BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/10675]

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 :
Kishor V Gandhi HUF [PAN: AAFHK2040D]

In the matter of Octant Interactive Technologies Limited (Now Known as Swarnjyothi Agrotech & Power Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an investigation in the scrip of Octant Interactive Technologies Limited (hereinafter referred to as "**OITL/ company**") and observed that the entities along with connected entities have allegedly indulged in circular/reversal and synchronised trades and there was alleged violation of regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**). The group of connected entities (hereinafter referred to as "**Connected Persons**" / "**Altra Clean Group**") comprised of Manish Rathi, Jitendra Chandrabhan Singh, Kishor V Gandhi HUF (hereinafter referred to as **" Noticee / Kishor"**), Rashmi Vijayjeet Walia, Geeta Ajayjeet Walia, Narendra Vallabhji Bahuva, Jaywant Ganpat Chavan, Maheshwar Das, Kailash Chandra Mishra, Yogarathinam Siva Arul Durai and Rahul

Sharma. The period of investigation is from September 1, 2009 to January 15, 2010 (hereinafter referred as **"Investigation Period / IP"**).

2. SEBI has, therefore, initiated adjudication proceedings under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") against the aforesaid entities (Connected Persons) for the alleged violation of Regulations 3(a) to (d), 4(1) and 4(2)(a) and (g) of PFUTP Regulations (hereinafter referred to as "**PFUTP Regulations**"). Subsequently, an Adjudication Order dated August 02, 2019 was passed against the aforesaid entities and monetary penalty was imposed on them.

3. An appeal against the aforesaid Adjudication Order was preferred in the Hon'ble Securities Appellate Tribunal (SAT), by Kishore V. Gandhi (Appellant) wherein the Hon'ble SAT vide its Order dated December 12, 2019 observed that – *"2. The penalty order has been imposed upon Kishor V. Gandhi, HUF. The present appeal has been filed by Kishor V. Gandhi contending that the HUF was dissolved and, therefore, the present appeal was being filed in his individual capacity. Considering the peculiar facts of the case, we permit the appellant to pursue the appeal as the Karta of Kishor V. Gandhi, HUF."*. Further, vide its aforesaid Order, the Hon'ble SAT issued the following directions –

> *"16. We accordingly set aside the impugned order of the Adjudicating Officer. The appeal is accordingly allowed. The matter is remitted to the Adjudicating Officer to decide the matter afresh after giving an opportunity of hearing to the appellant. For this purpose, the appellant will appear before the Adjudicating Officer on 27th December, 2019 on which date he would be supplied with a copy of the show cause notice. The appellant will provide his residential and business address along with mobile numbers, land line numbers and email address. The Adjudicating Officer will thereafter proceed with the matter and pass appropriate orders after providing the appellant an opportunity to file his reply and after giving an opportunity of hearing. It would be open to the appellant to raise all such*

grounds that are permissible in law before the Adjudicating Officer which if raised will be considered and dealt with."

APPOINTMENT OF ADJUDICATING OFFICER

4. In compliance with the above directions of the Hon'ble SAT, SEBI vide order dated December 19, 2019 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act, 1992 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 15HA of the SEBI Act, 1992 the aforementioned violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Vide letter dated December 23, 2019, the appointment of AO in the matter was communicated to the Noticee. Further, in accordance with the directions of the Hon'ble SAT, the Noticee was called upon to appear before the AO on December 27, 2019 and collect the Show Cause Notice dated February 18, 2018 (*hereinafter referred to as '**SCN**'*) issued to the Noticee by the erstwhile AO in the adjudication proceedings.

6. From the Memorandum of Appearance, I note that the following authorized representatives (**ARs**) viz. Ms. Sourabhi Shirishkumar Waknis, and Ms. Shweta Sunil Rankhambe appeared on December 27, 2019. The ARs were provided with a copy of SCN dated February 28, 2018 along with the annexures. The ARs were also provided with a copy of details of trades of Kishore V Gandhi HUF, relevant pages of investigation report, letter dated October 28, 2010 from Bombay Stock Exchange (BSE) along with its examination report and order appointing AO dated December 20, 2019. Further, the ARs submitted the communication details of the Noticee. Further, the ARs requested for inspection of documents. Accordingly, vide letter dated December 27, 2019, the same was granted and in this regard the Noticee was advised to contact the Enforcement Department of SEBI within 15 days from the date of receipt of the letter. Copy of the said letter granting opportunity for inspection of documents

was handed to the ARs on December 27, 2019 and their acknowledgement is on record.

7. From the available records, I note that subsequently the Noticee did not contact the Enforcement Department of SEBI for the inspection of documents. Accordingly, vide Hearing Notice dated September 04, 2020, the Noticee was granted an opportunity of personal hearing on September 17, 2020. Further, vide the said notice, the Noticee was also granted to submit its reply, if any, to the SCN on or before September 11, 2020. Vide email dated September 07, 2020, the authorized representative of the Noticee *inter alia* requested to send the soft copy of the SCN and all annexures thereto; and inspection of all the documents which are being referred to or relied upon as well the documents collected during the course of the investigation by SEBI, and also the copy of the investigation reports. In reply, vide email dated September 08, 2020, it was communicated to the authorized representative of the Noticee that the copy of the SCN dated February 28, 20218 along with all relied upon documents was provided to the ARs of the Noticee on December 27, 2019 and further their request for inspection of documents had been granted vide letter dated December 27, 2019, however the same had not been availed by them. In the interest of natural justice, the scanned copy of the SCN and all the relied upon documents was once again provided to the authorized AR/Noticee vide the aforesaid email dated September 08, 2020.

