Price Volume Chart for the investigation period is given as under:



4. During the period of investigation, it was observed that there were certain entities who manipulated the price of the CFTL scrip. Hence, to verify the alleged price manipulation in the scrip, Last Trade Price (LTP) analysis was carried out on the buy side for the period September 4, 2012 to January 1, 2013, when the price rise in the scrip was huge, the details of which are furnished hereunder:

Buyer Name	% of Positive LTP to Total Market	All trades			Trades with LTP diff > 0			Trades with LTP diff < 0			Trades with LTP=0	
		LTP impact in ₹	QTY traded	No of trades	LTP impact in ₹	QTY traded	No of trades	LTP impact in ₹	QTY traded	No of trades	QTY traded	No of trades
Daulat Laxmilal Chandraliya	16.52	57.25	395	26	57.25	395	26	0	0	0	0	0
Rajesh P Jasani & Sarojaben P Jasani	11.16	38.7	610	18	38.7	255	9	0	0	0	355	9
Prem Lata Nahar	8.01	27.75	290	14	27.75	135	8	0	0	0	155	6
VRP Financial Services Pvt Ltd	7.20	15.75	14035	137	24.95	1515	9	-9.2	200	3	12320	125
Insight Multitrading Pvt Ltd	6.43	22.3	19905	87	22.3	1553	7	0	0	0	18352	80
Sneha Goenka	5.68	19.7	295	10	19.7	120	5	0	0	0	175	5
Bharat Bagri (Huf)	4.30	14.9	75	5	14.9	75	5	0	0	0	0	0
Nirmala Sandesh Kamath	3.98	13.8	190	6	13.8	95	3	0	0	0	95	3
Sarika	3.75	10.9	1006	20	13	221	4	-2.1	179	3	606	13
Babubhai D Patel	3.02	10.45	7050	28	10.45	2250	4	0	0	0	4800	24
Total of Top 10	**70.04**	**231.5**	**43851**	**351**	**242.8**	**6614**	**80**	**-11.3**	**379**	**6**	**36858**	**265**
Others	29.96	9.30	146695	430	102	20159	53	-93	6716	41	119820	336
Market Total	**100.00**	**240.80**	**190546**	**781**	**344.75**	**26773**	**133**	**-104**	**7095**	**47**	**156678**	**601**

5. It is observed from the above table that top 10 LTP contributors have contributed positive LTP of ₹ 242.80 (70.41 %) of total market positive LTP in 80 trades. Out of the top 10 LTP contributors, 6 entities have contributed more than 5% of LTP.

6. The top contributor to LTP viz., Daulat Laxmilal Chandraliya (Noticee 7) had purchased 395 shares and sold 495 shares. All the 26 buy trades by the Noticee 7 contributed positive LTP of ₹ 57.25 (16.59 %) of total market positive LTP. All the trades were first trades and all buy orders were placed before the sell orders at near upper circuit filter rate at the opening of the market. For all his buy trades, there was only one counterparty namely Ghanshyam Kamlesh Kachhawa (Noticee 6), an entity connected indirectly to CFTL by way of fund transfer. Such high contribution to LTP is serious, when the financials and other fundamentals of the company does not commensurate with the price rise in the scrip.

7. From the order log analysis carried out on the trades of the Noticee 7, it was observed that for almost every trade, the Noticee 7 had been placing numerous buy orders for 100/200 shares at price significantly above the LTP (i.e. around the upper circuit limit). The trades got executed after the placement of sell order by the Noticee 6. It was observed that subsequent to the trade, in few minutes of time span, all the unexecuted buy orders for remaining quantity had been deleted.

8. It was observed that the Noticee 6 has sold during the first 50 days of the investigation period (till Nov 27, 2012) in small lots of 15-20 shares in the scrip. The price of the scrip almost touched the circuit filter (1.9%) on all 50 days. The price of scrip has increased to ₹ 205.95 on Nov 19, 2012. LTP analysis has indicated that the sell trades executed by the Noticee 6 has contributed to 72.73% of total LTP with sell of 900 shares (0.47% of market volume).

9. From the order/trade log, it was observed that the Noticee 6 was selling the shares in small quantities every day, even though there were pending buy orders at the prevailing price. It was also observed that he did not sell all the shares held by him at the beginning of investigation and continued to hold 550 shares out of the 1450 shares he held at the beginning of the investigation.

