BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/13678]

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

In respect of:

Mansukh Stock Brokers Limited (SEBI Registration no. INZ000164937)

In the matter of:

Halonix Limited (Now known as 'Phoenix Lamps Limited')

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint, alleging violations of Securities Laws in the scrip of Halonix Limited (Now known as 'Phoenix Lamps Limited') (hereinafter referred to as '**Halonix/ Company**') and conducted investigation in the matter for the period February 26, 2010 to September 24, 2010 (hereinafter referred to as '**Investigation Period/IP**'). The focus of investigation was to examine whether there were any violations in the provisions of, *inter alia,* SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') during the investigation period.

2. The shares of Halonix are listed on BSE Limited (hereinafter referred to as '**BSE**') and National Stock Exchange of India Ltd. (hereinafter referred to as '**NSE**'). The following table shows the price volume data of Halonix on BSE and NSE during the Investigation Period:

<u>Table- 1: Price – Volume Data</u>

			Open	High	Low	Close	Avg. Vol
BSE	Pre Investigation Period 01/12/2009-25/02/2010	Price	95.8	105	73.5	84.3	7025
		Volume	4028	45774	190	984	
	Investigation Period 26/02/2010-24/09/2010	**Price**	**84**	**166.5**	**73.15**	**136.8**	**31,654**
		Volume	**994**	**777902**	**401**	**4507**	
	Post Investigation Period 25/09/2010-01/12/2010	Price	132.35	147.6	108	124.35	7014
		Volume	3632	19991	585	4223	
NSE			**Open**	**High**	**Low**	**Close**	**Avg. Vol**
	Pre Investigation Period 01/12/2009-25/02/2010	Price	93.4	104.5	73.15	84.95	15101
		Volume	10954	86268	566	4751	
	Investigation Period 26/02/2010-24/09/2010	**Price**	**84.95**	**167.15**	**73**	**135.75**	**48051**
		Volume	**2125**	**1128213**	**850**	**43141**	
	Post Investigation Period 25/09/2010-01/12/2010	Price	129.4	145	105.55	123.65	9961
		Volume	10558	70518	845	4223	

3. During the investigation, SEBI observed that the average traded volume in the scrip was comparatively high during the investigation period. It was further observed that certain entities including Mansukh Securities and Finance Ltd. (hereinafter referred to as "**MFSL/client**") entered into self-trades on multiple days, during the investigation period. It was further observed that Mansukh Stock Brokers Limited (hereinafter to as '**Mansukh/ Noticee/ by Name**') was the broker on buy side as well as on the sell side on all the occasions of self-trades executed by MFSL. It was, therefore, alleged that by acting as broker and counterparty broker for self-trades of MFSL, Noticee failed to exercise due skill and care and thereby violated Clause A (2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 of the SEBI

(Stock Brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as "**Broker Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide order dated January 19, 2021 appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act,1992(herein after referred to as "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under Section 15HB of SEBI Act, the alleged violation of the provisions of Clause A(2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 of the Broker Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A show-cause notice dated January 29, 2021 and Supplementary Show Cause Notice dated August 18, 2021 were issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HB of SEBI Act for the aforesaid violation alleged to have been committed by them

6. It was alleged in the Show Cause Notice dated January 29,2021 that there were some entities who had entered into a major number of self-trades on BSE. It was also observed that both the buy and the sell side brokers, including Noticee, were same for these entities. The details of self-trade entered into by Noticee on behalf of its client of viz. Mansukh Securities and Finance Ltd.('**MSFL**') are as under –

Table - 2: Self-Trades

Broker On Both Buy & Sell Side	Entity Name	Total Self Trade Volume	Total Self Trade Count	No of days on which self-trades done
Mansukh Stock Brokers Limited	Mansukh Securities and Finance Ltd.	283	121	10

7. It was observed from the table that Noticee was broker of MSFL on both the buy and the sell side. In view of the same, it was alleged that the entity, MSFL, by entering into self-trades, had traded in a fraudulent manner without having the intention to transfer beneficial ownership of shares. Therefore, it was also alleged that Noticee, as a broker of MSFL, had failed to exercise due skill and care.

8. In light of the above, it was alleged that Noticee has violated the provisions of Clause A (2) of the Code of Conduct for Stock Brokers as specified in Schedule II read with Regulation 7 of the Broker Regulations.

