BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/SM/2020-21/10806-10809]

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:

S. no.	Names of the Noticee	PAN
1	Rajesh Chetanji Tawri	ABYPT5918K
2	Aanand Balavantrai Boghani	AGIPB2369K
3	Kaushik Bipinchandra Dhanki	AJPPD6414R
4	Mountain View Developers Private Limited	AAFCM3624G

(In the matter of Anukaran Commercial Enterprises Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) conducted an investigation into the trading activities of certain entities in the scrip of Anukaran Commercial Enterprises Limited (hereinafter referred to as ***"Company/Anukaran/ACEL"***) for unusual price movement for the period from January 01, 2012 to January 06, 2015 (hereinafter referred to as ***"Investigation Period/ IP"***). SEBI investigation revealed that the price of the scrip of Anukaran saw an abnormal rise, which was not supported by any corporate announcements or material changes in the business activities of the Company. Some of the sellers were noticed to be selling their shares in miniscule quantities, despite having sufficient quantities of shares in their respective demat accounts. These sellers were also executing trades at a price higher than the LTP on a continuous basis.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the findings of investigation, SEBI initiated adjudication proceedings against Rajesh Chetanji Tawri (hereinafter referred to as ***"Noticee 1"***), Aanand Balavantrai Boghani (hereinafter referred to as ***"Noticee 2"***), Kaushik Bipinchandra Dhanki (hereinafter referred to as ***"Noticee 3"***) and Mountain View Developers Private Limited (hereinafter referred to as ***"Noticee 4"***). All the four Noticees shall be hereinafter collectively referred to as ***"Noticees"***. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as ***"AO"***) vide order dated June 06, 2017 to enquire into and adjudge under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ***"SEBI Act, 1992"***) for the alleged violations by the Noticees, of 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 relating to Securities Market) Regulations, 2003 (hereinafter referred to as ***"SEBI PFUTP Regulations, 2003"***). The appointment of the AO was communicated vide communique dated September 07, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notices having reference Nos. EAD/AO-PM/NK/8986/2018 dated March 23, 2018; EAD/AO-PM/NK/8988/2018 dated March 23, 2018; EAD/AO-PM/NK/8989/2018 dated March 23, 2018 and EAD/AO-PM/NK/8990/2018 dated March 23, 2018 were issued to Noticee 1, 2, 3 and 4 respectively, in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995#(hereinafter referred to as ***"Adjudication Rules"***) r/w Section 15-I of the SEBI Act, 1992.I note that the Show Cause Notices issued to the Noticees were common. In view of the commonality, Show Cause Notices issued to the Noticees would be referred as ***"SCNs"*** hereinafter, for the sake of brevity. The SCN called upon the Noticees to show cause as to why penalty, if any, should not be imposed on them under Section 15 HA of the SEBI Act, 1992 and also giving them 15 days time from the date of the receipt of the SCN, to file the reply.

[# With effect from March 8, 2019, SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was amended to SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995]

4. It is noted from the records that the SCNs to the Noticees were sent by SPAD and were duly served to the Noticees except to Noticee 4. Subsequent to issuance of the SCNs to the Noticees, I note that replies were received from Noticee 1, 2 and 3 vide their separate letters. It is also noted that Noticee 2 & 3 in their respective replies dated April 18, 2018 and April 16, 2018 respectively, has made reference of having sought inspection of relevant documents from SEBI in a separate proceedings against them in the similar matter. I further note that inspection of documents has been provided to them during the said separate proceedings against them, which is under Section 11(1), 11B and 11(4) of the SEBI Act, 1992 in the similar matter. I also note from the records that facts, issues and the cause of the present Adjudication Proceedings are similar to that of the Proceedings under Section 11(1), 11B and 11(4) of the SEBI Act, 1992. Further, I also note that relevant documents relied upon in the present proceedings have been provided to Noticee 2 & 3 along with the SCNs. In view of the same, I note that no prejudice has been caused to Noticee 2 & 3.

5. Further, in compliance with the principles of natural justice and considering the situation prevailing due to Covid-19, an opportunity of personal hearing was granted to the Noticee 1 to 4 through Video Conference on the platform of Webex on December 16, 2020 and December 17, 2020. In this regard, Hearing Notices were sent to the Noticees to their respective available email-ids through separate emails. I also note that while providing opportunity of hearing to Noticee 4, a copy of the SCN along with its Annexures was also provided to the Noticee. It is noted that Noticee 2 & 3 have not appeared for the hearing scheduled for them on December 16, 2020. In this regard, I note that emails sent to Noticee 2 & 3 to their respective email-ids (i.e. anandboghani@gmail.com in respect of Aanand Balavantrai Boghani and kausik.22375@gmail.com & kaushik.22375@gmail.com in respect of Kaushik Bipinchandra Dhanki) have not bounced back. Notice 1 & 4 sought for reschedulement of the hearing. Upon their request, the hearing was then conducted on December 29, 2020 and December 30, 2020 in respect of Noticee 4 and 1

respectively, which was duly availed by them through their respective Authorized Representatives, on the said dates. In view of the above, I note that no prejudice has been caused to the Noticees and that the principle of natural justice has been followed as the Noticees have been given reasonable opportunities to file written representations and opportunity of personal hearing and also all the relevant documents relied upon in framing the charges against the Noticees have been provided.

6. I note that the Noticee 1 has submitted his replies vide his letters dated 05.04.2018 and 07.01.2021; Noticee 2 & 3 have submitted common replies vide their separate letters dated 18.04.2018 & 16.04.2018 respectively and Noticee 4 has submitted reply vide its letter dated 26.12.2020.

7. I have perused written replies submitted by the Noticees, the presentations made on their behalf during personal hearing and also the post-hearing submissions made by the Noticees. The contentions/ submission of the Noticees are briefly summarized as below:

Submissions of Noticee 1

a. That he is not involved in any type of malafide market making activity and insider trading.
b. That he is not having any relation with any companies, promoters, directors and market makers.
c. That his trading pattern is to sell quantities of scrips held by him in miniscule quantities and the trading in the scrip of ACEL has not been done by him with a manipulative intent of increasing the price of the scrip as alleged or otherwise.
d. That there is no allegation whatsoever in the captioned SCN that he sold the shares of ACEL in connivance with the buyers in order to increase the price of the scrip and that he had no relation whatsoever with the counterparty to the trade and neither the said allegation has been established in the SCN.

e. That there is no allegation in the SCN against him for being connected/ having colluded with Promoter/Director/Management of ACEL and/or with the entities who are notices in the present SCN.
f. That the burden of proof is on SEBI to prove as to whether he was connected to all the entities and also whether there was any prior meeting of minds or collusion with such entities to manipulate the price of the scrip of ACEL and create a purported misleading appearance.
g. That the trades were executed when the buy orders were already pending in the market. The counterparties to his trades traded as per their own choice and he did not have any control whatsoever in executing their trades.
h. That he had placed his sell orders on the basis of the highest price available in the market. It is the buyers who had contributed to positive LTP. None of his counterparties have been made parties to the present SCN. If the buyers to his trade have been let scot free, then the same principle ought to be applied to him.
i. That the SCN is bad in law as the same has been issued after a delay of more than 5 years of execution of alleged manipulative trades.
j. That even after selling 12 shares in Patch 1 and 15 shares in Patch 2, he was left with 145 shares. No comment or observation has been made by SEBI with respect to the sale of balance 145 shares at the end of Patch II.
k. That there is no allegation whatsoever against the counterparties of his trades in the scrip of ACEL to have violated any PFUTP Regulations nor any show cause notice has been issued to the said entities.
l. That all the trades executed by him were in normal course of business and no fraudulent or manipulative practice can be alleged against him for such trades.
m. That it is not in his control to manage the trading by other traders in the scrip of ACEL. The other shareholders/traders traded as per their own choice. Admittedly as per the SCN, he has no connection and/or relation with any other traders i.e counterparties of ACEL. In order to prove manipulation, connection between the buyer and seller ought to be made out as an individual himself by executing a trade cannot manipulate the price of a scrip.
n. It is not even the case of SEBI that he has executed circular or synchronized trades therefore merely based on the connection and the LTP contributed by him

which is miniscule, it cannot be alleged that he has violated the PFUTP Regulations.

Common Submissions of Noticee 2 & 3

a. That they are ordinary & lay investor and have dealt in the scrip of ACEL in the normal course of their trading activities.
b. That all their transactions were executed through the normal screen based trading system of stock exchange.
c. That in case of screen based trading, the automated system itself matches orders on price- time priority basis and hence it is not possible for anybody to have access over the details of order/ trades/ identity of counter party dealing in any scrip.
d. That there has been no grievance by any investor, broker, stock exchange or any other agency concerned w.r.t. their trading in the scrip of ACEL.
e. That they have not bought, sold or otherwise dealt in shares of ACEL in fraudulent manner.
f. That they have not used or employed any manipulative or deceptive device or acted in contravention of the provisions of SEBI Act, Rules & Regulations made thereunder.
g. That they have not indulged in fraudulent and unfair trade practice in respect of their dealings in shares of ACEL.