10. The investigation concluded that the Noticees 6 and 7 were acting in concert and contributed to manipulation in the scrip price *(upwards)* with a malafied intention and created a misleading appearance of trading in the scrip by such trades.

11. It was also observed that prior to the investigation period, CFTL *(Noticee 1)* had allotted 1 crore shares of ₹ 10/- per share on preferential basis to 49 non-promoter

entities on September 27, 2011 at a price of ₹ 15/- per share. The company was suspended from trading by BSE during the period January 14, 2003 and June 30, 2011 due to non-compliance with Listing Agreement. When the Company made preferential allotment of shares, there was no trading in the scrip, subsequent to revocation of suspension by BSE on July 1, 2011. The shares allotted in the preferential allotment were under lock-in up to one year till September 26, 2012. The investigation revealed that the Company (Noticee 1) and its Directors (Noticees 2 to 5) were part of a scheme to manipulate the price of the scrip to benefit the preferential allottees, during the period September 4, 2012 and January 8, 2013.

12. In view of the aforesaid findings of the investigation, it was alleged that the Noticees had violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and 4 (2) (e) of SEBI (PFUTP) Regulations, 2003.

APPOINTMENT OF ADJUDICATING OFFICER

13. Accordingly, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated May 18, 217 under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"*Adjudication Rules*")** to inquire into and adjudge under Section 15HA of SEBI Act for the alleged violation of the provisions of SEBI (PFUTP) Regulations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

14. A common Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/NJMR/29564/2017 dated November 28, 2017 was served on the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under section 15HA of SEBI Act, 1992 for the violation alleged to have been committed by them.

15. I note that the Noticee 7 vide letter dated December 7, 2017 while acknowledging receipt of SCN sought 4 weeks to file a reply to the charges alleged in the SCN, which was deemed to have been accorded. The Noticee 7 vide letter dated January 8, 2018 submitted his reply, which is summarized hereunder:

a) *Executed transactions for sale and purchase of shares in number of companies during the investigation period in addition to trades in the scrip of CFTL and all such transaction were executed in the normal course of business. ;*

b) *It was observed that the price of the shares of CFTL was moving upward on day to day basis and therefore decided to acquire the said shares for short and medium term without knowing that there are some investors and/or the management of the company who have indulged into market price manipulation.*

c) *In case of shares moving upwards, it is a usual practice to punch number of orders into the trading terminal prior to opening of the market at the rate above the last closing rate, so as to ensure their order comes in the queue. Said placement of order and its withdrawal cannot be construed as his involvement in manipulating the price.*

d) *SCN defines Patch 1 from September 4, 2012 to January 08, 2013 wherein the price of the scrip of CFTL had increased from ₹78.8 per share to ₹319.6 per share. During the said period, he had executed transactions from September 07, 2012 to October 23, 2012 when the price moved from ₹81.95 per share to ₹150.39 per share. Therefore, it has been contended that he cannot be held liable for price rise up to ₹81.95 per share and from ₹150.39 per share to ₹319.60 per share.*

e) *No relation with the counterparty Mr. Ghanshyam Kachhawa and it was a coincidence that in all purchase transactions in the shares of CFTL, he was the counterparty. In a screen based trading it was not possible for the noticee to find out who is the counterparty and therefore, Mr. Ghanshyam Kachhawa being a counter party to all the trades cannot be construed as a violation.*

f) *Purchase of 360 shares of CFTL was for delivery, as can be seen from the demat transactions statement and therefore the said transactions cannot be construed as transactions for purchase of shares of CFTL in a fraudulent manner.*

g) *That owing to the aforesaid submissions, the Noticee submits that it did not indulge in any fraudulent and unfair trade practice.*

16. It was observed that the Noticees 1 to 6 did not submit their replies to the charges alleged in the SCN. Accordingly, vide notice dated January 3, 2019 the Noticees 1 to 6 were given one more opportunity to furnish their reply to the SCN by January 25, 2019. Further, in the interest of natural justice and in terms of Rule 4 (3) of SEBI Adjudication Rules, the Noticees 1 to 7 were given an opportunity of personal hearing on February 5, 2019, which was communicated vide notice dated January 3, 2019.

17. The Noticee 1 vide its letter dated January 28, 2019 submitted its reply, which is summarized hereunder:

(a) The Noticees 1 to 5 were served with another SCN under Section11 (1), 11 (4) and 11B of the SEBI Act on August 9, 2017, i.e., before issuance of SCN dated November 28, 2017 in respect of the current proceedings, for the same set of allegations.