9. The Show Cause Notice was sent to Noticee via Speed Post Acknowledgement Due ('**SPAD**') as well as through email. I note that Show Cause Notice issued to Noticee through SPAD and email was duly served to Noticee and Noticee was given 15(fifteen) days' time to make its submission or file its reply in respect of the allegations made in the Show Cause Notice. Noticee vide letter dated February 05, 2021, filed its preliminary reply to Show Cause Notice and also sought inspection of documents. The request of Noticee was acceded to and Noticee was given the opportunity of inspection of documents on May 11, 2021. Vide email dated May 17, 2021, Noticee was granted an opportunity of personal hearing on May 19, 2021. Noticee vide its email darted May 18, 2021, requested adjournment of hearing. The request of Noticee was acceded to and vide email dated May 20, 2021, another opportunity of personal hearing was granted to Noticee on May 21, 2021. On May 20,2021, Noticee submitted its further reply. The personal hearing was availed by

Noticee on May 21, 2021, through its Authorized Representative ("**AR"**) namely Meit Shah. During the hearing, AR reiterated the contents of the replies submitted on May 20, 2021.

10. Subsequently, a supplementary Show Cause Notice was issued to Noticee through Speed Post AD and digitally signed email on August 20, 2021 and was duly served upon Noticee. Noticee vide its email dated August 26, 2021, submitted its reply. (Show Cause Notice issued on January 29, 2021 and Supplementary Show Cause Notice issued on August 18, 2021, together collectively referred to as "**SCN"**)

11. The replies submitted by Noticee, *inter-alia*, are summarized below:
    i. Noticee has denied the allegations levelled against them in the SCN.
    ii. They had exercised due skill, care and diligence at all points of time while executing orders on behalf of their clients MSFL in the scrip of Halonix.
    iii. Their client MSFL had dealt in number of other scrips during the relevant period.
    iv. The volume of self-trades was miniscule and negligible, so it did not have any impact on the market volume in the scrip. Further, Noticee had submitted comparison of impugned self-trades with Market volume in the scrip of Halonix which is as under:

Market volume at BSE			
Date	Market volume during said period	Volume of Impugned self-trade of MSFL	Percentage comparison of impugned self-trade to Market volume
04.05.2010	144639	6	0.00%
05.05.2010	49529	6	0.01%
06.05.2010	18952	1	0.01%
11.06.2010	264854	204	0.08%
22.07.2010	321040	19	0.01%
23.07.2010	182930	2	0.00%
27.07.2010	777902	2	0.00%
28.07.2010	236079	23	0.01%
29.07.2010	474744	15	0.00%
05.08.2010	267889	5	0.00%
Total	**2738558**	**283**	**0.01**%

v. Noticee has also submitted comparison of impugned no. of alleged self-trades of MSFL with No. of trades in Halonix at BSE which is as under:

Date	**No. of trades during said period**	**Impugned no. of alleged self-trades of MSFL**	**Percentage comparison of impugned no. of self-trades of MSFL to market no. of trades**
04.05.2010	2046	6	0.29%
05.05.2010	481	5	1.04%
06.05.2010	199	1	0.50%
11.06.2010	3469	55	1.59%
22.07.2010	4059	7	0.17%
23.07.2010	2194	2	0.09%
27.07.2010	8861	2	0.02%
28.07.2010	3269	23	0.70%
29.07.2010	5727	15	0.26%
05.08.2010	3139	5	0.16%
Total	**33444**	**121**	**0.36%**

vi. There were no systems available with the Exchanges for matching orders.

vii. They had dealt in large number of scrip in the year 2010-11 and their dealing in the scrip of Halonix was trifling and insignificant in comparison to overall dealing in securities market.

viii. The impugned self-trades did not affect the market price in scrip of Halonix.

ix. They do not have any relationship or nexus/connivance/collusion with Halonix, its promoters, directors or Key Management Persons.

x. Noticee has submitted various AO orders, wherein AO has disposed of the proceedings and no penalty has been imposed by AO. Further, Noticee has submitted various Hon'ble SAT judgment in support of its contention.

xi. Noticee has submitted that, the said proceedings were initiated after a gap of ten years after the transactions were executed. The proceedings started belatedly are bad in law. Further, Noticee submitted Hon'ble SAT judgment in the case of HB Stockholdings Limited v/s. SEBI(Appeal No. 114 of 2012) and opinion of Hon'ble Supreme Court Judgment in the case of State of Gujarat v/s. Patel Raghav Natha.

xii. Noticee also made a reference of Adjudication Order dated June 22, 2021 bearing reference no. ORDER/SM/DD/12308/2021-22 w.r.t. MSFL in the matter of Halonix Limited wherein Show Cause Notice issued to MSFL was disposed of without imposition of any penalty.

xiii. Noticee requested to drop the said proceedings.

CONSIDERATION OF ISSUES

12. I have carefully perused the charges levelled against Noticee, replies/submissions made by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    (a) Whether Noticee has violated the Clause A(2) of the Code of conduct for Stock Brokers as stipulated in schedule II read with Regulation 7 of the Broker Regulations?