Submissions of Noticee 4

a. That the investigation report has not been provided and by not providing the copy of the Investigation Report, Principle of Natural Justice is breached.
b. That they had sold 100 shares of Anukaran to Mr. Rajesh C Tawari on 29-10-2012 and the consideration was received in cash. The price of the scrip of Anukaran had reached to Rs. 136.10 on 18-10-2012 before Mr. Rajesh C Tawari started trading in the shares of the Company. During this period the price of the scrip increased with a volume of 1 to 5,00,000 shares.

c. That they had not executed a single sell trade during the Patch I and II. Even their buy orders in the scrip of Anukaran during Patch I and II did not contributed to positive LTP.
d. That off market transactions are per se not illegal.
e. That no connection/relation either direct or indirect had been established in between our Company and other major trader in the scrip of Anukaran during the Investigation Period. No collusion was established in between buyer and seller clients / person / entities.
f. That the allegation contained in SCN particularly as against our Company are farfetched and based on surmises, conjectures, assumption and presumptions. Furthermore, SCN is bad in law as the same has been issued after a period of more than 6 years after execution of purported off market transaction by our Company. This highly prejudices the case of the Noticee as justice delayed is justice denied.
g. That they were not having any connivance/ collusion with the purchaser.
h. That the doubt raised on the off market transactions executed is not sustainable. Their transaction is bonafide transaction and it is not challenged under the Securities Contract (Regulation) Act, 1956.
i. That it is an admitted position in the SCN that there were large demand in shares of the Anukaran during the Investigation Period. Since the demand in the shares was not filled with the supply, the price of the scrip was increased till the buyers interest remained.
j. That selling shares in miniscule quantities and above the LTP per se not illegal. The Hon’ble SAT and SEBI held that trades above the LTP in minuscule quantities are per se not illegal.
k. That their Company had not employed any manipulative or deceptive device with respect to alleged off market transaction in the shares of Anukaran or neither have their Company acted in contravention of the provisions of SEBI Act and Rules/Regulations made thereunder.
l. That their Company had not employed any device, scheme or artifice to defraud anyone while dealing in the shares of Anukaran.

m. That their Company had not indulged in fraudulent and unfair trade practice in respect of alleged off market transaction in the shares of Anukaran.

Case laws referred by Noticee 1 & 4 in their respective submissions

a. *Judgement of Hon'ble Supreme Court in the matter of Securities and Exchange Board of India v. Price Waterhouse (Civil Appeal No. 6003- 6004/12)*

b. *Judgment dated June 30, 2016 passed by The Hon'ble Bombay High Court in H.R. Mehta Vs. Assistant Commissioner of Income-tax, Mumbai*

c. *Judgement of Kerala High Court in (1996) 218 ITR 721 at page 723 in the matter of Capricon Shopping Complex V. ITO (1996) 218 ITR 721 (Ker.)*

d. *Order dated 22-08-2019 of Hon'ble Securities Appellate Tribunal passed in the matter of Mr. Ashok Shivpal Rupani & Ors. Vs. SEBI*

e. *Order dated 27-05-2019 of Hon'ble Securities Appellate Tribunal passed in the matter of Mr. Rakesh Kathotia & Ors. vs. SEBI*

f. *Order dated 31-01-2020 of Hon'ble Securities Appellate Tribunal passed in the matter of Mr. Ashlesh Gunvantbhai Shah &Ors*

g. *Order dated 15-06-2010 passed by the Hon'ble Tribunal in the Appeal No. 281 of 2009 filed by Mr. Vikas Gourihar Narnavar*

h. *Order dated 27-08-2008 of Hon'ble Securities Appellate Tribunal passed in the matter of Moneygrowth Investment and Consultants Pvt. Ltd. vs. SEBI*

i. *Order dated 27-10-2008 of Hon'ble Securities Appellate Tribunal passed in the matter of Jagruti Securities Ltd. vs. SEBI*

j. *Order dated 27-08-2013 of Hon'ble Securities Appellate Tribunal passed in the matter of HB Stock Holdings Ltd. vs. SEBI (Appeal No. 114 of 2012)*

k. *Order dated 10-10-2013 of Hon'ble Securities Appellate Tribunal passed in the matter of Kapil Chatrabhuj Bhuptani vs. SEBI (Appeal No. 95 of 2013)* *l. Order dated 29-07-2011 of Hon'ble Securities Appellate Tribunal passed in the matter of Narendra Ganatra vs. SEBI*

m. Order dated 07-02-2020 of Hon'ble Securities Appellate Tribunal passed in the matter of Rajesh Marchya (HUF) vs SEBI, and Appeal No. 496 of 2019 in the scrip of Malabar Trading Company Limited.

n. Order dated 07-11-2019 passed by the Hon'ble Tribunal in Appeal No. 105 of 2019 (Vipul Mohan Joshi vs SEBI)

o. Order dated 30-09-2003 of Hon'ble Securities Appellate Tribunal passed in the matter of KSL & Industries Ltd. vs. Chairman, SEBI (Appeal No. 9 of 2003)

p. Order dated 25-02-2010 of Hon'ble Securities Appellate Tribunal passed in the matter of Vikas Ganshmal Bengani vs. WTM, SEBI (Appeal No. 225 of 2009)

q. Order dated 16-01-2020 of Hon'ble Securities Appellate Tribunal passed in the matter of M/s Nishith M Shah (HUF) v/s SEBI in Appeal 97 of 2019

r. Order dated 01-03-2011 of Hon'ble Securities Appellate Tribunal passed in the matter of Jatin Manu bhai Shah &Ors v/s Adjudicating Officer, SEBI (Appeal No. 16 of 2010)

s. Order dated 31-05-2019 passed by the Ld. Whole Time Member in the matter of Amit H. Tilala in the investigation of M/s. Essar (India) Ltd.

t. Order dated 23-01-2018 passed by The Ld. Adjudicating Officer in the matter of Amit Tilala (in the scrip of Essar (India) Limited)

u. Order dated 31-08-2018 passed by the Ld. Adjudicating Officer, SEBI in the matter of Svaraj Trading & Agencies Ltd.

v. Order dated 24-02-2020 passed by Ld. Adjudicating Officer in favour of Ms. Sushma Agarwal in the matter of Winsome Yarns Limited *w. Order dated 06-03-2020 passed by Ld. Adjudicating Officer in favour of Ms. Sangita Pramod Harlalka in the matter of Reford global Limited*

x. Order dated 23-03-2020 passed by Ld. Adjudicating Officer in favour of Mr. Lokesh N Mistry in the matter of Alexander Stamps and Coin Limited

y. Order dated 26-04-2018 passed by the Ld. Adjudicating Officer in favour of JayantIndulal Sethna in the matter of Dhenu Buildon Infra Limited (Paragraph Nos.21 and 22)

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

8. I have perused the SCN dated March 23, 2018, the replies filed by the Noticees, submissions made during the course of personal hearing and written submissions filed and thereafter find that the pertinent issues that require consideration in this matter are as under:

(i) Whether the Noticees have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI PFUTP Regulations, 2003?

(ii) If violations are established then whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

(iii) If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992?

ISSUE No. 1-Whether the Noticees have violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI PFUTP Regulations, 2003?

9. Before I proceed to examine the aforesaid issue and decide as to whether on the facts of the matter the Noticees have violated the provisions of Regulations of SEBI PFUTP Regulations, 2003, it would be appropriate to reproduce hereunder, the relevant provisions of SEBI PFUTP Regulations, 2003 as alleged to have been violated by the Noticees in the instant matter. The same are reproduced below:

SEBI PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices-

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

(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;"

10. After having perused the replies of the Noticees, I note that the Noticee 1 & 4 have filed certain technical submissions in the form of objections to the proceedings and natural justice followed thereunder. Therefore, it is pertinent to deal with the technical submission before dealing the case on merits. It is noted that the Noticees have raised issues like non-furnishing of copy of investigation report, delay in initiating action etc. causing breach of Principle of Natural Justice and prejudice to them. In this respect, it is noted that documents which have been relied upon in the SCN to make allegations against the Noticees, have been provided to the Noticees as annexures to the SCN. Though the Noticees have contended that non-furnishing of documents and inordinate delay in proceedings have caused prejudice to them, however, the Noticees have not been successful in exhibiting the exact nature of prejudice claimed to have been caused to them. Similarly, it is also noted that the law on the issue of not giving the copy of entire investigation report is well settled to the effect that providing of documents which have been relied upon in the SCN to frame allegations/charges are treated as sufficient compliance of the principles governing the Natural Justice, unless an entity is successful in showing the prejudice caused, in case the document so demanded by it is not furnished.

11. The issue of causing a prejudice on account of non-furnishing of copy of the entire investigation report came up for consideration before Hon'ble SAT in the matter of *Shruti Vora Vs. SEBI (Date of decision: February 12, 2020)*, wherein Hon'ble SAT have inter alia observed that in the absence of any law specifically imposing or casting a duty to provide all the documents which are in the possession (of SEBI) though have not been relied upon, it would not be justified on the part of the Noticees to ask for those documents which are not having a role in attributing the allegation made on the Noticees and therefore, non-furnishing of all such documents would not ipso facto result in breach of principle of nature justice. Similarly, the Hon'ble SAT in the case of *Reliance Commodities Ltd vs. National*

Commodity & Derivatives Exchange Ltd. (DoD- July 23, 2019) have inter alia observed that;

"2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant……."

12. I note that the charges levelled against the Noticees are of manipulative and fraudulent trades for which the Noticees have been provided with the findings qua them from the investigations, in the SCN. I also note that the SCN contained annexures relevant to the findings and charges levelled against the Noticees, such as trade log & order log of the scrip, transactions/ trades of the Noticees etc. Except for making a bald allegation of non-furnishing copy of investigation report, the Noticees have failed to establish any prejudice caused to them on account of such non-furnishing of the investigation report. Further, the following judgment of Hon'ble SAT on the similar issue in the case of *Manoj Gaur Vs. SEBI, in Appeal Number 64 of 2012* decided on *October 03,2012* is noteworthy: -

"The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation."

13. Thus, the contention of Noticees that non-furnishing of investigation report has amounted to breach of Principle of Natural Justice is devoid of any merit as Noticees have not brought on record any reasons sufficient to satisfy that the furnishing of same was essential nor have they explained as to what prejudice was caused to them by non-furnishing of the entire investigation report. Therefore, the contention of the Noticees is rejected as the same is without any merit. Therefore, in view of the aforesaid jurisprudence, I am of the view that the principles of natural justice have not been breached and have been adequately complied with in the present matter.