(b) The Hon'ble WTM vide order dated December 31, 2018 held that "it would be difficult to conclude that the Noticees 1 to 5 have violated any of the provisions of SEBI (PFUTP) Regulations and accordingly disposed of the SCN dated August 9, 2017 issued to the Company and its Directors (i.e., Noticee 1 to 5).

(c) No role has been attributed to CFTL and / or its Directors for the trading carried out by top 10 LTP contributors except it has been alleged that we had transferred some funds to VRP Financial Services Pvt., Ltd., (hereinafter referred to as "VRP").

(d) As regards transfer of funds to VRP is concerned, it submitted that the same was in the form of unsecured loan which was received back prior to the start of the investigating period. A copy of the ledger of VRP in our books and copy of the bank account from where the funds were paid to VRP and received back is annexed hereto.

(e) The above clearly establishes that not even an iota of funds have been used by VRP in the trades carried out by them in the scrip of CFTL. Hence, the SCN has been issued without any basis and without taking into account the facts and circumstances of the case.

(f) No evidence has been adduced in the SCN to establish that the funds given by us to VRP were utilized by them either for purchasing the shares of CFTL or for transferring the same to Mr. Ghanshyam Kamlesh Kacchwa through which he has purchased the shares of CFTL. Hence, the serious allegation of violation of SEBI (PFUTP) Regulations have been levelled against CFTL and

its Directors just on the basis of figment of imagination of the Investigating Authority.

(g) Neither the Company not its Directors / Promoters have dealt in the shares of the company during the relevant period. The burden of acts in terms of alleged manipulative trading in the scrip cannot be saddled on to us. There is no allegation that the LTP contributors were trading at our behest or on our behalf. Further, it has not been demonstrated as to how we had any role to play in the trading done by the LTP contributors.

(h) The Company and its Directors are not aware how VRP routed the funds to Mr. Ghanshyam Kamlesh Kacchwa. We cannot be held liable for the acts done by VRP which has acted on its own and not on our behalf. We have no role to play in the trading done by Mr. Ghanshyam Kamlesh Kacchwa and Mr. Daulat Chandraliya.

(i) No proceedings have been initiated against other LTP contributors who have been instrumental in price manipulation.

(j) No SCN has been issued to VRP for being a conduit and no adverse inference has been drawn against them.

(k) The Noticees places reliance on the Orders of Hon'ble Securities Appellate Tribunal (SAT) viz., Shri Kamlesh R Shah Vs SEBI (Appeal No. 192 of 2011) dated 15/02/2012, Sumedha Fiscal Services Ltd., Vs SEBI (Appeal No. 53/2003) decided on 20/10/2004, which clearly establishes that similar action should be taken for same type of defaults.

(l) It was the collective decision of the Board of Directors of the Company to come out with preferential allotment. We are not aware about the trading done by other alleged entities, including the alleged counterparty buyers to the sale of shares of allottees during the post lock-in period and same is also of no concern to us.

(m) Since we have not violated any of the provisions of SEBI (PFUTP) Regulations and the same has been proved with the Order passed by the Hon'ble WTM, the present proceedings under SCN dated November 28, 2017 be dropped and we be discharged from the present proceedings.

18. The replies submitted by the Noticee 4 (Lalitkumar Roshanlal Maroo) and Noticee 5 vide their respective letters dated January 26, 2019 and January 11, 2019 are summarized hereunder:

(a) Lalitkumar Maroo was an Independent Director of CFTL and has resigned since February 14, 2014. Resignation letter along with relevant forms filed with RoC is annexed hereto.

(b) Swati Panchal was appointed as an Independent Director of CFTL w.e.f February 14, 2014, which was the fag end of the investigation period.

(c) Their role as an Independent Director was very limited and that they were not involved in the day to day management of CFTL. The Noticees states that they do not have any material/ pecuniary relationship as director with CFTL, its promoters, directors etc. which may affect his independence.

(d) The allegations in the SCN arise from day to day activities performed by the Whole Time Directors/ Executives/ officials of the company with regard to transfer of funds to an entity through circuitous route. There is nothing in the SCN that alleges that the alleged activities carried out by CFTL through Board Meetings. The activities carried out by CFTL were in the nature of day to day activities and did not require any board approval. Therefore, an independent director they were not involved with respect to transfer of funds to VRP Financial Services Pvt. Ltd. and Ghanshyam Kacchwa.