8. Vide letter dated September 17, 2020, the Noticee submitted reply to the SCN, and the main submissions made therein are as follows –

> *1. This is with reference to SCN Bearing ref No. SEBI / EAD – 12 / SM / JR / 6122 / 3 / 2018 dated 28 February 2018 (hereinafter referred to as* ***SCN****), which was received by me on 27 December 2019 in the matter of Octant Interactive Technologies Limited (hereinafter referred to as 'said scrip') alleging circular/reversal/synchronised trades in connivance with other entities without the intention of transferring beneficial ownership leading to false and misleading appearance of trading in securities market which is fraudulent in nature.*

2. At the outset, the Noticee denies allegations and contentions of the said SCN in entirety save and except what is expressly admitted herein, and nothing stated in the said SCN shall be deemed to be admitted by the Noticee, unless expressly stated so in this response.

All submissions, contentions and grounds vide the present response are without prejudice and in alternative to each other.

Gross and inordinate delay in issuance of SCN

3. The Noticee states that the SCN has been issued in February 2018 whereas the trades pertain to the period September 2009 to January 2010. Therefore, there is a delay of 9 years in issuance of the SCN and the Noticee is not in a position to trace any further documents pertaining to the said HUF and the said trades on account of such gross delay.

4. I would like to invite your kind attention to the excessive delay in the issuance of the SCN. Despite having appointed an Adjudicating Officer and concluding the investigation in 2013, there is a delay in issuance of the present SCN by a full 1665 days, i.e. 4 years 7 months. It is submitted that the said HUF was being controlled by the elder brother of the Noticee Mr. Dinesh Gandhi when they were living in a joint family. The Noticee's elder brother, Shri Dinesh V Gandhi, took care of all the financial and investment decisions in the family, and managed the trading and DEMAT account of the said HUF. However, said Shri Dinesh V Gandhi passed away on 13 December 2013 in a tragic fire incident that occurred at the residence. The Noticee's brother and his sister in law (brother's wife) both passed away engulfed in the said tragic fire.

5. The allegation in the SCN is that the Noticee is a part of one Manish Rathi Group. The Noticee states that he is not aware of who the said Mr. Manish Rathi is and that he has never met or interacted with the said Mr. Manish Rathi and till date has no idea about his whereabouts or his vocation. The noticee has no idea if Mr. Dinesh Gandhi knew Mr. Manish Rathi or not. After almost 11 years, the Noticee has no *document pertaining to the said HUF as the same was dissolved after the marriage of the Noticee's daughter.*

6. As per the SCN and the previous order passed in this matter, the investigation period was from September 2009 to January 2010. The competent authority of SEBI by its order dated 8.8.2013 appointed one Ms. Anita Kenkare as the Adjudicating Officer under section 19 of the SEBI Act. Therefore, presumably, the investigation in the matter was completed much before 8.8.2013. SEBI, despite having appointed an officer, the said Adjudicating Officer did not take any action from 8.8.2013 to 27.6.2017 (i.e. for a period of 1419 days). Thereafter, the learned Adjudicating Officer who had passed the earlier order (Shri Sahil Malik) was appointed by an order dated 27.6.2017. The said Adjudicating Officer, Shri Malik issued a Show Cause Notice dated 28.2.2018 (i.e. after a period of 246 days). Therefore, despite having appointed and Adjudicating Officer and concluding the investigation, the SEBI delayed in issuing a Show Cause Notice by a full 1665 days, i.e. 4 years 7 months. Such a delay is fatal to the case and irreparably prejudices the position of the noticee to answer the said SCN.

7. The Hon'ble Securities Appellate Tribunal has in several cases held that such long delays in issuing a show cause notice are fatal to the proceedings and has set aside the orders of SEBI on that ground alone without even examining the merits of the case. On the principles of law, your attention is also invited to observations in the order dated 31 January 2020 passed in the matter of ***Shri Ashlesh Gunvantbhai Shah v. Securities and Exchange Board of India*** *(SAT Appeal No. 169 of 2019), wherein the Hon'ble Tribunal has inter alia held that:*

> *"3. The ground urged is, that there is an inordinate delay in the issuance of the show cause notice for violation of Section 12(A)(a), (b) and (c) read with Regulations 3(a),(b),(c) & (d) and 4(1), (4(2)(a) and (g) of PFUTP Regulations. It was urged that on the ground of inordinate delay the proceedings should have been dropped and no penalty could have been imposed. It was contended that the alleged violations occurred in the year 2010 whereas the show cause notice*

was issued in the year 2017 after 7 years for which no explanation has been given.

*4. In support of his submission the learned counsel for the Noticees have relied upon a decision of this Tribunal in **Ashok Shivlal Rupani & Ors. vs. SEBI** (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019) as well as a decision in **Sanjay Jethalal Soni & Ors. vs SEBI** in Appeal No. 102 of 2019 and other connected appeals decided on November 14 2019.*

…

6. We have heard the leaned counsel for the parties in the respective appeals. From the material available on record we find that the alleged irregularities was noticed by SEBI in August 2011 and immediately thereafter investigation was launched for the period January 4, 2010 to January 10, 2011. Based on the investigation a show cause notice was issued on November 20, 2017. Thus, there is a delay of 7 years in the issuance of the show cause notice.

…

8. In our opinion, the grounds shown by the respondent in its additional affidavit only indicates the lackadaisical attitude in proceeding against the entities. It is quite clear that no urgency was shown by the respondent to culminate the proceedings and has moved at a leisurely pace. We find that after the submission of the preliminary report on April 2, 2012 no further steps were taken in 2012 and the period of 2013-14 has been covered with a vague allegation that there were certain changes in the officers of the Investigation department. We also find that after the report was submitted on February 1, 2016 it took the respondent another 17 months to issue the show cause notice. The explanation given in the additional affidavit is patently farcical and appears to be an afterthought.