14. Further, the Noticees have raised that the instant proceedings are suffering from inordinate delay and latches and SCN issued is bad in law. It has been stated that the trades alleged to be manipulative were executed in the year 2012, whereas the SCN has been issued in the year 2018. Insofar as the contention of the Noticees pertaining to delay in issuance of SCN is concerned, it is noted that the allegations in the SCN dated March 19, 2018 have been premised on the trades executed during the investigation period which is spread over January 01, 2012 to January 06, 2015. It has to be understood that in order to ascertain prima facie culpability of any delinquent, the trade data and other documents needs to be thoroughly examined during the investigation, which no doubt needs considerable time. After crystallization of the factual aspects pertaining to the case, the proceedings move further towards issuance of show cause notice. Thus, when I consider the factual aspects of the case on the basis of which the SCN has been issued in March, 2018, I do not find any reason or infirmity to drop the charges on the ground of delay as claimed by the Noticees. For the purpose of arriving at prima facie findings, all data pertaining to the scrip have to be diligently evaluated and only pursuant thereto; a show cause notice can be issued.

15. Without prejudice to the aforesaid, I may also record here that the extant framework of SEBI Act, 1992 and PFUTP Regulations do not prescribe a limitation period for initiation of action against any wrong doer for the violations of the said enactment

and rules and regulations made thereunder. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in the matter, which could be held as so inordinate that it results in causing prejudice and continuation of same tantamount to miscarriage of justice, in my view, the date when the violation came to the notice (of SEBI), would be the relevant point and not the date of actual commission of the said violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. vs. SEBI (Appeal no. 97/2014; Order dated December 16, 2015)*: *"....................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, as it is also settled 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:

"1. The Tribunal in an appeal arising under the Central Excise Act held that the adjudication made after a lapse of nearly nine years after the issue of show cause notice is not permissible and set aside the same.

2. There is no statutory bar to adjudicate the matter even after lapse of nine years after the issue of show cause notice and the adjudication pertains only to the actual levy of the duty which is due to the department and not to any levy of interest or penalty. In these circumstances we think the view taken by the Tribunal is not justified and we set aside the order made by the Tribunal and remit the matter to the Tribunal for fresh disposal in accordance with law after restoration of the appeal to its original number…..."

16. After having addressed the technical submissions, I, now, deal with the case on merit basis. I note that there is an unusual price movement in the Scrip of Anukaran during the period from January 01, 2012 to January 06, 2015. The investigation period spreads over four patches i.e. Patch 1, Patch 2, Patch 3 and patch 4. During

patch 1 i.e. before issue of bonus shares, the scrip price opened Rs. 35.15 reached high of Rs.256.25 and closed at Rs.256.25. During this patch except on 3 days the daily trading volume in the scrip was less than 1000 shares. The scrip price increased sharply, with insignificant trading volume. During Patch 2 i.e. after issue of bonus shares the scrip price opened at Rs.149.45 and reached high of Rs.306.20. During this patch there were 16 trading days with 1 trade each day. All the trades were executed for 1 share. The scrip price increased sharply, with insignificant trading volume. During Patch 3 i.e. after split of shares, the scrip price opened at Rs.31.20 reached high of Rs.80.95 and closed at Rs.69.80. During this patch the scrip initially increased sharply from Rs. 31.20 (on December 27, 2012) to Rs.68.85 (on February 26, 2013).Thereafter the scrip price did not fluctuate significantly. The average volume in the scrip was 288105 shares which was significant as compared to Patch 1 and Patch 2. During Patch 4 i.e. the scrip price started falling. The scrip price opened at Rs.66.35 reached low Re.0.28 and closed at Re.0.28.

17. It is noted that during patch 1 i.e. the period from January 01, 2012 to November 23, 2012, the first trade in the scrip was executed at Rs. 35.15 and last trade was executed at Rs. 256.25. The trading details in the scrip during patch 1 are summarized in the following table:

Sl. No.	**Particulars**	
1.	No. of trading days in patch 1	43
2.	No. of trades	60
3.	Total traded volume of shares	10,51,643
4.	Daily average volume of shares traded	24,457
5.	Value of the trades	1,07,76,283
6.	No. of buyers	22
7.	No. of sellers	16

18. During Patch 1, the scrip price has witnessed a sharp increase in price of Rs. 221.10 with just 60 trades in 43 trading days. During this patch, 16 entities has sold the shares and contributed to the Last Traded Price (LTP) substantially.

Considering the sharp price rise with miniscule volume in patch 1, the sell side LTP was analyzed and the details of sell side LTP are tabulated below:

S.NO.	Seller PAN	Seller Name	Net LTP			Positive LTP			Negative LTP			Zero LTP		% of + LTP to Total Market + LTP Rs.221.10
			Rs.	QTY traded	No of trades	Rs.	QTY traded	No of trades	Rs.	QTY traded	No of trades	QTY traded	No of trades	
1.	**ABYPT5918K**	**Rajesh ChetanjiTawri**	**96.35**	**12**	**11**	**96.35**	**12**	**11**	**-**	**-**	**-**	**-**	**-**	**43.58**
2.	**AGIPB2369K**	**Aanand Balavantrai Boghani**	**31.90**	**40**	**8**	**31.90**	**40**	**8**	**-**	**-**	**-**	**-**	**-**	**14.43**
3.	**AJPPD6414R**	**Kaushik Bipinchandra Dhanki**	**20.55**	**30**	**6**	**20.55**	**30**	**6**	**-**	**-**	**-**	**-**	**-**	**9.29**
4.	AAWPM0958P	Gulabrai Nandlal Mehta	12.20	1	1	12.20	1	1	-	-	-	-	-	5.52
5.	AADHG0923M	Goswami Vrajeshji Chandragopalji Huf	11.60	800	2	11.60	500	1	-	-	-	300	1	5.25
6.	AKKPS1106R	Raj Kumar	11.45	2	2	11.45	2	2	-	-	-	-	-	5.18
7.	ACHPD6858L	Pushpa Devi Dhoot	9.95	600	6	9.95	103	4	-	-	-	497	2	4.50
8.	ANFPS6780F	Zeenal Pravin Shah	7.00	2	2	7.00	2	2	-	-	-	-	-	3.17
9.	APDPM1938B	Vishal N Manseta	6.15	1	1	6.15	1	1	-	-	-	-	-	2.78
10.	AGGPD3966N	Sarita Devi Dakalia	4.15	2	1	4.15	2	1	-	-	-	-	-	1.88
11.	AABPV4701E	Bharat NanjiVora	3.55	2	2	3.55	2	2	-	-	-	-	-	1.61
12.	ABCPL5745Q	Falguni ChandreshLotia	2.30	25,000	6	2.30	10,000	1	-	-	-	15,000	5	1.04
13.	ABWPA4744L	Krishna Mahendra Agarwal	2.20	150	1	2.20	150	1	-	-	-	-	-	1.00
	Total of entities contributed to 1% or more of positive LTP		**219.35**	**26,642**	**49**	**219.35**	**10,845**	**41**	**-**	**-**	**-**	**15,797**	**8**	**99.21**
14.	AADCM1291K	Macro Securities(India) Pvt Ltd	1.75	10,00,000	2	1.75	10,00,000	2	-	-	-	-	-	0.79
15.	AACHC4426J	Chandresh P Lotia (Huf)	-	25,000	8	-	-	0	-	-	-	25,000	8	-
16.	AABPV7644Q	Heena Bharat Vora	-	1	1	-	-	0	-	-	-	1	1	-
	Market Total		**221.10**	**10,51,643**	**60**	**221.10**	**10,10,845**	**43**	**-**	**-**	**-**	**40,798**	**17**	**100.00**

19. From the above table, it is noted that 13 out of total 16 sellers contributed to 1% or more to positive LTP in this patch. Further, out of 13, I note that Noticee 1, 2 and 3 were the top 3 sellers contributing 67.3% to market positive LTP. I note that Noticee 1 has sold 12 shares in 11 trades and contributed Rs.96.35 to LTP variance out of total LTP variance of Rs.221.10. In terms of percentage, 43.58% of price rise in the scrip during patch 1 was due to sale of shares by Noticee1. Further, all the 11 trades were executed at a price more than LTP. On an average Noticee 1 contributed to price rise of Rs. 8.02 for every share he had sold during patch 1. The details regarding of sale of 12 shares by Noticee1 are tabulated as under:

S.NO.	Date of trade	No. of shares held before trade	Trade qty.	Trade price	LTP variance (INR)	Sell order details				Corresponding buy order details				LTP Percentage
						number	time	Price	qty.	number	order time	Price	qty.	

1.	30/10/2012	100	2	142.9	6.8	12000137084577	11:59:25	142.9	2	17000158000079	09:00:02	142.9	300	5
2.	31/10/2012	99	1	150	7.1	19000178001084	09:16:57	150	1	15000128003683	09:00:00	150	100	4.97
3.	02/11/2012	98	1	157.5	7.5	11000127002098	09:19:15	157.5	1	14000176000169	09:00:01	157.5	300	5
4.	05/11/2012	97	1	165.35	7.85	15000143023424	09:28:19	Market order	1	16000148004578	09:00:01	165.35	300	4.98
5.	07/11/2012	96	1	173.6	8.25	14000032211114	14:00:47	173.6	1	11000031000042	09:00:00	173.6	300	4.99
6.	08/11/2012	95	1	182.25	8.65	23000126069198	10:57:56	182.25	1	15000128001500	09:00:00	182.25	100	4.98
7.	12/11/2012	94	1	191.35	9.1	17000165153065	14:10:15	191.35	1	11000126003238	09:00:02	191.35	500	4.99
8.	13/11/2012	93	1	200.9	9.55	23000130038232	16:38:57	200.9	1	15000133000686	15:30:01	200.9	500	4.99
9.	16/11/2012	92	1	210.9	10	18000187231519	14:57:10	210.9	1	12000146000053	09:15:02	210.9	500	4.98
10.	19/11/2012	91	1	221.4	10.5	22000153102081	13:02:36	221.4	1	12000142000440	09:00:02	221.4	500	4.98
11.	20/11/2012	90	1	232.45	11.05	12000153062596	14:09:14	232.45	1	13000131385555	14:53:44	232.45	2	4.99
	Total		**12**	2171.5-	96.35				**12**				**3,402**	