(e) With regard to specific allegations in the SCN against the company, CFTL has filed a detailed reply dated January 28, 2019. The Noticees adopts the submissions made by CFTL in support of their contention that they had acted in a bonafide manner.

(f) The Noticees denies that they were part of any scheme to manipulate the price of the scrip to benefit the preferential allottees.

(g) The Noticees states that they have not made any gains or derived unfair advantage as a result of alleged violations.

(h) The Noticees 1 to 5 were served with another SCN under Section11 (1), 11 (4) and 11B of the SEBI Act on August 9, 2017, i.e., before issuance of SCN dated November 28, 2017 in respect of the current proceedings, for the same set of allegations.

(i) The Hon'ble WTM vide order dated December 31, 2018 held that "it would be difficult to conclude that the Noticees 1 to 5 have violated any of the provisions of SEBI (PFUTP) Regulations and accordingly disposed of the SCN dated August 9, 2017 issued to the Company and its Directors (i.e., Noticee 1 to 5).

(j) *In view of the foregoing submissions and Order passed by the Hon'ble WTM, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*

19. The replies submitted by the Noticee 2 (Manojkumar Naginlal Jain) and Noticee 3 (Amruth Joachim Coutinho) vide their respective letters dated January 28, 2019 and January 8, 2019 are summarized hereunder:

(a) *With regard to specific allegations in the SCN against the Noticees, CFTL has filed a detailed reply dated January 28, 2019. The Noticees adopts the submissions made by CFTL in support of their contention that they had acted in a bonafide manner.*

(b) *The Noticees 1 to 5 were served with another SCN under Section11 (1), 11 (4) and 11B of the SEBI Act on August 9, 2017, i.e., before issuance of SCN dated November 28, 2017 in respect of the current proceedings, for the same set of allegations.*

(c) *The Hon'ble WTM vide order dated December 31, 2018 held that "it would be difficult to conclude that the Noticees 1 to 5 have violated any of the provisions of SEBI (PFUTP) Regulations and accordingly disposed of the SCN dated August 9, 2017 issued to the Company and its Directors (i.e., Noticee 1 to 5).*

(d) *The Noticees denies that they were part of any scheme to manipulate the price of the scrip to benefit the preferential allottees.*

(e) *The Noticees stated that they have not made any gains or derived unfair advantage as a result of the alleged violations*

(f) *In view of the foregoing submissions and Order passed by the Hon'ble WTM, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*

20. The Noticees 1 to 5 appeared for personal hearing through their Authorized Representative Mr. Geet Shikhar, Advocate on February 5, 2019 and reiterated the submissions made by CFTL vide letter dated January 28, 2019 on its behalf and on behalf of the Noticees 2 to 5.

21. In respect of the Noticee 7, Mr. Kamal Agrawal, Chartered Accountant *(Authorized Representative)* appeared for personal hearing on February 5, 2019 and reiterated the submissions made by the Noticee vide his letter dated January

6, 2018. Further, the Authorized Representative undertake to file additional submissions by February 11, 2019.

22. On behalf of Noticee 6, Mr. Rahul Dwivedi, Advocate appeared before me on February 5, 2019 and sought extension of time till February 12, 2019 for submission of reply to the charges alleged in the SCN and adjournment of personal hearing to February 12, 2019, which was granted.

23. I note that the Noticee 7 vide letter dated February 1, 2019 submitted his reply by enclosing a letter dated October 24, 2018 submitted to the SCN issued by the Hon'ble WTM, which is similar to the reply furnished by him vide his letter dated January 8, 2018, which was summarized in paragraph 15 of this Order.

24. On behalf of the Noticee 7, Mr. Kamal Agrawal, Advocate has made additional submissions vide letter dated February 5, 2019, which is summarized hereunder:

(a) Reiterated the earlier submissions made by the Noticee vide his letters dated January 8, 2018 and February 1, 2019.

(b) It is pertinent to note that Hon'ble WTM in his Order dated December 31, 2018 has held under Para 18 that neither the Company nor its Directors were involved in manipulation of the price of the scrip. It is pertinent to note that there is no evidence brought on record that I was anyway either connected with Kacchawa or any other party and therefore in the absence, no penalty should be imposed on me.

(c) There is no evidence of any nature about my direct or indirect relationship or nexus with Kacchawa and he being a counterparty in all the trades cannot be construed as my involvement in the price manipulation in the scrip of CFTL.