9. An objection was raised by the respondent that the Noticees did not raise the issue of delay before the AO. This fact is apparently incorrect as some of the Noticees have raised a specific issue with regard to the inordinate delay in issuing the show cause notice. In this regard, we find from a perusal of Appeal No. 171 of 2019 that the Noticees had made a specific assertion with regard to the inordinate delay in the issuance of the show cause notice. Similar objection has *been raised in Appeal No. 171, 172 etc. For facility, paragraph 3 of the reply given by the Noticee in Appeal No. 171 of 2019 is extracted herein below:-*

> *"3. At the oustset, the Noticee may bring to your kind notice that the investigation period in the OCL scrip is between 04.01.2010 to 10.01.2011 and the above referred SCN is dated 24.07.2017. There is, therefore, a great delay of 7 years in issuance of the SCN which is not even explained. This delay has caused prejudice to the Noticee. On the basis of Hon'ble SAT judgment in the matter of Subhkam Securities Private Limited versus Securities and Exchange Board of India (Appeal No. 73 of 2012) observed as follows, "There is yet another aspect of the case which we would like to highlight here. The trades for which investigation was carried out pertain to the year 2000 and the impugned order has been passed only in March, 2012. Investigation started in or around June, 2001. It has taken the Board twelve years to complete the proceedings in a matter relating to market manipulation. This is not the way to conduct proceedings against entities who are charged with serious allegations like market manipulation or insider trading. Expeditious disposal of such proceedings by the Board alone will ensure that the Board is carrying out its duty effectively to protect the interest of investors in securities and to promote the development of and regulating the securities market as mandated by section 11(1) of the Act. Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market, it also has demoralizing effect on the market players who are ultimately 'not found guilty' but damocles' sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedings", notice hereby requests SEBI to provide explanation for the inordinate delay and request SEBI to dispose off the matter as expeditiously as possible."*

Similar objections have been raised by the other Noticees.

11. On this aspect we are of the opinion that the issue of delay is a mixed question of fact and law and if it goes to the root of the matter such an issue can be raised even at the appellate stage even though such objection was *not raised before the AO. In the instant case, we find that some of the Noticees had raised a specific issue with regard to the inordinate delay in the issuance of the show cause notice. This aspect should have been considered by the AO which in the instant case has not been done and in fact it has totally ignored such objection. We are further of the opinion that when the matter is being decided against the Noticees as a group by a common order, an objection raised by one Noticees will cover for all the Noticees and it will not be confined to that Noticee alone especially when the objection raised is one of mixed question of law which goes to the root of the matter.*

12. Having considered the matter we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the Noticees for the alleged violations. The controversy in this regard is squarely covered by a decision of this Tribunal in ***Mr. Rakesh Kathotia & Ors. vs SEBI*** *in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019. The relevant paragraph is extracted herein below:-*
"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in ***Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others****, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in* ***Bhavnagar University v. Palitana Sugar Mill*** *(2004) Vol.12 SCC 670,* ***State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd*** *(2007) Vol.11 SCC 363 and* ***Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695.***

14. We also find that in the case of ***Ashok Shivlal Rupani (supra)*** *the period of investigation was January 4, 2010 to January 10, 2011 in the scrip of M/s.*

> *Oregon Commercial Ltd. and the show cause notice issued on November 20, 2017 which this Tribunal held that there was an inordinate delay. In the instant case, the same scrip was investigated for the same period and there is a delay of 7 years in issuing the show cause notice. To this extent, the facts are common. Further, Civil Appeal No. 8444 - 8445 of 2019* ***Securities and Exchange Board of India vs. Ashok Shivlal Rupani & Anr****, etc was dismissed by the Supreme Court on November 15, 2019 thus affirming the decision of this Tribunal.*
>
> *16. As a result, without going into the merits of the case, we find that on account of the inordinate delay in the initiation of the proceedings by issuance of a show cause notice, the penalty order cannot be sustained. The impugned order passed by the AO is quashed. All the appeals are allowed. In the circumstances of the case, there shall be no order on costs."*

8. Further, it may also be noted that in order to elucidate upon its said decisions, the Hon'ble Securities Appellate Tribunal inter alia also relied on the decision of the Hon'ble Supreme Court in the aforementioned case of ***Adjudicating Officer, SEBI vs. Bhavesh Pabari*** *(2019) SCC Online SC 294 wherein it was held that, even though there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period, as quoted here under:*

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*
> *(Emphasis supplied)*

9. In light of the aforesaid excerpt, it can be discerned that the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be *imposed. On that account, the aforementioned orders cited, clearly reiterate that it is trite law that in the absence of any period of limitation, an authority is required to exercise its powers within a reasonable period. The trades pertain to a period of September 2009 to January 2010 for which Show Cause Notice was only issued in February 2018. Hence, from the date of the trades, there is a delay of about 10 years in passing of the Impugned Order. Such a gross delay would render it void and illegal as the delay in the matter has severely prejudiced the Noticee.*

10. Moreover, there is no justification whatsoever for the delay of approximately 5 years in issuing the Show Cause Notice. SEBI failed to give an explanation as to the reason for the delay of almost a decade in passing of the Impugned Order and why the predecessors of Shri Malik did not initiate any proceeding for almost 4 years after appointment.

11. Without prejudice to the aforesaid, the said SCN has been completely cryptic about the relationship between the said HUF and other entities. The only relationship shown is that the said HUF purchased some shares in an off-market transaction from one Mr. Manish Rathi. Since the documents pertaining to the said trades are no longer traceable, the Noticee is not in a position to admit or deny the said allegations. It is pertinent to note that several noticees have filed replies to the Show Cause Notice and in none of the replies is there any mention of the said noticees knowing of the Noticee or the said HUF.

12. That the allegations in the SCN is that 70,000 shares which were sold by the said HUF in the open market through the stock exchange mechanism were purchased by the said Mr. Manish Rathi and the said Mr. Jitendra Singh. On the other hand, the it is also alleged that only 6 out of 17 trades that happened were synchronised trades and the total quantity of such synchronised trades is 26,498. That the SCN on one hand holds that the entire trading happened between entities known to the said HUF while on the other hand holds that synchronised trading happened only for 26,498 shares and therefore the balance 43,502 shares were not a part of the synchronised trading. The allegation that the trades were premeditated and synchronised for the *entire trading on one hand and the finding that synchronised trading has happened only for 26,498 shares on the other hand are mutually self-destructive.*

13. The SCN does not specify any details as to how did the trading for the balance 43,502 shares constitute a synchronised trading.