20. From the above it is noted that Noticee 1 sold the shares on 11 different trading days during the period from 30/10/2012 to 20/11/2012 in patch 1. Further, I note that the Noticee 1 was selling shares at a price more than LTP in miniscule quantity i.e. 1 share or 2 shares repeatedly (in all the 11 instances), though buy orders were available for more quantity and Noticee 1 was holding sufficient shares in its demat account. I note that Noticee 1 had held 100 shares in his demat account and the buy order was available for 300 shares at Rs.142.90. However, he sold only 2 shares. Similarly, in the remaining instances also he had sold only 1 share in each trade, though the Noticee had more number of shares in his demat account. The cumulative sell order quantity of Noticee 1 was merely 12 shares, whereas corresponding cumulative buy order quantity was 3,402 shares. It is further noted from the demat statement of Noticee 1 that he had received 100 shares in off market on 29/10/2012 from Noticee 4. The above was an off market sale by Noticee 4 to Noticee 1 @ Rs. 82.87 per share which was settled in cash. Same has also been accepted by the Noticee 4 in its reply. It is further noted that Noticee 1 was not holding any shares in the scrip before receipt of shares in the off market from

Noticee 4. After the aforesaid receipt of shares, Noticee 1 started selling the shares in miniscule quantity from 30/10/2012 onwards i.e. the day immediately after receipt of shares in off market. Further, it is noted that the registered e-mail id of Noticee 4 as per the ROC records (MCA website- Company Master data)) was kushalpshah@gmail.com, which is the e-mail id that belongs to the Managing Director of Anukaran viz. Kushal Shah (PAN: AXPPS9103G and DIN: 00434124).

21. I further note that the sharp price rise (from Rs. 35.15 to Rs.256.25) during Patch 1 was not supported by or justified considering its financials or corporate announcements. Further, given the low volume of trading accompanied by the steep increase in price could not have been witnessed unless a manipulative pattern was deployed. Such a pattern has been observed in the order placement of Noticee 1 who sold the shares on market in miniscule repeatedly resulted in artificial increase in the scrip price in Patch 1. It is further noted that Noticee 1 had not placed any buy order on exchange platform on or before October 29, 2012 and the off market transaction was the only off market transaction between Noticee 1 and Noticee 4 during the entire investigation period. Further, repeated sale of miniscule shares by the Noticee 1 at price of more than LTP and immediately after receipt of shares in off market from Noticee 4, is indicative of the manipulative intent of the Noticee 1 and which has also triggered the artificial rise in the scrip price. Noticee 1 had no bona fide intention to sell because despite sufficient buy orders being available in the market and having shares in his demat account, he sold very small quantity of shares in each transaction repeatedly and was instrumental in establishing a price higher than the last traded price and thus contributed to increased scrip price with each of his trades.

22. The off market transaction between Noticee 1 and Noticee 4 was not genuine and was only for the purpose of manipulation of scrip price and appear to have been done to facilitate the Noticee no. 1 to execute trades manipulating the price of the scrip of the Company. It is also very unusual that despite the shares being available on the exchange platform, the Noticee 1 preferred to buy the shares through off market from Noticee 4 and settled the trade by cash. Further, the Noticee no. 4,

which is a corporate body, has not been able to demonstrate the reasons for accepting the consideration in cash against the purported sale of shares to the Noticee no. 1. The Noticee no. 4 has merely stated to have accepted sale considerations in cash, however, no supporting documents like vouchers, cash receipts, authority letter in favour of the executant of the transfer on behalf of Noticee no. 4 (as it is an incorporated entity) etc., have been produced before me to corroborate and add strength to the said claim. Thus, the claims have not been supported by any verifiable independent document to make out a case of genuine sale transfer to rebut the allegations made in the SCN with respect to the said transfer of shares.

23. I further note that the period of patch 2 is from November 27, 2012 to December 26, 2012. During this patch, as per the trade log the first trade in the scrip was executed at Rs. 149.45 and last trade was executed at Rs. 306.20 thereby registering an increase of Rs.156.75 (104.88% of opening price) in the scrip price. The trading details in the scrip during patch 2 are summarized in the following table:

Sl. No.	**Particulars**	
1.	No. of trading days in patch 2	16
2.	No. of trades	16
3.	Total traded volume of shares	16
4.	Daily average volume of shares traded	1
5.	Value of the trades	16
6.	No. of buyers	7
7.	No. of sellers	2

24. The sell side LTP analysis shows that during this patch 2, entities have sold the shares and contributed to positive LTP. The details of sell side LTP analysis are tabulated below:

S.NO.	Seller PAN	Seller Name	Net LTP			Positive LTP			Negative LTP			Zero LTP		% of + LTP to Total Market + LTP Rs.156.75
			Rs.	QTY traded	No of trades	Rs.	QTY traded	No of trades	Rs.	QTY traded	No of trades	QTY traded	No of trades	
	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1.	ABYPT5918K	Rajesh Chetanji Tawri	142.20	15	15	142.20	14	14	0	0	0	1	1	90.72
2.	AKKPS1106R	Raj Kumar	14.55	1	1	14.55	1	1	0	0	0	0	0	9.28
		Market total	**156.75**	**16**	**16**	**156.75**	**15**	**15**	**0**	**0**	**0**	**1**	**1**	**100.0**

25. I note that Noticee 1 had sold 15 shares in 15 trades and contributed Rs.142.20 to LTP variance out of total LTP variance of Rs.156.75 which is 90.72% of price rise in the scrip during this patch. Further, out of total 15 trades by the entity, in 14 instances trades were executed at a price more than LTP. On an average Noticee 1 contributed to price rise of Rs.9.48 for every share it had sold during patch 2. The details regarding sale of 15 shares by the Noticee 1 are tabulated below:

S.NO.	Date of trade	No. of shares before trade	Trade qty.	Trade price	LTP variance (Rs.)	Sell order details				Corresponding buy order details			
						number	time	price	qty.	number	order time	price	qty.
1.	27/11/2012	89	1	149.45	-	19000040085386	11:58:46	149.45	1	12000028011254	09:34:38	149.45	5
2.	29/11/2012	88	1	156.90	7.45	15000128095066	12:40:49	156.90	1	20000155000270	09:18:41	152.00	50
3.	04/12/2012	87	1	164.70	7.80	22000132017923	10:08:17	164.70	1	18000154064050	11:30:08	164.70	1
4.	05/12/2012	86	1	172.90	8.20	12000125097818	10:56:19	172.90	1	12000125148596	13:08:49	172.90	500
5.	06/12/2012	85	1	180.00	7.10	21000120029234	10:18:05	180.00	1	12000124186227	14:25:30	181.00	200
6.	07/12/2012	84	1	189.00	9.00	21000031220128	13:23:53	189.00	1	18000040052991	10:01:00	189.00	22
7.	10/12/2012	83	1	198.45	9.45	17000147159574	14:52:08	198.45	1	23000106027619	09:35:56	198.45	22
8.	11/12/2012	82	1	208.35	9.90	22000125043348	10:01:26	208.35	1	19000159035269	09:43:35	208.35	20
9.	13/12/2012	152*	1	218.75	10.40	12000124106703	11:56:44	218.75	1	12000125042093	09:58:02	218.75	10
10.	14/12/2012	151	1	229.65	10.90	20000135024269	10:20:55	229.65	1	15000122038525	09:53:21	229.65	10
11.	18/12/2012	150	1	240.00	10.35	17000147124298	12:31:34	240.00	1	19000159133742	12:55:11	240.00	10
12.	19/12/2012	149	1	252.00	12.00	11000105105074	11:12:05	252.00	1	13000117005377	09:23:47	Market Order	2
13.	20/12/2012	148	1	264.60	12.60	19000159097406	11:29:29	264.60	1	14000153001974	09:17:22	264.00	3
14.	21/12/2012	146	1	277.80	13.20	12000130108709	11:26:05	277.80	1	19000166000828	09:24:28	277.80	10
15.	24/12/2012	145	1	291.65	13.85	11000090199521	14:33:31	291.65	1	21000115024096	09:40:29	291.65	10
	Total		**15**		**142.20**				**15**				**875**

**71 shares were credited to the demat account pursuant to issue of bonus shares on November 26, 2012.*

26. It is noted that Noticee 1 had sold shares on 15 different trading days during the period from 27/11/2012 to 24/12/2012 in Patch 2. Further, it is also noted that as during the Patch 1, Noticee 1 in Patch 2 also, repeatedly sold shares at a price

more than LTP in miniscule quantity i.e 1 share in 14 out 15 instances though buy orders were available for more quantity despite Noticee 1 was holding shares in its demat account. For example, on 27/11/2012, the Noticee 1 was holding 89 shares, the buy order was available for 5 shares at Rs.149.45. However, Noticee 1 had sold only 1 share. Similarly, in the remaining instances also Noticee1 sold only 1 share though it held shares in the demat account. It is also noted that the sell orders for cumulative sell order quantity was mere 15 shares, whereas corresponding cumulative buy order quantity was for 875 shares. This again showed manipulative intent of the entity to increase the scrip price. Thus, the repeated sale of minuscule shares by the Noticee 1 at a price more than LTP, triggered the artificial rise in the scrip price during the Patch 2.