(d) It is submitted that on all the days when I acquired shares of CFTL, the volume of trade at BSE was 15 or 20 shares and therefore there is no artificial volume generated or created by me which can create an impression of false and misleading appearance of trading in the securities market.

(e) It is stated that on all the days when the shares were purchased by me, the rates were within the circuit filter limit and therefore it cannot be construed as price manipulation.

(f) Reliance is placed on the Order of Hon'ble SAT in the matter of Jagruti Securities Lvt., Vs SEBI, wherein the Hon'ble SAT had sent aside the Order passed by the Ld. Adjudicating Officer for the similar violations.

(g) Further, the Noticee places reliance on the Order of Hon'ble Supreme Court in Civil Appeal No. 14730 of 2015 in the matter of Siddharth Chaturvedi Vs SEBI with regard to imposition of penalty.

25. The Noticee 6 vide his letter dated February 4, 2019 *(received on February 8, 2019)* submitted his reply, which is summarized hereunder:

a) That, one Mr. Giriraj Agrawal has taken me into confidence and wherever and whenever he told me to sign, I have signed on as well as whatever he was telling to do, I was doing as per his instructions and as per the instructions of Mr. Pradeep Dhanuka.

b) I say that it is Mr. Giriraj Agrawal who handled all such alleged transactions be it purchase / sale of shares, for which I was getting ₹ 2,000/- per month from them.

c) I have neither opened an account nor sold and purchased any shares as alleged. I am no way concerned in this matter. I do not have any records also about the same. I have believed on the aforesaid persons and signed on Forms for said transactions, who have played mischief with me.

CONSIDERATION OF ISSUES AND FINDINGS

26. After perusal of the material available on record, I have the following issues for consideration viz.,

I. Whether the Noticees have violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), 4 (2) (a) and 4 (2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003?

II. Whether the Noticees are liable for monetary penalty under Section 15HA of the SEBI Act?

III. If so, what quantum of monetary penalty should be imposed on the Noticees?

FINDINGS

27. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder.

ISSUE I: Whether the Noticees have violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), 4 (2) (a) and 4 (2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003?

28. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PFUTP Regulations), 2003 which reads as under:

Regulation 3 of SEBI (PFUTP) Regulations: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

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

(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 thereunder.

Regulation 4 of SEBI (PFUTP) Regulations: - Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

29. First, I would like to deal with the allegation pertains to Noticee 1 to 5 that they were part of a scheme to manipulate the price of the scrip to benefit the

preferential allottees, during the period September 4, 2012 and January 8, 2013. I note that prior to investigation period, CFTL had allotted 1 crore shares of ₹ 10/- per share on preferential basis to 49 non-promoter entities on September 27, 2011 at a price of ₹ 15/- per share. I note that the company was suspended from trading by BSE for the period January 14, 2003 to June 30, 2011 due to non-compliance with Listing Agreement. When the Company made preferential allotment of shares, there was no trading in the scrip, subsequent to revocation of suspension by BSE on July 1, 2011. The shares allotted in the preferential allotment were under lock-in up to one year till September 26, 2012.

30. The company and its directors in their replies and submissions denied the allegations and have submitted that transfer of funds to VRP was in the form of unsecured inter- corporate loan which was received back prior to the start of the investigation period. As regards the allegation that the company and its directors were part of a scheme to manipulate the price of scrip to benefit the preferential allottees, it is stated by CFTL that the allegations are sweeping and based on surmises. The Noticees have stated that they were not aware about the trading done by other alleged entities including the alleged counterparty buyers to the sale of shares during the post lock in period. In support of its contention, the company has enclosed copy of the ledger of VRP in its books and copy of the bank account statement from where the funds were paid to VRP and received back with its reply. From the reply of the company and its directors and the annexures enclosed therewith, I note that the following fund transfers have taken place between CFTL and VRP.

Amount transferred from CFTL's Axis Bank account no. 911020017645987

Date	Cheque no.	Transferee's Name	Amount transferred (in ₹)
31/10/2011	27745	VRP	8,75,000
24/01/2012	27771	VRP	15,00,000
02/05/2012	30664	VRP	53,00,000
	Total		**76,75,000**

Amount transferred by VRP

Date	Transferee's Name	Amount transferred (in ₹)
25/02/2012	CFTL	2,75,000
24/01/2012	CFTL	15,00,000

04/05/2012	CFTL	52,00,000
13/06/2012	CFTL	15,00,000
30/07/2012	CFTL	7,00,000
	Total	**76,75,000**

31. I note from the aforesaid transactions furnished by CFTL along with the documentary proof that a total amount of ₹ 76,75,000/- was transferred by CFTL to VRP on various dates in the form of inter-corporate loan, which was repaid by VRP to CFTL on various dates. I note that the transfer of funds to VRP and receipt of funds subsequently from VRP took place before commencement of the investigation period. I note from the submissions made by the Noticees 1 to 5 that the aforesaid transactions with VRP was in the form of normal course of business only. I also note that the company and its directors have not traded in the scrip during Patch 1 of investigation period i.e., 04/09/2012 to 08/01/2013, when the price of CFTL scrip moved from ₹ 78.80 to ₹ 319.60.

32. I note that the loan given by CFTL to VRP were returned by VRP before the commencement of investigation period and thus the question of any trading by Ghanshyam Kamlesh Kacchawa out of the funds provided by CFTL to VRP and further by VRP to Ghanshyam Kamlesh Kacchawa does not arise. I note that there is no evidence found in the SCN to establish that the funds given by CFTL to VRP were utilized by it for the purpose of purchase of shares of CFTL or for the purpose of transferring the same to Ghanshyam Kamlesh Kacchawa. Therefore, the allegation of connection by way of funds transfer to VRP by CFTL and further transfer of funds by VRP to Ghanshyam Kamlesh Kacchawa does not sustain in view of the fact that the transfer of funds and subsequent repayment was in the form of loan, which was in the normal course of business.

33. In view of the aforesaid facts and circumstances of this case, since the connection of VRP with CFTL by way of funds transfer could not be established, I am inclined to hold that the Noticee 1 to 5 i.e. the company and its directors were not involved in the manipulation of the price of the scrip as alleged in the SCN.

34. Upon analysis of LTP on buy side in respect of the Patch 1 i.e., September 4, 2012 to January 1, 2013, I note that top 10 LTP contributors have contributed

positive LTP of ₹ 242.80 (70.41 %) of total market positive LTP in 80 trades. Out of the top 10 LTP contributors, 6 entities have contributed more than 5% of LTP. The top contributor to LTP viz., Daulat Laxmilal Chandraliya (Noticee 7) had bought purchased 395 shares and sold 495 shares. All 26 buy trades by Daulat contributed positive LTP of ₹ 57.25 (16.59 %) of total market positive LTP.

35. I note from the order log analysis that the Noticee 7 had been placing numerous buy orders for 100/200 shares at price significantly above the LTP (i.e. around the upper circuit limit). The trades got executed after the placement of sell order by Ghanshyam Kamlesh Kacchawa (Noticee 6). I note that subsequent to the trade, in few minutes of time span, all the unexecuted buy orders for remaining quantity had been deleted. For the purpose of illustration, from the order log analysis for trade done on September 7, 2012 I note that the Noticee 7 placed 30 buy orders for 3900 shares altogether. All buy orders were placed at ₹ 81.95 which is 1.99% higher than previous close ₹ 80.35 during 9:15 -9:19am. The trade for 20 shares at ₹ 81.95 has been executed with the placement of sell order by the Noticee 6 at 12:09:10. Subsequently, between 12:15pm -12:16pm, all other 29 unexecuted buy orders were deleted by Noticee 7. Such pattern of placement of buy orders and deletion of unexecuted orders was observed repeatedly almost for all trades undertaken by Noticee 7 and therefore the trades executed by the Noticee 7 cannot be construed as genuine, but with an intention to increase the price of the scrip with a malafied intention. I note that the Noticee 6 was the only counterparty client for all the buy trades of the major LTP contributors.

36. I note that the Noticee 6 Kachhawa had sold during the first 50 days of the investigation period (till November 27, 2012) in small lots of 15-20 shares in the scrip. The price of the scrip almost touched the circuit filter (1.9%) on all 50 days. The price of scrip has increased to ₹ 205.95 on November 19, 2012. LTP analysis has indicated that the sell trades by Kachhawa has contributed to 72.73% of total LTP with sell of 900 shares (0.47% of market volume).

37. From the order/trade log, it is observed that the Noticee 6 was selling the shares in small quantities every day, even though there were pending buy orders at the prevailing price. It was also observed that he did not sell all the shares held by

him at the beginning of investigation and continued to hold 550 shares out of the 1450 shares he held at the beginning of the investigation.