14. It is pertinent to note that the SEBI EAD has failed to provide the inspection of documents despite the fact that the same was sought. Since no such inspection of document has been furnished by SEBI, the present proceedings are also vitiated on account of lack of principles of natural justice.

Other Factors

15. The Noticee is the erstwhile Karta of Kishor V Gandhi HUF. The Noticee is a 65 year old senior citizen. The Noticee's wife has been undergoing treatment for kidney ailment for the past 4-5 years and has had to undergo a kidney transplant. In fact, recently, she was also diagnosed with COVID-19. The Noticee has been spending a substantial sum of his savings and monthly income on his wife's treatment for the past several years. The noticee is in a precarious financial condition and his wife had to undergo a kidney transplant five years ago. Pursuant to the said kidney transplant, the Noticee had to incur a recurring expenditure on the follow up treatment, medication, tests etc.

16. These conditions need to be factored under Section 15J of The Securities and Exchange Board of India Act, 1992. The respective section has been reproduced verbatim for your reference

> *"15J. Factors to be taken into account by the adjudicating officer.—While adjudging the 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."

Accordingly, appropriate steps need to be taken as per the abovementioned section, in order to determine the legitimacy of the alleged offence.
(Emphasis supplied)

17. In view of the above, the proceedings initiated against Kishor V Gandhi HUF vide the SCN dated 28 February 2018 deserve to be dropped without any penalty upon the Noticee.

9. A personal hearing of the Noticee was held on September 17, 2020 and owing to the pandemic the same was conducted through video conference on the webex platform. The authorized representative (**AR**) of the Noticee reiterated the submissions made by the Noticee vide his reply dated September 17, 2020. Further it was noted during the hearing proceedings that the request for inspection of documents was made by the Noticee and the same had been granted on December 27, 2019. However, the same had not been availed by the Noticee. In this regard, the Enforcement department of SEBI vide its email dated September 01, 2020 had confirmed that post December 27, 2019, they had not received any request/ communication regarding inspection of documents from the Noticee. During the course of hearing proceedings, I note that the Noticee was advised that it would be provided inspection of only those documents that have been relied upon in the SCN, however the Noticee stated that they do not require inspection of the documents that has been already provided along with the SCN.

10. I note that Shri Kishor Gandhi who is the Karta of Kishor V Gandhi HUF (i.e. the Noticee) has submitted the reply dated September 17, 2020 to the SCN and has made representations during the hearing in the matter through authorized representatives. In the said reply it was stated that the HUF was dissolved. Vide email dated January 28, 2021, documentary evidence in support of the dissolution of the HUF was sought from Shri Kishor Gandhi and the AR. In this regard, it was *inter alia* submitted by the AR that the HUF was closed around the year 2011/2012 and Mr. Kishor Gandhi has no records

from the relevant time available with him. I note that the Noticee had account with the trading member - Religare Broking Limited (**Religare**), and his demat was also with the depository participant - Religare. Vide email dated February 04, 2021, Religare stated that the demat account of the Noticee was not closed and further the broking account was also not closed (but had been suspended in their backoffice since 04.04.2016). Vide email dated February 09, 2021, it was communicated to the AR and Kishor Gandhi that the demat account and the broking account of the Noticee was existing and the Client Master List (**CML**) of the Noticee's demat account as submitted by Religare was enclosed. In this regard, the AR submitted that they were shocked and surprised to see that Religare has informed that the HUF has an active demat account and that it also had the HUF's existing trading account. It was further submitted that the mobile no. -9820629437 and the email id – jjj_33@yahoo.com appeaing in the CML do not belong to Mr. Kishor Gandhi. Further, regarding the bank account no. 10529911894 appearing in the CML, the AR enclosed copy of the letter dated February 10, 2021 written by Kishor V Gandhi as the Karta of the HUF to State Bank of India (**SBI**) seeking status of the above account and its account statement. Thereafter, vide email dated February 18, 2021, the AR enclosed the reply received from SBI regarding the above account, wherein it was stated that the said account belonging to Kishor V Gandhi HUF had been closed on July 29, 2010.

11. From the above, I note that on one hand Religare has confirmed the status of client account and demat account to be active/ existing, while on the other hand State Bank of India has confirmed that the savings bank account is closed. Thus, I find the confirmations on status of accounts as provided by the Stock broker vis-a-vis the bank to be contradictory. Since the confirmations on status are contradictory it becomes necessary to have a concrete documentary evidence in support of the claim of the Notice that the HUF (i.e. the Noticee) is dissolved. However, the Noticee has not produced any documentary evidence in support of its contention or claim and on the other hand it was advising to obtain a copy of the KYC and the transaction statement from opening till date from Religare. I note that it is the duty of the Noticee to bring

documentary evidences in support of its claims and arguments, however in the present case it has not done so. Therefore, in the absence of any supporting document available on record to show that Kishor V Gandhi HUF is dissolved, it is difficult to accept the claim of the Noticee. Therefore, I am proceeding in the matter on merits.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

I. Whether the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations?

II. Does the violations, if established, attract monetary penalty under Section 15HA of SEBI Act, 1992?

III. If yes, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

13. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

PFUTP Regulations

3. Prohibition of certain dealings in securities No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

14. Before moving forward, I would like to deal with the contention raised by the Noticee with regards to gross and inordinate delay in issuance of SCN. The Noticee has stated that the SCN had been issued in February 2018 whereas the trades pertain to the period September 2009 to January 2010. The Noticee has further contended that despite having appointed an AO and concluding the investigation in 2013, there is delay in issuance of the present SCN by 4 years and 7 months. The Noticee has placed reliance on the judgement of Hon'ble SAT in the matter of Shri Ashlesh Gunvantbhai Shah v. Securities and Exchange Board of India (SAT Appeal No. 169 of 2019), judgement of Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294. In this regard, I note that initially AO was appointed on 08.08.2013, however, certain clarifications were sought by the erstwhile