27. The Noticee has advanced an argument that all the trades executed by him were in normal course of business, which I, after carefully analyzing the details of the trades executed by the Noticee no. 1, find no credence to rely on the submissions advanced by him. From the details of sell trades as enumerated in the above two tables, it is noted that in both the patches, he had executed trades in miniscule quantities of 1 share only (except 1 trade involving 2 shares), in each of his trades. In the Patch 1, he has sold 12 shares in 11 trades whereas in Patch 2, he has sold 15 shares in 15 trades. Thus, in the two patches together, he has sold 27 shares in 26 trades. It is also observed that in both the patches, he has sold shares above the LTP in as many as 25 trades. In Patch 1, his contribution to LTP was of INR 96.35 to the total positive market LTP of INR 221.10 and in Patch 2, the LTP contribution by him was of INR 142.20 to the total LTP of INR 156.75 contributed to the scrip. In percentage terms, it is noted that the contribution of LTP by the Noticee no. 1 to the total market LTP during the two patches were 43.58% and 90.72 %, respectively. Consequently, as the analysis of the total LTP contribution to the scrip of Anukaran by the Noticee no. 1 in the two patches suggests, it is observed that in Patch 1, the Noticee no. 1 has contributed to price rise in the scrip by INR 8.02 for every share, sold by him and similarly in Patch 2, average contribution by him to the price rise in the scrip of Anukaran was of INR 9.48, per every share through the sale of share by him. It is also evident from the trade details

of the Noticee no.1 that immediately after receiving 100 shares from the Noticee no. 4 in an off-market transaction on October 29, 2012, he started selling those shares without losing any time, from the very next day i.e., from October 30, 2012. He continued to sell those shares of Anukaran (in Patch 1) up to November 20, 2012 and again after a hiatus of 06 days, commenced selling from November 27, 2012 up to December 24, 2012. Thus, effectively in 11 trading days over the period of 20 days, he had sold only 12 shares and further over a period of 15 trading days, he preferred to sell only 1 share at a time aggregating to 15 shares. The submission that the trades executed by him were in normal course of business appears to be an empty excuse, particularly after observing the price rise caused in the scrip and the pattern of trading resorted to by the Noticee no. 1, which had noticeable contribution to such price rise, which clearly exhibits an apparent motive to artificially raise the price of the scrip. It is inexplicable that during a period of two months, the Noticee has never thought of selling more than one share at a time, at prices above LTP, to gain more profit or even to hold his shares to sell them in future at higher prices, if he anticipated a price rise in the scrip. However, as noted above, the Noticee no. 1 chose to sell only 01 share each in all instances except for one trade, where he sold 02 shares thereby contributing to the LTP of the scrip. The unusual and abnormal conduct displayed by the Noticee by no means can be held to be the conduct of a normal course of business. Further, objective of any investor should be to maximize its profits or gains in buying or selling of securities, however it is noted that although the scrip witnessed a substantial rise in price, the Noticee no.1 never seemed to have indulged in buying the scrip during the said time, from the exchange platform so as to consolidate his position in the scrip which a prudent investor eyeing for maximum profit would have done, as the scrip was witnessing rise and there were huge buy demands of the scrip. On the contrary, he indulged in execution of sell trades with a minimum possible lot on each day, with an apparent motive to set a high closing price of the scrip. The said objective further finds strength from the background fact that the Noticee no. 1, who bought shares in off market transaction from the Noticee no. 4 presumably impressed by the future prospect of the scrip, indulged in execution of sell order in tiny quantities immediately after receipt of shares from Noticee no. 4, successively contributing to the LTP and resultantly to the price rise of the scrip. Such a trading behaviour does not reflect any normal course of business. The trading pattern followed and the explanations offered by the Noticee 1 are beyond any business rationale which cannot justify or legitimize such unfair and manipulative trades indulged in by the Noticee 1.

28. In view of the above and from the discussed trading pattern of Noticee no. 1, I find that he was not acting as a genuine seller in the market and had no bonafide intention to sell as because, in-spite of sufficient number of buy orders with abundant quantities being available in the market and with sufficient quantities of shares at his disposal, the Noticee has deliberately released very small quantity of share in each of his transactions and has executed not more than one transaction in a day. In this manner, the Noticee was instrumental in establishing a price higher than the last traded price thereby contributing to the increasing price of the scrip with each of his trades. Further, from the established trading pattern of the Noticee no. 1 which has led to positive LTP of Rs. 96.35 during Patch 1 (43.58% of the total market positive LTP) and Rs. 156.75 during Patch 2 (90.72% of the total market positive LTP) and in light of the established manipulation from the overall circumstances, the trades of the Noticee 1 executed after the investigation period are irrelevant for the present proceedings. The manipulative trades of the Noticee 1 containing which reflect large contribution to the LTP, themselves make the case of the Noticee 1 factually distinguishable from the cases cited by him in his defense. Such a trading practice followed by the Noticee 1 was apparently motivated towards sending a false and misleading impression to the market at large, about the trading activities in the scrip of Anukaran so as to artificially induce other investors to trade in the scrip. The extra ordinary exuberance shown by him while selling the shares of Anukaran and thereby contributing to LTP with each such trade, can't be held as trades executed in normal course of investment activities to maximize the profit. The Noticee 1 never preferred to sell shares in large quantity to seize the price benefit, which exposes nothing but his manipulative and fraudulent intent to deal with the scrip with a stock of 100 shares acquired through off-market deal, only to disrupt the price discovery process in the scrip.

The Noticee no. 1, with each of his sell trades has invariably contributed to the market positive LTP of the scrip and therefore, all the pleas taken by the Noticee 1 in his defense have to be rejected for want of any merit. The culpability of the Noticee in increasing the price of the scrip through such manipulative and fraudulent trades is established. Hence, I am convinced that he has manipulated the scrip price and created a misleading appearance of trading in the scrip by executing such trades as explained above.

29. Now I move on to the allegations against the Noticee nos. 2 and 3, I note that these two Noticees have been alleged to be involved in short selling of the shares of Anukaran, and by executing such trades in minimal quantities, the Noticee nos. 2 and 3 have been alleged to have indulged in manipulation of the price of the scrip of Anukaran. I note that during Patch 1, Noticee 2 had sold 40 shares in 8 trades and contributed Rs. 31.90 to LTP variance out of total LTP variance of Rs. 221.10 which was 14.43% of price rise in the scrip. Further, all 8 trades by Noticee 2 were executed at a price more than LTP. Noticee 3 had sold 30 shares in 6 trades and contributed Rs. 20.55 to LTP variance out of total LTP variance of Rs. 221.10 which was 9.29% of price rise in the scrip during Patch 1. It is noted that all 6 trades by Noticee 3 were executed at a price more than LTP. I note that Noticee 2 and Noticee 3 had short sold the shares (i.e. without having securities) on some instances. Noticees 2 and 3 repeatedly short sold the shares in minuscule quantity as is evident from their trades in the table below and therefore the same had to be settled on trade to trade basis. By these trades, Noticee 2 and Noticee 3 were instrumental in establishing a price higher than the last traded price and thus contributed to increased scrip price with each of their trades. I note the trading pattern of Noticee 2 and Noticee 3 as below:

S.NO.	Date of trade	No. of shares held before trade	Trade qty.	Trade price	LTP variance (Rs.)	Sell order details				Corresponding buy order details			
						number	**time**	**price**	**qty.**	**number**	**order time**	**price**	**qty.**
	Aanand Balavantrai Boghani (Noticee 2):												
1	12/06/2012	0	5	69	3.25	11000122179019	13:14:38	69	**5**	16000146000000	09:00:00	69	500
2	28/06/2012	0	5	72.45	3.45	13000143056169	15:02:52	72.45	**5**	21000146000013	09:00:00	72.45	2000

3	04/07/2012	0	5	76.05	3.60	12000142115339	15:29:24	76.05	**5**	15000128001578	09:00:17	76.05	500
4	13/07/2012	0	5	79.85	3.80	22000138049471	15:27:45	79.85	**5**	19000180000000	09:00:00	79.85	100
5	03/08/2012	0	5	92.3	4.35	18000225222076	15:12:18	92.3	**5**	13000162000783	09:00:00	92.3	100
6	07/09/2012	0	5	96.9	4.60	12000137398960	14:02:07	96.9	**5**	12000145000003	09:00:02	96.9	300
7	12/09/2012	0	5	101.7	4.80	16000149126862	14:56:43	101.7	**5**	12000141000400	09:00:00	101.7	500
8	25/09/2012	0	5	106.75	4.05	19000264054880	14:51:01	106.75	**5**	19000219004507	09:00:00	106.75	300
	Total		**40**	-	**31.90**				**40**				**4,300**
	Kaushik Bipinchandra Dhanki (Noticee 3)												
1	27.02.2012	0	**5**	54.2	2.55	12000048081078	13:18:16	54.2	5	22000052001574	09:00:01	54.2	2000
2	06.03.2012	0	**5**	56.9	2.70	23000059183996	15:12:17	56.9	5	17000060000367	09:00:01	56.9	2000
3	27.03.2012	0	**5**	59.7	2.80	15000234081541	13:49:38	59.7	5	12000253000161	09:00:02	59.7	100
4	30.04.2012	0	**5**	62.65	2.95	14000249056401	15:15:58	62.65	5	20000211000029	09:00:00	62.65	1000
5	04.05.2012	0	**5**	65.75	3.10	15000196071287	13:26:31	65.75	5	14000229000023	09:00:00	65.75	1000
6	18.10.2012	0	**5**	136.1	6.45	17000157294567	14:05:40	136.1	5	11000121003311	09:00:03	136.1	99
		Total	**30**		**20.55**				**30**				**6199**

30. From the above, the trades executed by the Noticee no. 2 had contributed Rs. 31.90 (14.43% of the total market variance of INR 221.10) and the trades executed by the Noticee no. 3 had contributed Rs. 20.55 (9.29% of the total market variance of INR 221.10), to the market positive LTP of scrip of Anukaran.