38. I note from the transaction statements as provided by depositories that Kacchawa was holding substantial quantity of shares (1450 shares at the beginning of investigation) during the period of sale transactions. Despite holding abundant quantity of shares, he released limited number of shares and matched the above LTP buy orders with trade quantity, mostly offering shares in the range of 15-20 shares. Thus, it was observed from his trading pattern that he was not acting as genuine seller and had no bonafide intention to sell because inspite of sufficient buy orders with abundant quantity being available in the market, he released very small quantity of shares in each transaction and performed not more than one transaction a day. I note from the trading pattern of the Noticee 6 that he was instrumental in establishing a price higher than the last traded price and thus contributed to increased scrip price with each of his trades.

39. I note that the thumb rule of trading in stock market is to buy shares at lesser rate and sell shares at higher rate. The trading pattern of the Noticee 7 in entering buy Orders at prices much higher than the market price in minimal quantities establishes his manipulative intent to artificially increase the price of the scrip. I note that the rationale for such transactions entered by the Noticee 7 defies the logic and basic economic sense. Further, the trading pattern of the Noticee 6 by releasing small quantity of shares to match the trades of the Noticee 7, clearly establishes his manipulative intent to increase the price of scrip.

40. In this connection, I would like to refer to the observations made by the Hon'ble SAT in its order dated March 21, 2014 in Saumil Bhavnagari Vs. SEBI which are as under: *"… but by purchasing shares at the higher price in LTP in most of the trades, the Noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the Noticee's trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible investors. By purchasing at a higher price in most of his trades, the Noticee had given the wrong impression about the price of the scrip in the market. It is an accepted state of affairs that in cases of manipulation*

of the volume and / or price of a particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafied intention of the appellant."

41. Further, the Noticee 7 contended that the SCN does not provide an iota of evidence as to how he is related to the counterparty viz., Noticee 6. In this context, I note that in the screen based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc., In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of Ketan Parekh vs. SEBI (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, ..., the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

42. In this regard, I note the observations of the Hon'ble Supreme Court in Securities and Exchange Board of India v. Kishore R. Ajmera (2016) 6 SCC 368:

> *"While the screen-based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned.*
>
> *The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors."*

43. This position was further reiterated by Hon'ble Supreme Court in the matter of SEBI vs. Rakhi Trading Private Ltd., in Civil appeals no., 1969 of 2011 with Civil Appeal Nos., 3174-3177 of 2011 and Civil Appeal No., 3180 of 2011 decided on February 8, 2018, wherein the Apex Court observed that *"in the absence of direct*

proof of meeting of minds, the test should be one of preponderance of probability and also stated that the conclusion has to be gathered various circumstances like volume of trade, period of persistence of trading, particulars of buy and sell orders, proximity of time between the two and such other relevant factors".

44. In view of the dicta of the Hon'ble SAT and Hon'ble Supreme Court, I am not inclined to take a different view and hold that the Noticees 6 and 7 while acting in concert manipulated the price of CFTL scrip.

45. The Noticee 7 in his submissions contended that as a trader, he observed that the price of shares of CFTL were moving upward and therefore he decided to acquire the said shares for short and medium term without knowing that there was price manipulation. In case of shares moving upwards, it is a usual practice to punch number of orders into the trading terminal prior to opening of the market at the rate above the last closing rate, so as to ensure their order comes in the queue. It is observed from the trading pattern of the Noticee 7 that he placed his orders at price significantly above the LTP and such orders were matched only when Noticee 6 placed his sell orders. Therefore, I note that deletion of unexecuted buy orders does not indicate bona fide intention to trade on the part of the Noticee 7 and on other hand it indicates manipulative intent to increase the price of the scrip. Therefore, the contention of the Noticee 7 that placement of order and its withdrawal cannot be construed as his involvement in manipulating the price, devoid of any merit.

46. The Noticee 7 further contended that he cannot be held liable for price rise from ₹ 81.95 to ₹ 150.39 per share during the period September 9, 2012 and October 23, 2012 and from ₹ 78.80 per share on September 4, 2012 to ₹319.60 on January 8, 2013. In this connection, I deem it appropriate to refer to the table of LTP analysis carried out at paragraph 4 of this Order, wherein it was observed that the Noticee 7 with his trades had contributed to a positive LTP of ₹ 57.25. In view of the above, it is evident that the Noticee 7 had in fact a major contributor to the positive LTP, which had impacted the price of the scrip. Therefore, the contentions raised by the Noticee does not find any merit.

47. It is an admitted fact that Noticee 6 had knowingly lent his name and documents to Mr. G K Agarwal to operate. It is evident and established that the dealings of the Noticee 6 in the scrip of CFTL in connivance with Noticee 7 was with a manipulative intent to increase the price of the CFTL scrip. I am of the view that the Noticee 6 cannot absolve responsibility for misuse of his accounts by third parties by merely stating that he does not know the purpose for which his accounts were used. Name lending is a serious offence which enables manipulators to carry out their nefarious activities by masking their identity and the ultimate beneficiary of manipulative scheme of things. In the instant case, even if it is accepted that G K Agarwal had used the bank / demat accounts of Noticee 6, there are no records of any of his dealings in the scrip of CFTL and therefore had escaped the regulatory supervision / surveillance which not only threatens the integrity of the market but also adversely affects the interest of investor, if such activities remain unchecked. Therefore, I am not inclined to view the acts of voluntary name lending by Noticee 6 leniently, as such acts have facilitated market operators to devise and deploy deceptive, fraudulent and manipulative schemes in the scrip of CFTL. In this regard, I take note of the observation of The Hon'ble Securities Appellate Tribunal in Rahul H. Shah Vs. SEBI (Appeal No. 83 of 2012 decided on May 11, 2012) wherein it was observed that name lending "*is a fraudulent activity and requires to be curbed for maintaining the sanctity of the securities market".* Therefore, I am not inclined to give benefit of doubt / lenient view, in respect of the Noticee 6.

48. In view of my observations and findings in the paragraphs above, I conclude that Noticees 6 and 7 have violated the provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a) & (e) SEBI (PFUTP) Regulations.

ISSUE -II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?

49. Pursuant to detailed analysis, it is established that that the Noticee 7 by repeatedly placing buy orders at a price higher than LTP and the Noticee 6 by matching the buy orders with his sell orders by releasing small quantity of shares, manipulated the price of the scrip and thereby violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), 4 (2) (a), and 4 (2) (e) of SEBI (PFUTP)

Regulations, 2003. Therefore, the Noticees are liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are furnished hereunder.

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

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

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

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

Section 15J - Factors to be taken into account by the Adjudicating Officer

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.

51. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default.

52. It is difficult, in cases of such nature, to quantify with mathematical precision the disproportionate gains or unfair advantage enjoyed by an entity and the consequent loss suffered by the investors. However, as noted earlier, trading in the scrip of CFTL had been suspended from January 14, 2003 to June 30, 2011. Further, the financials and other fundamentals of the company were not commensurate with the price rise. In such a situation, any genuine investor would try to make the most out of such an opportunity and trade in all the shares at once particularly when such scrip which was were under suspension for 8 years and was infrequently traded even after the suspension was revoked. I note that by the concerted acts of the Noticees 6 and 7 by indulging in price manipulation in the scrip of CFTL, general public could have been carried away by the unusual rise in the volumes and prices in the scrip of CFTL, which induced into investing in the said scrip. This kind of activity seriously affects the normal price discovery mechanism in the securities market. People who indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for such acts of omissions and commissions.

53. In this connection, I deem it appropriate to refer to the Order of the Hon'ble Supreme Court of India in case of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC), which inter-alia 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".*

54. It is relevant to mention here that ratio of the said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to income tax act. It was held by the Hon'ble Supreme Court *"that penalty under the provision is for breach of civil obligation and is mandatory and the mens-rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives".*

55. In view of the established aforesaid legal provisions, I am not inclined to take a different view and it is a fit case for imposition of penalty on the Noticees 6 and 7 for indulging in price manipulation.

56. In respect of the Noticees 1 to 5, as discussed in pre-paragraphs, since it is not established that they were part of manipulative scheme to manipulate the price of the scrip to benefit the preferential allottees, the SCN is disposed of without imposition of any monetary penalty.

ORDER

57. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose the following penalties on the Noticees 6 & 7 under Section 15HA of the SEBI Act, 1992, for contributing to price rise fraudulently, in the scrip of CFTL.

Noticee No.	**Name of the Noticee**	**Penalty amount in ₹**
6	**Ghanshyam Kamlesh Kacchawa**	**5,00,000/- (Rupees Five lakhs only)**
7	**Daulat Laxmilal Chandraliya**	**5,00,000/- (Rupees Five lakhs only)**

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

59. 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex

RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

60. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-IV, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

61. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: February 28, 2019 **B J DILIP**

Place: Mumbai **Adjudicating Officer**