AO. Pursuant to the transfer of the matter to another AO the SCN was issued to all the entities. I note that an adjudication order was passed against the Noticee on August 02, 2019 by the erstwhile AO. Thereafter, the Noticee has preferred appeal against the above adjudication order dated August 02, 2019 passed byt eh erstwhile AO, before the Hon'ble SAT. I note that the present matter has been remanded by Hon'ble SAT vide order December 12, 2019. Subsequently, the undersigned has been appointed as AO vide Order dated December 19, 2019. In compliance with the directions of Hon'ble SAT order dated December 12, 2019, copy of SCN and other relied upon documents in the matter were served on the Noticee through its Authorized Representatives who appeared before me on December 27, 2019 in order to collect the SCN. Subsequently, as per the request of the Noticee, it was granted opportunity of inspection of documents on December 27, 2019. However, the same was not availed by the Noticee as confirmed by Enforcement department vide email dated September 01, 2020. Thereafter, an opportunity of hearing was granted to the Noticee vide Hearing Notice dated September 04, 2020. The said hearing was conducted on September 17, 2020 and the Noticee has also filed its reply dated September 17, 2020. I, thus, note despite the global pandemic the matter was proceeded with without any delay.

15. In regard to the argument of delay, I find it relevant to refer to the order passed by Hon'ble SAT in the case of *Metex Marketing Pvt. Ltd. vs. SEBI* (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

16. The Noticee has contended that it is not in a position to trace any further documents pertaining to the HUF and the said trades. In this regard, I note that the Noticee was provided all documents relevant in the matter. The Noticee has not mentioned what further documents were needed to be traced at its end. I find the reply of the Noticee

to be general in nature. The Noticee has also contended in its reply that SEBI EAD has failed to provide the inspection of documents despite the fact that the same was sought. In this regard, as discussed previously, I note that the Noticee did not approach SEBI's Enforcement department for inspection of the documents despite being given an opportunity and clear instructions for the same vide letter dated December 27, 2019. In this regard, it is also relevant to note and cite that during the hearing proceedings dated September 17, 2020 the Noticee stated that they do not require inspection of those documents which have already been provided to them. Thus, I note the arguments of the Noticee in this regard have no basis.

17. After having addressed the preliminary contentions of the Noticee, now I proceed to deal with the matter as per records.

Issue I) **Whether the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations?**

18. I note that the allegation against the Noticee is that it has indulged in circular /reversal and synchronized trades with the group viz. Connected Persons, and thus violated provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations.

19. I note that the basis of connection of the Connected Persons is as follows –

Sr.	**Client Name**	**Basis of connection**
		Altra Clean Group
1	Altra Clean Operations * (Manish Rathi)	As per KYC documents, Manish Rathi and Jitendra Singh share a common bank account with Kotak Mahindra Bank ie (A/c no.:06662000001231). As per KYC documents, Manish Rathi - Altra Clean Operations shares the same address with Amizara Securities & Finance (Proprietor: Indra Pratap Singh) who received OITL shares in the offmarket from OITL Promoter viz; Keystone Stock Finance Ltd and also from VRP Financial Services Ltd. (Promoter: Pradeep Dhanuka) during the period January 2, to September 02, 2009.
2	Altra Clean Operations Prop* (Jitendra Singh) —	

3	KishorV Gandhi HUF	Received OITL shares in off market from Manish Rathi- Altra Clean Operation during the period 08/09/09 to 24/09/09
4	Rashmi Vijayjeet Walia	Received OITL shares in off-market from Manish Rathi- Altra Clean Operation & Jitendra SingFT - Altra Clean Operations (Prop) during the period 06/10/09 to 08/10/09.
5	Geeta Ajayjeet Walia	Common address with Rashmi Walia i.e. Ganesh Nagar, Gondia - 441601
6	Narendra Vallabhji Bahuva	Transferred OITL shares to Geeta Walia in off market
7	Jaywant Ganpat Chavan	Received shares in off market from M/s. Altra Clean Operation in the scrip Channel Guide India Ltd.
8	Maheswar Das	Received OITL shares in off market from Jaywant Ganpat Chavan on 18/09/09
9	Kailash Chandra Mishra	Received OITL shares in off market from Maheshwar Das on 12/10/09 and transferred shares to Jaywant Ganpat Chavan and Yogarathinam Durai in offmarket on 15/09/09, 17/09/09 & 16/10/09
10	Yogarathinam Siva Arul Durai	Received OITL shares in off market from Kailash Mishra, Jaywant Ganpat Chavan and Maheshwar Das during the period from 01/09/09 to 03/10/09
11	Rahul Sharma	Received OITL shares in off market from Jaywant Ganpat Chavan on 10/09/09, 17/09/09 & 08/10/09
* It is observed from the KYC documents of Manish Rathi and Jitendra Singh that both entities have represented themselves as proprietor of Altra Clean Operations.		

20. I note that the Noticee has *inter alia* stated that it is not aware of Mr. Manish Rathi, and has never met or interacted with Manish Rathi. It was also submitted by the Noticee that it has no idea if Mr. Dinesh Gandhi (brother of Kishor V Gandhi) knew Mr. Manish Rathi or not. In this regard, I note that the basis of connection between the Noticee and the Group is off-market transfers. Further, I note that the offmarket transfer between the Noticee and Manish Rathi has not been an isolated occurrence, rather the Noticee has been involved in offmarket transfers with Manish Rathi on 4 occasions. Unlike exchange transactions where the buy and sell orders are matched by the system, the offmarket transfers happen between two parties on a one to one basis. Further, I note

that offmarket transfers involve signing of Delivery Instruction Slips (DIS) where the seller specifies the buyer details and transaction details. I understand that in the case of off-market transfer of shares, naturally, the transferor of shares and transferee of shares are ought to be known to each other as the transaction involves a positive action. Thus, I find it difficult to accept in such situations, arguments stating that the parties are unknown to each other. In view of the above, I note that it can be reasonably concluded that these counterparties in the off-market transfers knew each other and thus, are connected to each other.