31. The two Noticees in their identical submissions, have argued that their trades were in normal course of their trading activity. In order to appreciate the submissions of the Noticees, it requires perusal and consideration of the order log which is reproduced herein below:

Aanand Balavantrai Boghani (Noticee no. 2)					
Sr. no.	**ORDER_DATE**	**ORDER_TIME**	**BUY/SELL**	**RATE**	**QTY**
1.	12-06-2012	13:14:38	S	69	5
2.	12-06-2012	13:14:49	B	69	50
3.	28-06-2012	15:02:52	S	72.45	5
4.	28-06-2012	15:02:58	B	72.45	50
5.	04-07-2012	15:29:24	S	76.05	5
6.	13-07-2012	15:27:44	S	79.85	5
7.	13-07-2012	15:27:49	B	79.85	5
8.	03-08-2012	15:12:17	S	92.3	5
9.	03-08-2012	15:12:24	B	92.3	50
10.	07-09-2012	14:02:06	S	96.9	5

11.	07-09-2012	14:02:22	B	96.9	50
12.	12-09-2012	14:56:42	S	101.7	5
13.	12-09-2012	14:56:46	B	101.7	50
14.	25-09-2012	14:51:00	S	106.75	5
15.	25-09-2012	14:51:04	B	106.75	50
Kaushik Bipinchandra Dhanki (Noticee no. 3)					
Sr. no.	**ORDER_DATE**	**ORDER_TIME**	**BUY/SELL**	**RATE**	**QTY**
1.	27-02-2012	13:18:16	S	54.2	5
2.	27-02-2012	13:18:27	B	54.2	500
3.	06-03-2012	15:12:17	S	56.9	5
4.	06-03-2012	15:12:21	B	56.9	100
5.	27-03-2012	13:49:37	S	59.7	5
6.	27-03-2012	13:49:49	B	59.7	100
7.	30-04-2012	15:15:58	S	62.65	5
8.	30-04-2012	15:16:03	B	62.65	50
9.	04-05-2012	13:26:30	S	65.75	5
10.	04-05-2012	13:26:52	B	65.75	5
11.	18-10-2012	14:05:40	S	136.1	5
12.	18-10-2012	14:05:54	B	136.1	100

32. I have carefully gone through the aforesaid details of the trades executed by the Noticee nos. 2 and 3 and have also considered the identical submissions made by both of the Noticees.

33. Based on a conjunctive reading of the details of the abovementioned last two tables, I note that both of the Noticees (nos. 2 and 3) have entered into short selling of 5 shares each in exactly similar fashion, albeit on different days. Further, both the Noticees were not holding a single share of Anukaran. It is also noted from the order log that except for one instance, the Noticee no. 2 and 3 had placed their buy orders (for at least the same number of shares short sold) immediately after placing their sell orders, so as to square off their position, that was taken by short selling. However, admittedly, such an attempt of squaring off the position never seems to have fructified. The only possible reason for the same is that there was no one selling the shares, from whom the aforesaid Noticees could have purchased the shares and squared off their short sell positions. It is further noted that all the trades have been executed for quantity of 5 shares each, irrespective of the demand pending in the system which was largely in the range of 100-2000 shares. It is also interesting to note that all the buy orders, corresponding to which the sell (short

sell) orders of the Noticee nos. 2 and 3 matched, were placed in the system at the opening of the market. However, such buy orders remained unexecuted in the system for long and every time, it was the sell (short sell) order placed by the Noticee nos. 2 and 3, which fructified such buy orders into trade, albeit for small quantities of 5 shares each. I note that out of the 8 trades executed by the Noticee no. 2, as many as 4 trades have been executed after 15:00 pm and out of said 4 trades, 2 trades have been executed at the verge of closure timings of the market.

34. It is noted that the trades that were executed on July 04, 2012 and July 13, 2012, were executed at 15:29:24 and 15:27:45, respectively (almost at the closing of market hours). Similarly, 2 trades have been executed at 14:56:43 and 14:51:01. The Noticee no. 3 has also followed a pattern akin to the Noticee no. 2, wherein out of 6 short sell trades, is been seen to have executed 1 trade each at 15:12:17 and 15:15:58; 1 trade at 14:05:40 and 3 other trades during the period of 13:18:16 to 13:49:38. Admittedly, merely based on the timings of the trades, no imputation of manipulation can be made on any person. However, one cannot ignore the fact that the nature of trades under reference are short sell trades, which needs to be squared off before closure of the market, failing which the trader shall remain exposed to imposition of penalty by the Stock Exchange under the auction mechanism. Therefore, in an ideal situation, a short seller will be apprehensive of non-availability of suitable orders during closure of the market hours so as to set off his short sell order and the consequential penalty has a potential to distort his thin profits that he would be expecting from his short sell position. Thus, when the facts of the present case are seen holistically, it seems very difficult to comprehend as to what prompted Noticee nos. 2 and 3 to execute such trades around market closing time, having glaringly remote chances of squaring off their short sell trades, which admittedly had to be settled on trade to trade basis.

35. I note from the tables that the buy orders that were necessary to square off the short sell positions were, placed within a gap of 3 to 4 seconds. However, the aspect that merits consideration is the pricing of such buy orders. It is seen that all the buy orders have been placed by the Noticee nos. 2 and 3 at exactly the same

rates at which the corresponding short sell orders were executed. I also observe that the said Noticees have exhibited a strange trading strategy where shares are short sold and instead of even attempting to square off such positions by placing buy orders at an amount lesser than the rate of the sell trade, the buy orders have been placed at exactly the same price at which shares were short sold a while ago. Under the circumstances, it cannot be disputed that the two Noticees were not short selling with a profit motive but apparently the only motive that the Noticee nos. 2 and 3 had in their mind, was execution of those trades at prices higher than the LTP. It is evident that the alleged trades were executed to set the closing price in the scrip upwards and not with intent to garner benefit, from falling prices of the scrip. It is also noticed that the quantity of buy trades was not always equal to the sell trades, which gives an indication that the Noticees might be interested in buying the shares also. For illustration, Noticee no. 2 has always short sold 5 shares but the corresponding buy orders, which were purportedly placed to square off the sell positions, contained 50 shares in 6 instances. However, as noted above, the Noticee no. 2 was never able to even square off his position of 5 shares, let alone buying the remaining shares. The said factual aspect brings another suspicion to the veracity of the claim of having executed genuine trades by the Noticee, for which trade log needs to be referred to. As noted above, Noticee no. 2 had placed buy orders of 50 shares each on 6 instances, none of which could be fructified. Given the fact that Noticee no. 2 had short sold 5 shares each, the placing of buy orders for 50 shares would go on to show that he had an intention of buying extra 45 shares in those instances. However, even after placing buy orders for such extra 45 shares which could not get executed, Noticee no. 2 never placed a fresh buy order on the next day or any day thereafter, without having an open short sold position. In other words, if the Noticee no. 2 had any genuine desire to buy shares during his attempts to square off his short sold positions, such an expression to buy shares was never implemented. I find that exactly similar trading pattern has been followed by Noticee no. 3 also, who is seen to have short sold 5shares on February 27, 2012 and after 11 seconds, he has attempted to purchase 500 shares, which he could not purchase. Similarly, buy orders of 100 shares each were placed by Noticee no. 3 on March 06, 2012, March 27, 2012 and October 18, 2012; respectively with corresponding short sold shares being 5 shares only on each of those days. However, despite exhibiting such a demand, the Noticee no. 3 never attempted to buy the shares of Anukaran afresh.

36. Another fact that comes to light based on a careful analysis of the trade log is the lone presence of Noticee nos. 2 and 3 as a seller on the relevant trading days. It is seen that Noticee no. 2 has traded in the scrip in the months of June, July, August and September, 2012. I also note that in the said 4 months, the scrip of Anukaran witnessed trading only on 11 trading days, viz.: 12th and 28th June; 04th and 13th July; 01st, 02nd and 03rd August; 07th, 12th, 14th and 25th September. Out of aforesaid 11 trading days, the Noticee no. 2 has traded on 08 days and, on all such 08 days, it was only the Noticee no. 2, who had sold (short sold) shares of Anukaran. There is no other person/seller who is seen to have executed even a single sell trade on such days when the Noticee no. 2 has executed his sale trades. In the months of June and July, 2012, the scrip of Anukaran witnessed trading on only 2 days each and in the month of August, 2012 the trading days increased to 3 days and in September, it increased to 4 trading days. For rest of the trading days, no trade was executed in the scrip of Anukaran. Thus, in the months of June and July, 2012, it was the Noticee no. 2 alone, who was behind 100% of the trading in the scrip of Anukaran. Similar attribution can be given to the Noticee no. 3 also, since on all those days when Noticee no.3 had executed his sell trades (short sell), there was no other seller of shares of Anukaran and it was the Noticee no. 3 alone, who was selling shares of Anukaran, that too without holding such shares. To elaborate further, for the months of March, 2012 (trading took place only on 06th and 27th); April, 2012 (trading took place only on 30th); and May, 2012 (trading took place only on 04th), it was the Noticee no. 3 alone, who was selling (short selling) the shares of Anukaran. Collectively seen, since February 27, 2012 till July, 2012, the Noticee nos. 2 and 3 were holding the field of trading in the scrip of Anukaran. It is further noted that all the aforesaid trades executed by the two Noticee nos. 2 and 3 contributed to the LTP variance in the scrip of Anukaran. The Noticee no. 2, by his 8 trades bearing 40 shares contributed INR 31.90, whereas the Noticee no. 3, by his 6 trades involving 30 shares contributed INR 20.55, to the

LTP variance of the scrip of Anukaran. Thus, when there was no trade in the scrip of Anukaran for the whole trading day, it was the covert act(s) of short selling in the shares of Anukaran by the two Noticees, which not only resulted in creation of a false appearance of trading in the scrip, but also triggered a signal of upward movement of the price of the scrip to the investors at large. I observe that in absence of any cogent reason to justify such repeated acts of indulging in unsuccessful short selling in the shares of the Company that too always at prices higher than the LTP, there cannot be any motive except for an intention to carry out an agenda to manipulate the price, implemented meticulously, in the scrip of Anukaran, by these Noticees through their dubious concerted actions.

37. I also observe that exactly similar to the trades of the Noticee no. 1, the Noticee nos. 2 and 3 had also executed trades which were always having potential of contributing LTP near to the 5%, apparently to the extent permitted by the circuit filter at appropriate time. Thus, the said two Noticees have also taken all efforts to take the scrip's price to higher levels by gradually increasing the scrip price within the permissible limits, through their LTP contributory sell trades. It is very much possible that trade in any scrip can be executed even for a quantity as less as one share, which can cause a substantial variance with the LTP of the scrip. Since the price of the scrip can get altered based on a trade involving even a single share only, such a trade when carried out repetitively with manipulative intent, can have potentiality to manipulate the price of the scrip in the same manner as can be done by a trade involving large number of shares. Evidently, the trades executed by the Noticee no. 2 had contributed INR 31.90 (14.43% of the total market variance of INR 221.10) and the trades executed by the Noticee no. 3 had contributed INR 20.55 (9.29% of the total market variance of INR 221.10), to the market positive LTP of scrip of Anukaran. Thus, the aforesaid LTP contributing trades of the Noticees themselves go on to show as to how their trades involving small number of shares have proved to be equally potent to distort the price discovery mechanism of the market.

38. At this stage, I also note that Hon'ble SAT, in numerous orders have laid down that an entity in isolation can be booked for its unilateral act of manipulation of price of the scrip if analysis of trade log and order log reflects malafide intention even without any collusion with the other entities. The various cases that have spelt out the factors that deserve to be taken into account to assess the manipulation in a trade, are briefly discussed hereunder:

   i. Hon'ble SAT, in the matter of *Mrs Kalpana Dharmesh Chheda vs. SEBI (Appeal no. 454 of 2019 decided on February 25, 2020), while dealing with a similar issue, have inter alia held that "looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. This behavior cannot be justified in terms of normal rational expectations of a seller."*

   ii. In the matter of *Shri Lakhi Prasad Kheradi vs. SEBI (Appeal no. 232 of 2017 decided on June 21, 2018),* the Hon'ble Tribunal have held that *"Facts recorded in paras 15 to 17 of the impugned order clearly establish that the trades executed by the appellant had the effect of net positive LTP of Rs. 85.35. Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades."*

   iii. While dealing with the issue of manipulation caused by a buyer of the shares, Hon'ble SAT in the matter of *Saumil Bhavnagari v. SEBI (Appeal No. 28 of 2014 decided on March 21, 2014), inter alia* held that: *"From the nature of the trading, it is clear that the appellant has sought to create a misleading impression that a large number of persons were trading in the scrip."*

39. Thus, in light of the afore-stated judicial observations, one can firmly state that the trading pattern of the Noticee nos. 2 and 3 involved a series of unusual elements such as, absence of any other sellers on those trading days; execution of (short sale) trades at the fag end of the day leaving no time to offset the contract; no intention of making profits; all trades being executed at prices higher than the LTP, no genuine effort to consolidate their shares stock when the scrip was witnessing price rise on a continuous basis etc. When these unusual and peculiar trading activities are considered holistically, one can easily appreciate that the preponderance of all probabilities, clearly points fingers at the manipulative trades executed by the Noticees thereby vindicating the allegations made against them in the SCN. Similarly, the examination of the trades executed by the Noticee no. 1 also exposes similar modus operandi like absence of other sellers when the shares were sold by the Noticee no. 1, always selling 01 share in each of his trades (except 1 trade when he sold 02 shares) and repeatedly contributing market positive LTP to the maximum level permissible (just near the upper circuit level of 5%) in both the patches, by using 100 shares acquired through off-market deal from Noticee no. 4. I note that the aforesaid inferences based on the trading pattern of the Noticee nos. 1, 2 and 3 are sufficient in themselves to prove the charges of manipulation and the mere absence of any other direct evidence cannot be a ground of exoneration, as held by Hon'ble Supreme Court in the matter of SEBI Vs. Kishore R. Ajmera [(2016) 6 SCC 368]. Hence, merely for the reason that the counters parties to trades have not been proceeded against or no connection is brought by the investigation between the parties to a trade, would not be a ground to seek exoneration in isolation.

40. I further note that the Noticees have strongly harped upon the fact that the sell orders placed by them were matched with already pending buy orders on the market platform and as no action has been initiated against the buyers, they too deserve exoneration. Insofar as the said argument is concerned, I note that the mandate under the present proceedings is to adjudge the allegations levelled against the Noticees and if the investigation has not made any allegation of prima facie complicity of the Noticees with the buyers, I do not find it a reason to

exonerate the Noticees, more so, considering my observations noted above in support of the allegations against the said Noticees. Even assuming that the investigation has either not been successful in establishing a connection between the Noticees and the counter parties who were large in numbers or for lack of adequate evidence, it does not suo moto lead to a conclusion that no proceedings should continue even against entities, whose trades have been independently noticed to be abnormal and laced with elements of manipulation and fraud. In case the evidences mustered by the investigation are prima facie sufficient to sustain the charges made against the Noticees, it would be reasonable to proceed against such Noticees on the basis of the allegations framed thereon and these allegations deserve to be examined on the basis of those factual evidences including trading pattern adopted by the Noticees and the explanations offered by them to rebut those allegations. I have already noted with respect to the present case that the buyers had placed orders in the early hours of the respective trading days and it was the sell/short sell orders placed by the Noticee nos. 1, 2 and 3 only, which acted as a catalyst to convert such long pending buy orders into trades. Thus, in all the trades executed by the Noticee nos. 1, 2 and 3, they are responsible for converting those long pending buy orders into trades at prices above LTP. At this stage, it may be relevant to quote the observations of Hon'ble SAT recorded in the matter of *Systematix Shares & Stocks India Limited Vs. SEBI (2012).*The Hon'ble Tribunal while rejecting a similar contention have observed inter alia as: *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."* Under the circumstances, the Noticees were required to put forward justifiable explanation on merits of their case, which they have failed to do, for the reasons recorded in the foregoing paragraphs.

41. The Noticees have also contended that their trades were executed on screen based system of the Stock Exchange, where no one can have the details of the orders placed by their counter parties, manipulation cannot be imputed on such trades without an arrangement with the counter parties. The said argument is however erroneous as the charges in the SCN against them are not of collusion

with the counter party buyers but of manipulating the scrip by their own independent acts of indulging in repeated selling (by Noticee no. 1)/short selling (by Noticee nos. 2 and 3) of the scrip. Therefore, the argument of no collusive trades with counter party buyers is redundant and will not be of any help to the Noticees. The conspectus of factors governing the trades executed by the Noticee nos. 1, 2 and 3 as highlighted earlier, speak volumes about the trading conduct of the Noticees, which by no stretch of reasonableness can be termed as an outcome of system driven trades, executed on price time priority. Under the circumstances, the submission of the Noticees that the trades were genuine in nature does not find support from the strange and abnormal pattern of the trades executed by them. Executing similar trades on a repetitive basis is self-evident of the fact that the trades were borne out of a pre mediated scheme to manipulate the price of the scrip.

42. I also note that the Noticees have claimed that no loss has been caused to any investor due to their alleged trades. In this connection, I observe that establishment of direct quantified damage/loss to an investor *in personam* is not an essential ingredient to prove the charges of the price manipulation. The very acts of marking up the price of a scrip higher by manipulative trading practices even by a selected few persons can induce the investors *in rem*. There is no evidence on record to show that the drastic upward price movement of scrip of Anukaran from INR 35.15 to INR 256.25 was attributable to any genuine corporate action or business development but the same was found to be due to the manipulative and fraudulent trades executed by some people in the scrip. It is relevant to state here that how so ever judicious an investor may try to be; he may not always be able to understand as to whether the price rise noticed in a scrip is due to any genuine business development or due to manipulative actions in the market. By observing such a price trend showing remarkable increase in the share price of a company, an innocent investor has all reasons to fall prey to the temptation to invest in such security. I find it pertinent to demonstrate here the collective increase in the price of the scrip that have been caused by the Noticee nos. 1, 2 and 3 by way of their manipulative trades, which is tabulated herein below:

Sr. No.	Noticee no.	Contribution in INR to LTP in Patch 1 (% of the total LTP)	Contribution in INR to LTP in Patch 2 (% of the total LTP)
1.	Noticee no. 1	96.35 (43.58%)	142.20 (90.72%)
2.	Noticee no. 2	31.90 (14.43%)	-
3.	Noticee no. 3	20.55 (9.29%)	-
Total		**291**	

43. Considering the afore quoted numbers which reflect the quantum of impact that has been caused by the manipulative trades of the Noticee nos. 1, 2 and 3, on the price of the scrip one cannot ignore that such a huge impetus given by the 3 Noticees together to the price of the scrip of Anukaran, had all the elements to attract gullible investors to invest in the scrip. It has already been noted that there was no corporate announcement by the Company that could be stated as a reason behind such price rise and when the trades of the aforesaid 3 Noticees are evaluated carefully, it can be said that the said trades must have created an illusion in the minds of the investors about the bright future prospect of the scrip after witnessing the price of the scrip riding on an ascending graph. It is therefore clear that the inducement created by the manipulative trading of the 3 Noticees is sufficient enough to establish their violations as alleged in the SCN without dealing into the quantification of losses caused to the investors which is not at all necessary to decide the merits of the charges against the Noticees.

44. At this stage, it is apt to refer to the observations of the Hon'ble SAT in the matter of *Giriraj Kumar Gupta HUF Vs. SEBI (Date of decisions: February 25, 2020)*, in which the Hon'ble Tribunal, inter alia, observed that *"Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument that each entity's trade is miniscule and only on a few days alone etc. is not sufficient to rebut the findings in the impugned order."*

45. I now proceed to evaluate the charges made in the SCN against the Noticee no. 4. The charge against the Noticee no. 4 is that it had transferred 100 shares of

Anukaran to the Noticee no. 1 and such transfer was not genuine and was done only for the purpose enabling manipulation in the price of the scrip of Anukaran, as it turned out from the trading activities of Noticee no. 1 soon after he acquired those shares from Noticee no. 4.