    (b) If yes, then do the violations, if any, on the part of Noticee attract any monetary penalty under Section 15HB of the SEBI Act.?

    (c) If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act.?

13. Before proceeding with the matter on merits, I first deal with the preliminary issue raised by Noticee regarding delay in proceedings. In this regard, I note that Noticee has been unable to show any prejudice or impact which might have been caused due to the time taken to conclude the proceedings. Noticee was provided with all relevant and relied upon documents along with Show Cause Notice dated January 29, 2021 and also during inspection of documents. Notwithstanding the same, I also note that there is no provision in the SEBI Act which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given

case. In Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 08, 2013, Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI(Appeal no. 114 of 2012) decided on August 27, 2013 and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in2003 (158) ELT 129 (S.C.),held as under :

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

14. The decision of Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of Kunal Pradip Savla & Ors. v. SEBI (Appeal no. 231 of 2017) decided on April 04, 2018. Therefore, I conclude that there is no merit the preliminary submissions made by Noticee, regarding the delay in issuance of SCN in the instant proceedings.

15. Before moving forward, it is pertinent to refer to the relevant provisions of the Clause A (2) of the Code of Conduct for Stock Brokers as specified in Schedule II read with Regulation 7 of Broker Regulations which read as under:-

Provisions of the Clause A (2) of the Code of Conduct:

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

***Regulation 7 of Broker Regulations**:*

The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

16. The first issue to be decided is whether Noticee has violated Clause A (2) of the Code of conduct for Stock Brokers as stipulated in Schedule II read with Regulation 7 of the Broker Regulations?

17. Upon perusal of the documents available on record, I find that 121 self-trades for a total quantity of 283 shares were executed by MFSL in the scrip of Halonix at BSE on ten(10) days during the investigation period. I note that the only charge against Noticee is that it acted as a broker and counterparty broker for the self-trades of MFSL.

18. I find that on BSE, the total traded volume of Halonix shares during the investigation period was 46,21,498 shares and self-trades executed by MFSL in the scrip of Halonix was for a total quantity of 283 shares through 121 self- trades. I also note that the percentage of self-trade volume executed by MFSL to the total traded market volume on BSE was only 0.006124%. Similarly, I also find that on NSE the total traded volume of Halonix shares during the investigation period was 70,15,459 shares and MFSL has not allegedly executed any self-trades on behalf of its client in the scrip of Halonix on NSE during the investigation period. Therefore, I note that total volume of self-trades executed by the MFSL was only 0.002432% of total market volume, i.e. on both the BSE and NSE, during the investigation period.

19. I note that the trading transactions of MSFL which gave rise to the present proceedings against Noticee have elaborately been dealt with vide order dated June

22, 2021 in a separate proceedings before me against MSFL wherein I noted, *inter alia,* as under:

"I also note that on the aforesaid trading day when Noticee has executed self-trades, the percentage of volume of self-trades by Noticee to total market volume traded on NSE and BSE, is miniscule, as it is less than0.1% of total market volume on that day. In view of the same, I find that the percentage contribution in the volume, as mentioned above, does not suggest the possibility of any manipulative intent on the part of Noticee to the extent of contributing to market volume through artificial volume creation in the scrip of Halonix during the investigation period……

Therefore, I find that only few instances of self-trades, as presented in the instant matter cannot be considered to be fraudulent in nature, unless supporting facts and circumstances leading to a manipulative intent behind these trades are also presented. I note that Investigation report is silent on these facts and circumstances, which would be necessary to establish that these Self-trades executed by Noticee were manipulative trades, intended to defraud the market.

On account of aforesaid observations, I find it difficult to conclude that the aforesaid self-trades by Noticee in the scrip of Halonix were in violation of provisions of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations. Since, the alleged violations are not established against Noticee, issues No. (b) and(c) require no consideration."

20. In view of the above observation, since it is not established that MSFL had entered into self-trades to create artificial volume in the scrip, there is no case to draw any adverse inference on Noticee as the broker and counterparty trades of MSFL, as regards its role on exercise of due skill and care under Clause A (2) of the Code of Conduct as stipulated under Schedule II read with Regulation 7 of Broker Regulations.

21. As the alleged violations are not established against Noticee, Issue No. (b) and (c) as mentioned in paragraph no. 13 require no consideration.

ORDER

22. Accordingly, taking into account the aforesaid findings, the Adjudication proceedings against Noticee i.e. Mansukh Stock Brokers Limited, initiated vide Show Cause Notice dated January 29, 2021, as well as Supplementary Show Cause Notice dated August 18, 2021, stand disposed of without imposition of any penalty.

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

Date: October 04, 2021 **SOMA MAJUMDER**

Place: Mumbai **ADJUDICATING OFFICER**