21. I note that the price movements of the scrip during the investigation period are as under:

Particulars	**Price (Rs.)**	**Date**
Open	**239.00**	01/09/2009
High	239.00	01/09/2009
Low	9.65	15/01/2010
Close	**10.20**	15/01/2010

22. The trading activities of the connected entities during the investigation period on the exchange and in the off-market are as below:

Details of trades by Connected Persons											
Sr. No.	Particulars	**Off-market trades**					**Exchange Trades**				
		Buy	% of Category Total*	Sell	% of Category Total*	**Net (Buy-Sell)**	Buy	**% of** Category Total*	Sell	% of Category Total *	**Net (Buy-Sell)**
Altra Clean Group											
1	Manish Rathi	387662	30.31	435521	40.82	**-47859**	246584	15.13	14550	1.04	**232034**
2	Jitendra Chandrabhan Singh	144786	11.32	206016	19.31	**-61230**	176861	10.85	10000	0.71	**166861**
3	Kishor V Gandhi HUF	70000	5.47	0	0.00	**70000**	0	0.00	70000	4.98	**-70000**
4	Rashmi Vijayjeet Walia	27006	2.11	0	0.00	**27006**	0	0.00	27006	1.92	**-27006**
5	Geeta Ajayjeet Walia	19500	1.52	0	0.00	**19500**	0	0.00	23500	1.67	**-23500**
6	Narendra Vallabhji Bahuva	19500	1.52	19500	1.83	**0**	33890	2.08	0	0.00	**33890**
7	Jaywant Ganpat Chavan	39444	3.08	208639	19.55	**-169195**	129640	7.96	0	0.00	**129640**

8	Maheswar Das	39651	3.10	60185	5.64	**-20534**	33602	2.06	2	0.00	**33600**
9	Kailash Chandra Mishra	25187	1.97	40387	3.79	**-15200**	26200	1.61	0	0.00	**26200**
10	Yogarathinam Siva Arul Durai	78850	6.17	15499	1.45	**63351**	0	0.00	60501	4.31	**-60501**
11	Rahul Sharma	24000	1.88	0	0.00	**24000**	0	0.00	24000	1.71	**-24000**
	Total of Connected Persons	**875586**	**68.45**	**985747**	**92.39**	**-110161**	**646777**	**39.69**	**229559**	**16.34**	**417218**

* The percentages are calculated basis the group's total trading during the IP as per the investigation report

23. The allegation is that trading activities of the aforesaid entities indicate a circular/ reversal pattern between entities in the table above on the exchange and in the offmarket. It is observed that some of the connected entities, who have only sold shares in the market, have met their pay-in obligation of securities from the shares received in the off-market from connected group entities.

24. I also note that the Connected Persons had engaged in synchronized trades through 13 trades amounting to 46,199 shares on 6 different dates. A summary of the circular/reversal and synchronized trading activities amongst the Connected Persons is shown as under –

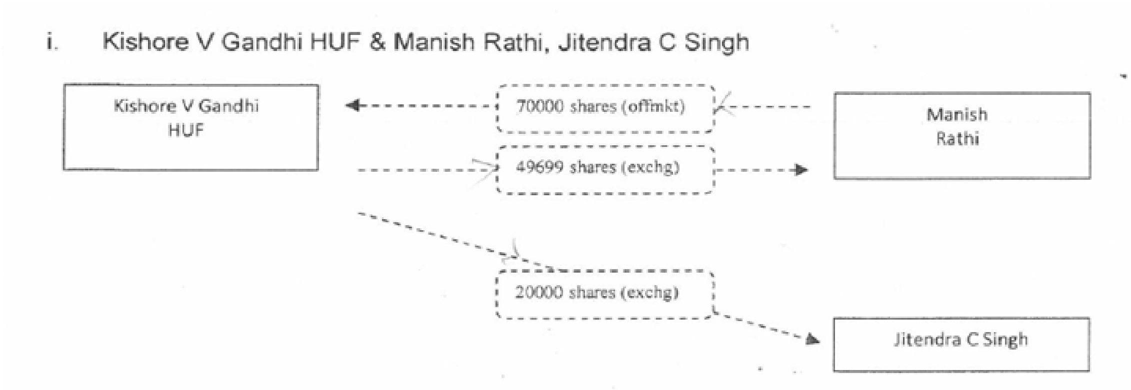
Sr. No.	**Name of Entity**	**Quantity of shares involved in circular / reversal trades (A)**	**Total Traded Qty of shares on the exchange (B)**	**Circular / Reversal trades as a % of Total trades {(A) as %of (B))**	**No. of days on which circular / reversal trading pattern was observed**	**No of circular / reversal trades**	**Quantity of shares involved in synchronised trades**	**No. of days on which synchronized trading pattern was observed**	**No. of synchronised trades**
1	Manish Rathi	59,204	2,46,584	24.01	6	18	21,498	2	5
2	Jitendra CSingh	40,960	1,76,861	23.16	4	19	5,000	1	1
3	Kishore V. Gandhi HUF	69,699	70,000	99.57	5	17	26,498	3	6
4	Rashmi Walia	26,965	27,006	99.85	4	19	-	-	.
5	Geeta Walia	8,500	23,500	36.17	2	2	5,000	1	1
6	Narendra Bahuva	5,000	33,890	14.75	1	1	5,000	1	1
7	Jaywant Chavan	63,997	1,29,640	49.37	5	15	10,000	2	4
8	Maheswar Das	11,201	33,602	33.33	3	5	4,701	1	2
9	Kailash Mishra	3,000	26,200	11.45	1	3	-	.	-
10	Yogarathinam Siva Durai	55,198	60,501	91.23	7	18	14,701	3	6
1 1	Rahul Sharma	23,000	24,000	95.83	3	5	-	-	.
	Total	3,66,724	8,51,784	43.05	16	122	46,199	6	13

i.	Qty of shares listed in column (A) pertain to circular trades only and includes sell trades of entities at sr. no. 3, 4, 5, 10, 11 and corresponding buy trades of entities at sr. no. 1, 2, 6, 7, 8, 9 on the exchange which has resulted in circular pattern.
ii.	Circular trading pattern was observed on 16 days during the investigation period.