46. I note from the demat statement of Noticee 1 that he (BOID: IN30311610540497) received 100 shares in off market on 29/10/2012 from Noticee 4 (BOID: IN30154935788631). The said trade was an off market sale by Noticee 4 to Noticee 1 @ Rs. 82.87 per share which was allegedly settled in cash on the same day i.e. 29/10/2012. The market price of the scrip at the relevant time is of the great significance so as to test the strength and genuinity of the transaction. It is seen from the trade log that from October 18, 2012 to October 31, 2012, the price of the scrip of Anukaran jumped from INR 136.10 to INR 150. It is noted that the market price of the scrip during the relevant time was far higher than the price at which the Noticee no. 4 had sold the shares to the Noticee no. 1. I further note from the records that the Noticee no. 4 remained active in the market as a buyer in the scrip of Anukaran during February, 2012, however, no cogent reason is forthcoming from it as to why the Noticee no. 4 did not sell its shares on the market platform which would have fetched him at least INR 40-50 per share extra in comparison to the off-market settlement made with the Noticee no.1 and thereby it willingly incurred a loss of INR 4000 (approx.) on those 100 shares. Therefore, it is noted that the reason remains unexplained as to why the Noticee no. 4 had sold shares to the Noticee no. 1 for a price relatively lower than the prevailing market price. I further note that the submission from Noticee 1 and 4 are innocently simple and both the Noticees have submitted that the transaction was an off market transaction and was settled in cash. None of the Noticees have bothered to explain the reason of the off market transaction in their respective replies. Thus, the reason behind the off market transaction between the two Noticees when the shares were being traded on the exchange platform, remains unexplained. Further, I also note that none of the Noticees have furnished any proof of consideration given or received in respect of the off market transaction undertaken between them. Under the circumstances, the very act of off-market transfers between these two Noticees

clearly suggests a connection/nexus that the two entities were enjoying between themselves, contrary to their silent claims.

47. It is pertinent to mention here that Noticee 1 was not holding any shares in the scrip before receipt of shares in the off market from Noticee 4. After the aforesaid receipt of shares, Noticee 1 started selling the shares in miniscule quantity from 30/10/2012 onwards i.e. the day immediately after receipt of shares in off market. Further, I note that the registered e-mail id of Noticee 4 as per the ROC records (MCA website- Company Master data)) was kushalpshah@gmail.com. This e-mail id belongs to the Managing Director of Anukaran viz., Kushal Shah (PAN: AXPPS9103G and DIN: 00434124). Further, Investigation has observed that Noticee 1 did not place any buy order on exchange platform on or before October 29, 2012 and the off market transaction was the only off market transaction between Noticee 1 and Noticee 4 during the entire investigation period. The alleged price manipulation by Noticee 1 started immediately after receipt of shares in off market from Noticee 4 which is indicative of the fact that the off market transaction between Noticee 1 and Noticee 4 was not genuine and was only for the purpose of manipulation of scrip price. The manipulation in the scrip would not have taken place without this off market transfer of shares from Noticee 4.

48. I further note that the Noticee no. 4 has placed reliance on the orders of Hon'ble SAT passed in the matter of Vipul Mohan Joshi (supra) etc., so as to contend that being a mere transferor, it cannot be held liable for the alleged manipulations committed by the transferee. I have perused the said orders and I observe that the present case is factually distinguishable in light of the findings as aforesaid. Thus, the reliance placed on the said orders is of no help for the Noticee no. 4. Additionally, in that matter, at the time of transfer of shares through off market mode, the scrip was not trading on the exchange platform, whereas, in the instant matter, it is. I have noted that no explanation has been put forth by the Noticee no. 4 for consciously incurring a loss of INR 4,000/- happily on those 100 shares by avoiding market based sale and by preferring to make off market transfers to the Noticee no 1.

49. Further, reliance has been placed on the decisions of *Vikas Ganesh Mal Bengani Vs. WTM, SEBI (supra) and Ketan Parikh (supra)*, wherein the Hon'ble SAT held that mere placing of buy orders at prices above the LTP would not lead to a conclusion of manipulation being done. I have perused the said orders and note that the said orders are of no help to the Noticees, as in the present case, the charges are not made on the fact of merely selling at prices higher than the LTP but clearly on the distinguishable abnormal pattern of trading, as has already been elaborated earlier, and various other factors like selling of shares in miniscule quantity; no other seller present in the market on those trading days, indulging in short selling repeatedly towards the closure of the trading and not being able to offset those trades, etc., that have collectively proved that the trades were not bonafide and were in the nature of manipulative trades.

50. To sum up, it would be relevant to reiterate here that the transfer of 100 shares in an off market transaction by the Noticee no. 4 to the Noticee no. 1; the unexplained reason behind the off market transaction by Noticee 4 to Noticee 1 at a price relatively lower than what was prevalent on the exchange platform; no proof as to the consideration received by Noticee 4 or given by Noticee 1 and the unique and unusual pattern of selling 01 share at a time on a continuous basis over a long period, trading in miniscule quantities by the Noticee no. 1 immediately after receipt of those 100 shares that consistently resulted in contributing to the LTP etc., leave no room for doubt that the transactions were not carried out in normal course of dealing in securities but with some ulterior motive to disturb market mechanism of the securities market by artificially raising of the price of shares of Anukaran. Considering the trading pattern, the responses filed, justifications advanced and absence of any documents to support those justifications advanced, I am constrained to find that the acts of the two Noticees were not genuine and such trades (of Noticee no. 1) were sufficient to mislead and induce the genuine investors to deal in the securities market. Thus, even in the absence of any proven nexus with the counter party buyers or any allegation of collusion/nexus with any other person, the acts of the above Noticees are independently themselves found

to be malafide and manipulative in nature for the reason records above. After getting the shares in his account, the Noticee no. 1 placed repetitive sell orders which led to the contribution of INR 96.35 in Patch 1 and INR 142.90 in Patch 2 in 26 trades through which he sold only 27 shares, which was possible only due to those manipulative trades executed by him.

51. The Hon'ble Supreme Court, in their judgment passed in the matter of *Kishore R. Ajmera (supra)*, has laid down the principle that in case direct evidence is not available, the immediate facts surrounding the events may be considered to draw inferences. In precise terms, the Hon'ble Supreme Court held that: *"In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that are as on able/prudent man would adopt to arrive at a conclusion."*

52. Further, the Hon'ble SAT in the case of *Ketan Parekh Vs SEBI (Appeal no. 2 of 2004)*, while dealing with the issue of manipulative trade observed inter alia that: *"............Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve*

circular trading and whether there is real change of beneficial ownership, 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. "

53. I further note that Hon'ble Supreme Court, in *SEBI Vs. Rakhi Tading Pvt. Ltd. (2018) 13 SCC 753* has appreciated the need of protection for interest of investors by observing that: *"The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market."*

54. Based on the foregoing factual analysis and observations, I note that the trades as well as the transfer of shares which preceded such trades were all part of a pre-mediated arrangement with the sole purpose of stirring up the price of the scrip and to create artificial appearance of trading in the said scrip so as to induce the investors to trade in the scrip. The Noticee nos. 1, 2 and 3 by way of their trades which are clearly established to be manipulative and unfair, have distorted the price discovery mechanism of the Securities Market. By executing those manipulative trades repeatedly at higher prices, the Notice nos. 1, 2 and 3 were able to trigger rapid rise in the price of the scrip, which was not real but only an outcome of such manipulative trades. Further, the Noticee no. 1 would not have been successful in carrying out the price manipulation in the scrip of Anukaran, but for the active connivance of the Noticee no. 4, who, by providing the shares of the Company to the Noticee no. 1 in off market transaction has made its intention clear that the transfer was done for the purpose of manipulating the price of the scrip of Anukaran, which indeed happened. Therefore, I am of the view that the Noticees by their respective acts have violated Regulations 3 (a), (b), (c), (d) and 4 (1), 4(2), (a) and (e) of PFUTP Regulations.

ISSUE No. II: If violations are established then whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act, 1992?

55. In this context, It is pertinent to refer the observation of Hon’ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon’ble Court had observed:

"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...".

56. It is established from the above findings that the Noticee nos. 1 to 4 by way of their acts and trades, which are clearly established to be manipulative and unfair, have distorted the price discovery mechanism of the Securities Market and have been found to violating the Regulations as aforesaid in above paras. Therefore, as the alleged violation against the Noticees no. 1 to 4 stand established, the Noticees are liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced 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 No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

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

Factors to be taken into account by the adjudicating officer
15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

58. In the present matter, the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees 1 to 4 and also the loss suffered by the investors as a result of these Noticees' default. The consequences resulting from violations committed by the said Noticees are of grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market.

59. The Hon'ble SAT, in its order dated August 02, 2019 in the matter of P G Electroplast vs SEBI, has held that the Order passed in corresponding proceedings before the Whole Time Member should be factored in while fixing the quantum of penalty.

60. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticees under the provisions of Sections 11(1), 11(4) and 11B of SEBI Act under the same facts. In the said proceedings, vide Order dated January 08, 2021, Hon'ble Whole Time Member of SEBI has inter-alia restrained the Noticees from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of six (06) months from the date of the said order.

<u>ORDER</u>

61. Therefore, in view of the findings mentioned 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 Adjudication Rules, 1995, I hereby impose a penalty on the Noticee 1 to 4 as under:

Name of the Noticee	**Penalty amount in `**	**Imposition of penalty under**
Rajesh Chetanji Tawri	5,00,000/-	Section 15HA of SEBI Act, 1992 for violation of Regulation 3 (a) (b) (c) (d) and 4 (1), 4(2)(a) and (e) of the SEBI PFUTP Regulations, 2003
Aanand Balavantrai Boghani	5,00,000/-	
Kaushik Bipinchandra Dhanki	5,00,000/-	
Mountain View Developers Private Limited	5,00,000/-	

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

63. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link :**ENFORCEMENT → Orders →Orders of AO → PAY NOW**

64. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (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

65. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India, Mumbai.

Date: March 10, 2021 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**