25. I note from the reply of the Noticee, that it has contended that the only relationship shown is that it had purchased some shares in off-market transaction from Mr. Manish Rathi. The Noticee has further submitted that the documents pertaining to the said trades are no longer traceable, hence it is not in a position to admit or deny the said allegations. In this regard, I note that there was no specific document that was requested by the Noticee. As has been dealt with in the preliminary paragraphs, I note that all the relied upon documents in the matter have been provided to it.

26. The Noticee has further submitted that several other entities in the matter who had filed replies to the SCN had not mentioned that they knew the Noticee. In this regard, I note that the same does not absolve the Noticee from the allegations levelled against it.

27. I note that the Noticee had sold a total of 70,000 shares of OITL on the exchange. It is further observed that out of the 70,000 shares sold, 49,699 shares were sold to Manish Rathi, and 20,000 shares were sold to Jitendra C Singh. I also note that the Noticee had received 70,000 shares in off market from Manish Rathi himself. I note that the Noticee has done reversal of trades with the Connected Persons to the extent of 69,699 shares i.e. 99.57% of his total on-market trades. The Flowchart depicting the circular/reversal pattern by the Noticee in the offmarket and on the exchange is depicted as below –



28. As observed from the flowchart, the Noticee along with the Connected Persons indulged in reversal of trades which gave false impression of trading in the market. Hon'ble SAT in the matter of V. G. Capital Market Pvt. Ltd. v SEBI, order dated December 1, 2009 also noted the following:

> *"The trading system on the exchanges is based on the principle of anonymity. The buyer does not know who the seller is and seller cannot know who the buyer is. In other words, the buyer should buy the shares without being concerned as to who the seller is and similarly the seller should sell the shares in the market without being concerned about the buyer and it is the system which determines the buyer and the seller by matching the buy and sell orders. On a screen based trading, the best buy order will match the best sell order subject to price time priority. The buyer and seller cannot keep matching their trades and if they do, they are obviously manipulating the system which is the case before us. Reverse trades are a clear instance of manipulative trading. It is true that before any buy and sell order can result in a trade they must match but this matching must take place through the system without the intervention of any human element. Knowing how the system works, reverse trades are not possible unless the trades are manipulated particularly when the scrip is liquid."*

29. I note that the group of Connected Persons got together to buy and sell large number of shares amongst themselves. They had traded both on market and off-market and in many cases the buy and sell transactions cancel out each other and the shares

remained within the circle. The Noticee in the present case has not given any cogent explanation as to why it had indulged into such trades.

30. In this regard, I note that the offmarket transfers of OITL shares cumulating 70,000 shares from Manish Rathi to the Noticee had taken place between 08-09-2009 and 24-09-2009. Further, the on market sell of 70,000 shares by the Noticee had taken place between 08-09-2009 to 05-10-2009. From the reply of the Noticee, I note that Noticee has not disputed the transactions as alleged in the SCN. I note from the Investigation Report that the off market transfers and the on market sell have happened in such a manner that the Noticee has met its pay-in obligation of securities from the shares received in the off-market from one of the Connected Persons viz. Mr. Manish Rathi. Thus I note there is no real change in beneficial ownership if one sells shares to a certain entity in on market, and receives back the same in offmarket from the same entity to meet pay-in obligations

The details of the circular/reversal pattern of trades is depicted below –

Details of Circular/ Reversal Trading Pattern of trades by the Noticee							
Exchange Sell Trades of Kishor V Gandhi HUF				**Offmarket Buy (Cr)Trades of Kishor V. Gandhi HUF (BO ID: IN302269 12033721)**			
Trade Date	**Client Code**	**Name of Counter-party (Buyer)**	**Quantity**	**Execution Date**	**Source BO ID (Seller)**	**Name of 1st Holder**	**Quantity**
08-09-2009	253662	Manish D Rathi	3500	08-09-2009	IN301983 10511795	Manish D Rathi	20000
	253662	Manish D Rathi	5000				
	253662	Manish D Rathi	5000				
	253662	Manish D Rathi	2				
09-09-2009	253662	Manish D Rathi	6498				
		Total (A)	**20000**			**Total (A)**	**20000**
10-09-2009	253662	Manish D Rathi	5000	10-09-2009	IN301983 10511795	Manish D Rathi	15000
	253662	Manish D Rathi	5000				
	253662	Manish D Rathi	2000				
	253662	Manish D Rathi	3000				
		Total (B)	**15000**			**Total (B)**	**15000**
11-09-2009	A200	Jitendra C. Singh	10000	11-09-2009	IN301983 10511795	Manish D Rathi	15000
	A200	Jitendra C. Singh	5000				
		Total (C)	**15000**			**Total (C)**	**15000**
25-09-2009	RA101685	Raman Arora[#]	50	24-09-2009	IN301983 10511795	Manish D Rathi	20000
25-09-2009	846AD01	Amrish Mahesh Dave[#]	200				

25-09-2009	KCS8	Sushil Omprakash Chichani#	25				
05-10-2009	253662	Manish D Rathi	419				
05-10-2009	253662	Manish D Rathi	3280				
05-10-2009	A200	Jitendra C. Singh	5000				
05-10-2009	253662	Manish D Rathi	3000				
05-10-2009	403000275	Manish Devendra Rathi	3000				
05-10-2009	253660	Manish D Rathi	5000				
05-10-2009	8501095422	Vinay Somani#	26				
		Total (D)	**20000**			**Total (D)**	**20000**
		Grand Total (A+B+C+D)	**70000**			**Grand Total (A+B+C+D)**	**70000**
*Note: # = Entity is not from within the connected group.							

31. From the available records viz. the Noticee's trades and the price-volume details of OITL in BSE (also shared with the Noticee), I note that the contribution of the Noticee's trading through reversal of trades to the market volume of OITL in BSE is as follows –

Date	Quantity Sold	Quantity Reversed	Market Volume of OITL	% Quantity Reversed to Market Volume
08/09/2009	13,502	13,502	94,931	14.22%
09/09/2009	6,498	6,498	1,42,201	4.57%
10/09/2009	15,000	15,000	78,100	19.21%
11/09/2009	15,000	15,000	97,590	15.37%
25/09/2009	275	No reversal	28,162	No reversal
05/10/2009	19,725	19,699	34,831	56.56%
Total Sell	70,000			

From the above, I note that the Noticee's contribution through reversal of trades to the market volume of OITL has ranged from 4.57% to 56.56%.

32. I further, note that the Noticee has engaged in 6 synchronized trades for a quantity of 26,498 shares. The details are given hereunder –

Trade Date	Trade Time	Trade Qty	Trade Rate	Buyer Name	Buy Order Time	Buy Order Rate	Buy Order Qty	Seller Name	Sell Order Time	Sell Order Rate	Sell Order Qty

09-09-2009	13:52:23.819278	6498	182.90	Manish D Rathi	13:52:23.355725	182.90	6498	Kishor V Gandhi HUF	13:52:20.925934	182.90	6498
10-09-2009	14:01:52.760890	3000	193.75	Manish D Rathi	14:01:52.551801	193.75	3000	Kishor V Gandhi HUF	14:01:42.552736	193.75	3000
10-09-2009	14:02:50.835497	2000	194	Manish D Rathi	14:02:50.528466	194	2000	Kishor V Gandhi HUF	14:02:32.011951	194	2000
10-09-2009	14:29:30.259887	5000	193	Manish D Rathi	14:29:29.880595	193	5000	Kishor V Gandhi HUF	14:29:22.083803	193	5000
10-09-2009	14:52:12.878237	5000	194.50	Manish D Rathi	14:52:12.293514	194.50	5000	Kishor V Gandhi HUF	14:52:08.243880	194.50	5000
11-09-2009	14:38:02.473266	5000	195	Jitendra C Singh	14:38:02.293171	195	5000	Kishor V Gandhi HUF	14:37:56.777906	195	5000

From the above table, I note that the buy – sell orders had happened in less than one minute. I also note the quantities in trade also matching.

33. In this regard I note that the Noticee has submitted that synchronized trading happened only for 26,498 shares and therefore the balance 43,502 shares were not part of synchronized trading. Further, the Noticee has inter alia contended that the allegation that the trades were premeditated and synchronized for the entire trading on one hand and the finding that the synchronized trading has happened only for 26,498 shares on the other hand are mutually self-destructive. The Noticee has further contended that the SCN does not specify any details as to how did the trading for the balance 43,502 shares constitute synchronized trading. Firstly, I note that the SCN clearly specifies the number of synchronized trades entered by each entity of the Connected Persons and nowhere is it alleged that the entire trading of the Noticee was synchronized as stated by the Noticee. With regard to the contentions of the notice that synchronized trades had happened only for a part of the shares traded and not for the whole amount of shares traded lacks any reasoning and hence I am not inclined to accept the argument. Further, I note that to term the trades as fraudulent and manipulative, it is not necessary

for the entire trading to be synchronized. Further, from the Investigation Report (also shared with the Noticee) I note that only such trades where order time difference between buy and sell orders are less than or equal to 60 seconds, and further rate and quantity of buy and sell orders are equal have been considered as synchronized trades. Thus, even by considering the synchronized trades with more stringent / additional parameters, by examining not merely from the point of view of time difference in orders alone, it transpires that the impugned trades of the Noticee still stand to testify the allegation that the Noticee has engaged in synchronization with its counterparties. The same buttresses the manipulative intent of the Noticee in carrying out its overall trading activity. I note from the facts of the present case that the Noticee has engaged in reversal trading with the Connected Persons to the extent of 99.57% of his total trades.

34. I note that in the matter of ***SEBI v. Kishore R. Ajmera,*** *(supra)* the Hon'ble Supreme Court observed that *"the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light".* In view of the above, I note that the Noticee has to ensure that whatever trading strategy it adopts, it should be in conformity with the regulatory framework.

35. Therefore, in view of the above, I hold that the Noticee by indulging in reversal/synchronized trades in connivance with others without the intention of transferring beneficial ownership leading to false and misleading appearance of trading

in the securities market has violated the provisions of Regulations 3(a), (b), (c), and (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations.

Issue II) **Does the violations, if established, attract monetary penalty under Section 15HA of SEBI Act, 1992?**

36. I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

37. The Hon'ble Supreme Court in its Order dated April 26, 2013 in the matter of ***N. Narayanan Vs Adjudicating Officer, SEBI,*** has laid down that "*Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality"".*

38. Thus, the violation of Regulations 3(a) to (d), 4(1), and 4(2)(a) and (g) of PFUTP Regulations by the Noticee makes her liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below –

> ***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 twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

The aforesaid provisions of Section 15HA of the SEBI Act, 1992 are as they stood during the period of the violations by the Noticee and prior to their amendment w.e.f 08.09.2014

Issue III) If yes, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

39. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, 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.

40. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors. The Noticee executed reversal trades and also synchronized trades with connected entities on several days during the investigation period. Hence, the default is repetitive in nature.

ORDER

41. 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, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) under Section 15HA of SEBI Act, 1992 for violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations, 2011 on the Noticee viz. Kishore V Gandhi HUF, which will be commensurate with its violations.

42. The Noticee 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.

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

    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

44. 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.

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

Date: February 26, 2021
Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER