SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/2022-23/17499-17521

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

In the matter of Sunstar Realty Development Limited

In respect of:

S. No.	Name of the Entity	PAN
1.	Maxtor Conclave Pvt Ltd.	AAICM5727H
2.	Blueview Tradevin Pvt. Ltd.	AAECB8239K
3.	Jain Nemi Minerals Pvt. Ltd.	AACCJ4323L
4.	Keshavah Mercantile Pvt. Ltd.	AAECK7235N
5.	Frohar Trading Pvt. Ltd.	AACCF0551A
6.	Quickscope Dealers Pvt. Ltd.	AANCS8376B
7.	Ambuja Commosales Pvt. Ltd.	AAICA1638F
8.	Anil Kumar Agarwala HUF	AAEHA4449K
9.	Ecstatic Merchandise Pvt. Ltd.	AABCO4034C
10.	Hari Mohan Beriwala	ADXPB6833G
11.	Santosh Devi Agarwal	ADAPA1940Q
12.	Sapna Agarwala	AEOPA6422Q
13.	Dhanaasha Developers Pvt. Ltd.	AAECD6470G
14.	Panchmadhu Projects Pvt. Ltd.	AAHCP0443J
15.	Nirdesh Trading Pvt. Ltd.	AABCN1526E
16.	Dhanaseth Properties Pvt. Ltd.	AAECD6471H
17.	Pragyan Realty Pvt. Ltd.	AAHCP1157B
18.	Hari Mohan Beriwala And Others HUF	AAAHH9893J
19.	Manju Beriwala	ADDPB1460H
20.	Saurabh Kumar Agrawal Huf	AAUHS5431F
21.	Sarda Solutions Pvt. Ltd.	AATCS2316K
22.	Proficient Managerial Solutions Pvt.Ltd.	AAHCP1962C
23.	Sarwani Devi Modi	ADUPM9995M

*(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. 1- 23 and collectively as "**Noticees**", unless the context specifies otherwise)*

BACKGROUND

1. An investigation was conducted by Securities and Exchange Board of India (for convenience **"*SEBI*"**) into the trading activities in the scrip of Sunstar Realty Development Limited (for convenience **"*Sunstar / Company*"**) for the period of November 26, 2013 to June 03, 2015 (for convenience **"Investigation Period"**) to ascertain possible violation, if any, of the provisions of Securities and Exchange Board of India Act, 1992 (for convenience **"*SEBI Act, 1992*"**) and rules and regulations made thereunder.

2. During the course of investigation following has been observed:

   (a) The company is listed on Bombay Stock Exchange Limited ("***BSE***"). During the investigation period, the price of the scrip opened at Rs. 51.20/- on November 26, 2013, reached a high of Rs. 425.95/- on December 10, 2014 and closed at Rs. 401.20 on June 03, 2015. Based on the price movement, three patches of price rises, one patch of price fall and one patch of stable price movement was observed during the investigation period.

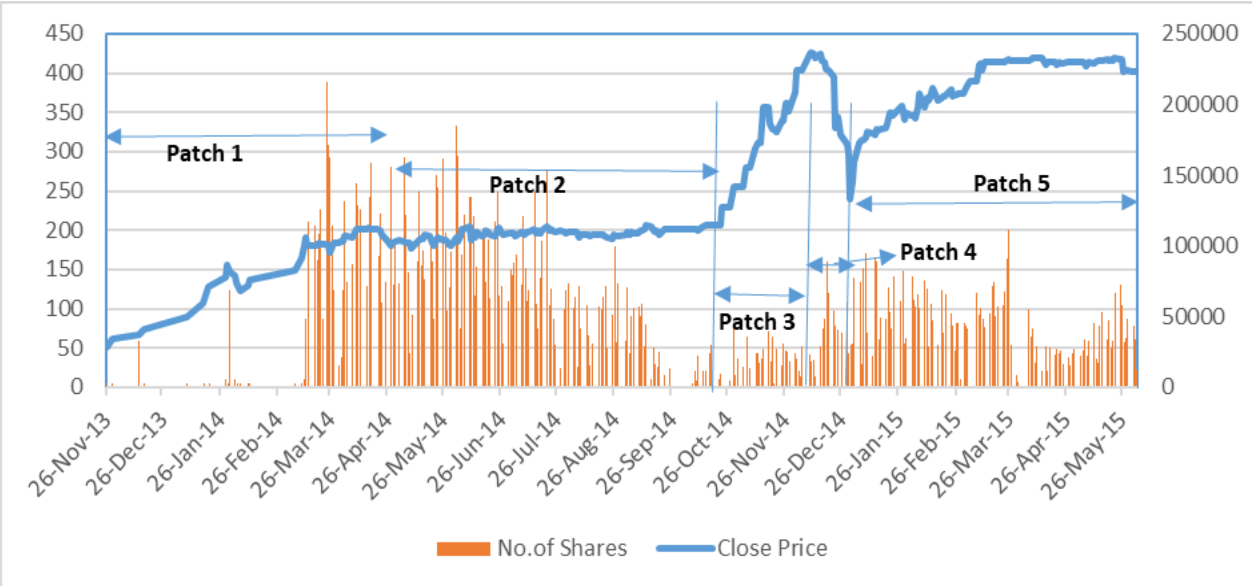
   (b) Details of price volume information in the scrip of *Sunstar* during the Investigation Period are presented in the table and chart below:

Table-1: Price-Volume movement in scrip of Sunstar

Patches	Period	Designation	Open	High	Low	Close	Avg. Traded Volume
Pre-Investigation Period	26/08/2013 to 25/11/2013	No trades were observed during this period					
Patch-1	26/11/2013 to 30/04/2014	Price	51.20	210.75 (10/04/2014))	51.20 (26/11/2013)	185.95	69184
		Volume	3000	216000 (24/03/2014)	3000 (multiple dates)	103000	
Patch-2	01/05/2014 to 22/10/2014	Price	189.90	218.00 (06/06/2014)	165.05 (08/05/2014)	206.95	67599
		Volume	73900	185400 (02/06/2014)	600 (20/10/2014)	9600	
Patch-3	23/10/2014 to 15/12/2014	Price	229.90	425.95 (10/12/2014)	229.90 (multiple dates)	424.90	20598
		Volume	600	600 (23/10/2014)	41950 (29/10/2014)	28800	
Patch-4	16/12/2014 to	Price	424.90	424.90 (16/12/2014)	240.00 (31/12/2014)	240.00	48573

Patches	Period	Designation	Open	High	Low	Close	Avg. Traded Volume
	31/12/2014	Volume	41400	88700 (18/12/2014)	24000 (30/12/2014)	30000	
Patch -5	01/01/2015 to 03/06/2015	Price	252.00	419.90 (multiple dates)	251.95 (01/01/2015)	401.2	44894
		Volume	31200	111600 (26/03/2015)	600 (05/03/2015)	12900	
		There was shares split in the ratio 10:1 effective June 04, 2015					
Post Investigation Period	04/06/2015 to 03/09/2015	Price	40.50	41.50 (10/06/2015)	25.20 (14/08/2015)	34.00	339606
		Volume	6000	6000 (04/06/2015)	663000 (07/08/2015)	174000	

Price-Volume Chart



3. I note that, the price volume data in the scrip of the Company was analyzed. The period of investigation was divided into 5 different patches, however, for the purpose of the instant proceedings only two patches are relevant, wherein it was, *inter alia*, noticed that the price of the scrip of the Company was manipulated. The periods pertaining to patches relevant in the instant proceedings are a) from October 23, 2014 to December 15, 2014 ("***Patch-3***"); and b) from January 01, 2015 to June 03, 2015 ("**Patch-5**").

4. Based on the UCC details, off-market transactions, financial transactions and MCA data, a group of 44 entities was identified including the 23 Noticees, herein, as suspected entities (hereinafter referred to as "***group entities***").

During the investigation, on analysis of the price and trade movement in the scrip, *inter alia*, following has been observed:

A. **Patch-3 (October 23, 2014 to December 15, 2014)**

   a. During Patch-3 the price of the scrip opened at ₹229.90, reached a high of ₹425.95 and closed at ₹424.90, registering an increase of ₹195 (84.82%) from the opening price in the scrip. It was observed that Noticee No. 1 to 12 have executed 9 trades amongst themselves and have contributed ₹63.05 towards the positive Last Traded Price (hereinafter referred to as ***"(+) LTP / positive LTP"***), which constituted 15.61% of the total market positive LTP in the scrip during Patch-3.

   b. It was further observed that in the aforementioned 9 trades, Noticee No. 1 to 7 were acting as buyers, while Noticee No. 3 and 8 to 12 were acting as their counterparties / sellers. Therefore, it was found that Noticee No. 3 have acted both, as a buyer, as well as a seller in the aforementioned alleged trades.

   c. From the trading pattern observed in the aforementioned 9 trades, it has been alleged that the Noticee No. 1 to 12 were acting in concert, and had placed their orders at a price higher than the LTP, which impacted the price of the scrip by contributing significantly to the price rise in the scrip. It has been also alleged that these Noticees have created misleading appearance of trading in the scrip in the minds of the other investors and market participants.

B. **Patch-5 (January 01, 2015 to June 03, 2015)**

   a. During Patch-5, the price of the scrip opened at ₹252.00, reached a high of ₹419.90 and closed at ₹401.20 i.e. resulting in a price rise of 66.63% in the scrip from the opening price of the patch. It was observed that the Noticee No. 1, 2, 4, 6, 9 and 13 to 23 (for convenience "***16 Noticees***") by executing 39 trades amongst themselves, have contributed to 10.80% (₹171.00) of total market (+ve) LTP in the scrip during Patch 5.

b. From the trading pattern observed in the aforementioned 39 trades, it has been alleged that the aforesaid 16 Noticees, by repeatedly executing trades amongst each other at prices higher than LTP have contributed to price rise in the scrip and thereby allegedly have indulged in an act which created false or misleading appearance of trading in the scrip amounting to manipulating the price of the scrip during Patch-5.

5. In view of the aforementioned trading pattern in para 4 among the Noticees; the contribution towards the price rise in the scrip of the Company during relevant period through their impugned trades; and their connection to each other through a larger group of group entities, it has been alleged that the Noticee No. 1 to 12 during the Patch-3 and Noticee No. 1, 2, 4, 6, 9 and 13 to 23 during the Patch-5 of the Investigation Period have been instrumental in establishing a price higher than the LTP and have thus, contributed to price rise in scrip, with their unusual, unfair, manipulative and fraudulent trades executed during the respective patches. Considering the aforesaid facts and circumstances, it has been alleged that the aforesaid acts of these Noticees have resulted in the manipulation of price of the scrip of Sunstar upwards and have also created a misleading appearance of trading in the scrip by executing such fraudulent trades. Therefore, by indulging in such fraudulent and manipulative act, it has been alleged that the Noticees have violated the provisions of Sections 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for convenience "***PFUTP Regulations, 2003***"). Relevant provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003 are as follows:

<u>PFUTP Regulations</u>

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 thereunder;

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

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

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 [markets][1].

[2] [Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]

(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;

[1] Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

(Amendment) Regulations, 2018 w.e.f. February 01, 2019 ***("PFUTP 2018 Amendment Regulations****")*.

[2] *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

a. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
b. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
c. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder.

6. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the aforesaid provisions of the SEBI Act and the PFUTP Regulations by the Noticees. Accordingly, vide communication order dated March 28, 2018, Shri Jeevan Sonparote ("***erstwhile AO***") has been appointed as the Adjudicating Officer under Section 15I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '***Adjudication Rules***') in the matter to inquire and adjudge under Rule 5 of the Adjudication Rules and under Section 15HA of the SEBI Act, 1992, of the alleged aforesaid violations by the Noticees. Thereafter, pursuant to transfer of erstwhile AO, undersigned has been appointed as the Adjudicating Officer vide communication order dated August 13, 2019. It has been advised that except for the change of the Adjudicating Officer, the other

terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect*'. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders'*.

7. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, 1992, a notice to show cause dated May 08, 2018 (hereinafter referred to as '**SCN'**) was issued to the Noticees by erstwhile AO calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and why penalty, if any, be not imposed under Section 15HA of the SEBI Act, 1992, as the case may be for respective alleged violations as mentioned hereinabove.

8. On receipt of records, it was observed that the SCN was forwarded *via* Speed Post Acknowledgement Due ("***SPAD***") to the Noticees. SCN w.r.t. 11 Noticees (Noticees No. 2, 3, 8, 9, 10, 11, 12, 15, 18, 19 and 23) delivered *via* SPAD. However, SCN forwarded returned undelivered w.r.t. 12 Noticees. Accordingly, hand delivery *cum* affixture was attempted w.r.t. 16 Noticees, wherein, SCN could not be affixed to address on records of the Noticees due to a) addressee moved; b) not available at given address; and c) person residing at given address did not allowed notice to be affixed. Thereafter on receipt of records, in terms of Rule 4(3) of the Adjudication Rules, hearing Notice has been forwarded to 11 Noticees *via* SPAD, granting them opportunity of hearing on April 19, 2022. However, hearing Notice forwarded *via* SPAD w.r.t. Noticees No. 2, 3, 9, 11 and 15 returned undelivered. Subsequently, in terms of principle of natural justice, SCN *cum* Hearing Notice was served to 17 Noticees (*12 Noticees w.r.t. whom SCN returned undelivered and 5 Noticees w.r.t. whom hearing notice forwarded via SPAD returned undelivered*) *via* paper publication. However, 16 Noticees out of the aforesaid 17 Noticees have failed to filed any reply to the SCN. They also failed to avail the opportunity of hearing on given date. It may be noted that no further communication has been received from these 16 Noticees till date. The details of the delivery status of the SCN and reply, if any, filed by the Noticees in the matter is as follows:

Table 2

Name of the Entity	SCN Delivered (Date/ Mode)	Date of Reply to the SCN
Maxtor Conclave Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Blueview Tradevin Pvt. Ltd. - 2	Speed Post (16.05.2018) and Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Jain Nemi Minerals Pvt. Ltd. - 3	Speed Post (14.05.2018) and Paper Publication on 03/05/2022 in newspapers – Times of India and Navbharat Times, of Mumbai edition.	09.07.2018.
Keshavah Mercantile Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Frohar Trading Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers – Times of India and Navbharat Times, of Mumbai edition.	No Reply.
Quickscope Dealers Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Ambuja Commosales Pvt. Ltd.		No Reply.
Anil Kumar Agarwala HUF - 8	Speed Post (18.05.2018)	09.07.2018.
Ecstatic Merchandise Pvt. Ltd. - 9	Speed Post (15.05.2018) and Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Hari Mohan Beriwala - 10	Speed Post (17.05.2018)	28.06.2018 &18.05.2022 12.06.2022*
Santosh Devi Agarwal - 11	Speed Post (17.05.2018) and Paper Publication on 03/05/2022 in newspapers -The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	25.06.2018 & 09.04.2022.
Sapna Agarwala - 12	Speed Post (18.05.2018)	10.05.2022
Dhanaasha Developers Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers - The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Panchmadhu Projects Pvt. Ltd.		No Reply.
Nirdesh Trading Pvt. Ltd. - 15	Speed Post (15.05.2018) and Paper Publication on 03/05/2022 in newspapers - The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Dhanaseth Properties Pvt. Ltd.	Paper Publication on 03/05/2022 in newspapers - The Statesman, Sanmarg and Bartaman Patrika, of Kolkata edition.	No Reply.
Pragyan Realty Pvt. Ltd.		No Reply.

Name of the Entity	SCN Delivered (Date/ Mode)	Date of Reply to the SCN
Hari Mohan Beriwala & Others HUF - 18	Speed Post (17.05.2018)	28.06.2018 &18.05.2022 12.06.2022*
Manju Beriwala - 19	Speed Post (17.05.2018)	28.06.2018 &18.05.2022 12.06.2022*
Saurabh Kumar Agrawal HUF	Paper Publication on 03/05/2022 in newspaper - Hindustan of Dhanbad edition.	No Reply.
Sarda Solutions Pvt. Ltd.	Paper Publication on 03/05/2022 in newspaper -The Sentinel of Guwahati edition.	No Reply.
Proficient Managerial Solutions Pvt.Ltd.		No Reply.
Sarwani Devi Modi - 23	Speed Post (17.05.2018)	14.05.2022

*****Noticee No. 10, 18, 19 filled submission by letter dated 12.06.2022 after the completion of hearing in the present adjudication proceedings. Said Noticees requested that Adjudicating Officer consider aforesaid letters dated June 12, 2022 as additional reply in the interest of principles of natural justice.

9. It is noted that Noticees No. 3, 8, 10, 11, 12, 18, 19 and 23 has filed reply to the SCN during the proceedings. Further, Noticees No. 10, 12, 18, 19 and 23 have availed the opportunity of hearing extended to them during the proceedings, wherein, respective Noticees or their authorised representatives have made submissions before me on the basis of their respective replies. Noticees No. 10, 18 and 19 have filed common replies to the SCN. During the proceedings, Noticee No. 11, husband Mr. Pawan Kumar Agarwal vide e-mail dated April 09, 2022 had informed that Mrs. Santosh Devi Agarwal, Noticee No. 11 had expired on November 21, 2021 and as an evidence he had produced death certificate of the Noticee No. 11 issued by Department of Health & Family Welfare, Government of West Bengal bearing reference no. HG013/2021/006192 dated 22/11/2021. Therefore, with regard to Late Santosh Devi Agarwal, Noticee No. 11, I note that, she had expired on November 21, 2021 and same has been verified from the aforesaid death certificate produced before me during the proceedings. In this case, the allegations have been levelled against the Noticee No. 11, in her personal capacity being part of a '**connected entities**' at the relevant time. Thus, the proceedings are against the acts of omission and commission of a person who is no more to face the charges. In view of the

foregoing, I am of the view that the proceedings against the Noticee No. 11 are liable to be abated without going into the merits of the case *qua* her and the SCN No. EAD-8/JS/VRP/OW/13762/2018 dated May 08, 2018 issued against the Noticee No. 11 is disposed of accordingly.

10. In view of above, I further note that to Noticees No. 1, 2, 4 – 7, 9, 13 – 17 and 20 - 22, the SCN and hearing notice has been served *via* paper publication or speed post (*refer para no. 8 and Table 2*) and the aforesaid noticees have failed to file any reply to the SCN and also failed to avail the opportunity of hearing during instant proceedings. Considering the above, I note that sufficient opportunities has been granted to aforementioned Noticees to file reply to the SCN and to represent case before me during the instant proceedings. However, the aforesaid Noticees have failed to avail the opportunity extended to them in this regard. Further, these Noticees were also informed through said notices that, in case they fail to avail the opportunity of filing reply to the SCN or fail to avail the opportunity of personal hearing, the matter will be proceeded on the basis of material available ion record. In these facts and circumstances, I am of the view that the matter can be proceeded ***ex-parte*** w.r.t. Noticees No. 1, 2, 4 – 7, 9, 13 – 17 and 20 - 22 on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules, which reads as under: -

> *"**4(7)** If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."*

11. I note that Noticees No. 1, 2, 4 – 7, 9, 13 – 17 and 20 - 22 have failed to file any response during instant proceedings. In the fact and circumstances of the case, I am of the view that the aforesaid Noticees have defied the regulatory provisions and I, therefore, deem it fit to draw an adverse inference against the aforesaid Noticees. Further, in absence of any response from the said Noticees, it is presumed that they have admitted the charge of violations of provisions as alleged in the case. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)* has, *inter-alia*, observed that, *"............ the appellants did*

not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". It is also pertinent to note that the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014)*, has also, *inter alia*, observed that: *"........... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...".* Therefore, it can reasonably be presumed that the allegations/charges have been admitted by the Noticees No. 1, 2, 4 – 7, 9, 13 – 17 and 20 - 22 in this case. The material on record do not indicate anything to *ex facie* hold otherwise.

12. The submissions made by the Noticees No. 3, 8, 10, 12, 18, 19 and 23 vide their replies to the SCN during the instant proceedings *inter alia* are as follows:

A. **Common Contentions of the Noticees No. 3, 8, 10, 12, 18, 19 and 23**

a. It is denied that they have contributed to positive LTP and increased scrip price as alleged. All of their impugned trades in the scrip were *bona fide* and in the ordinary course of business, dehors sinister intent or design.

b. They deny their connection with other entities, as alleged in the SCN. The alleged trades w.r.t. them have been cherry picked as they are miniscule in number.

c. The SCN is ambiguous and vague and does not clearly make any specific allegations or case against the Noticees, nor does it give any details of the grounds on which such allegations have been levied. The SCN does not provide any iota of evidence to corroborate the violations alleged against the Noticees and the serious charge of fraud has to be supported with strong evidence. In this regard, they have placed reliance upon the judgements of Hon'ble Supreme Court in the cases of *Varanasaya Sanskrit VishwaVidyalaya & Anr. Vs. Dr. Rajkishore Tripathi* *and Anr., Bank of India v. Degala Surya Narayana (AIR 1999 SC 2407), M.S.Bindra V Vol (1998) 7 SCC 310, Union of India v. H. C. Geol (AIR 1964 SC 364), L. D. Jaisinghani v. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376, Razik Ram v. J. S. Chauhan - AIR 1975 SC 667: (1975) 4 SCC 769, Gulab D Chand V Kudilal (AIR 1966 SC 1734)*. They have placed reliance upon the judgements of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matters of *Smitaben N. Shah vs. SEBI* order dated July 30, 2010, *Dhanalakshmi Bank Limited v. SEBI* (order dated 20th April, 1999) and *M/S Vintel Securities Private Limited v. SEBI* (Appeal No. 219/2009).

d. They have not made any gains or gained any unfair advantage and have not caused loss to investors or anybody.

B. **Common Reply of Mr. Hari Mohan Beriwala (Noticee No.10), Hari Mohan Beriwala & Others HUF (Noticee No.18) and Mrs. Manju Beriwala (Noticee No.19):**

a. They have made investments in shares and/or securities with the whole and sole object of making profit through such investments. During January, 2013, each of them have purchased 1 lakh shares of the Company from Massive Management Consultancy Private Limited ("***Massive***") upon payment of valuable consideration. Thereafter, during August, 2014 to February, 2015, they have sold their entire shareholding in the said Company on BSE.

b. Mr. Hari Mohan Beriwala contacted one of the sub-broker M/s. A Satnaliwala & Co. having its office at *62 Bentick Street, Kolkata 700 069* (hereinafter referred to as "***M/s. A Satnaliwala & Co***") and requested it to sell their entire shareholding in the Company. M/s. A Satnaliwala & Co then between August, 2014 to February, 2015 sold the entire shareholding of my clients in the Company. The said A Satnaliwala & Co for the purpose of selling shares of used the services of broker ISE Securities and Services Ltd. ("ISE"). The said ISE from time to time raised contract notes on Noticees. The sale proceeds received by them after deduction of the brokerage, Security Transaction Tax ("STT"), Service Tax, Exchange Transaction Charges, SEBI Turnover Charges, Stamp Duty.

c. They are not aware of any entity by the name Frohar Trading Pvt. Ltd. (Noticee No. 5) and/or Blueview Tradevin Pvt. Ltd. (Noticee No. 2), nor they ever had any transactions with them, whatsoever. The supporting documents annexed with SCN fails to establish any connection of the Noticees with other entities. They also had no transactions, whatsoever, with any of these entities and the same would also be evident from the bank statements forwarded. They are not at all concerned and/or involved in any act and/or activities of the Company nor are associated or had any transactions with the Company and/or any of its promoters, in any manner, whatsoever.

d. They are not aware of any Bholebaba group or any promoter director of the Company or any of the alleged entities to whom SCN has been issued.

e. They were seller to the trades and in any event their sales cannot be alleged to have resulted in creation of positive LTP. Further, admittedly they have not bought even a single share during the relevant time, therefore, it cannot be alleged to have increased the price or created positive LTP.

f. After the completion of hearing vide letter dated June 12, 2022 Noticee No. 10, 18, 19 made the following common submissions:

    i. They have contended that SCN treated us as a ‘Group entity’. This is not correct as we are not a group entity, nor is there any evidence in the Notice to show that we are a group entity. The connection has been established with us on the basis of Off market transfer of shares only which is in the normal course of business and shares were acquired by us by paying due monetary consideration for the same, and the beneficial ownership of the shares purchased by me was transferred in my name in my D mat account. Thus, no connection with any of the entities is established.

ii. They have not manipulated the price by buying shares of Sunstar Realty Development Ltd in the open market neither was they manipulating the price by both buying and selling in this scrip. All of our sell transactions in the scrip Sunstar Realty Development Ltd were executed within trading parameters on the anonymous trading system of BSE where identity of the counter party is not known. They have submitted it is trite law that price manipulation by way of LTP is done by the purchasers to induce investors to buy the shares, but I was not a purchaser.

iii. Noticees contended that trade log are not showing any false and misleading appearance of trading amounting to manipulation. Said Noticee placed reliance on Hon'ble Securities Appellate Tribunal in the landmark judgement in Ketan Parekh vs Securities & Exchange Board of India (Appeal No 2 of 2004 dated 14.07.2006). The relevant trade log contention submitted by the Noticee are as follows: -

Patch	**Date of Trade**	**Qty**	**@(price)**	**Alleged LTP Variation**	**Remarks(Submissions made by Noticee)**
Hari Mohan Beriwala					
3	11.11.2014	3000	311.95	0.05	The LTP contribution, if at all , is Rs 0.05 which is insignificant and normal and does not amount to manipulative LTP.
3	26.11.2014	1200	361.90	21.90	my sell bid was for 7200 shares, but the counter party accepted only 1200 shares out of 7200 shares. This demonstrates non manipulative nature of trade as the entire quantity offered for sale was not accepted by the counter party.
5	04.02.2015	9600	344.70	10.10	The immediately preceding trade executed by me was on 26.11.2014 @ Rs 361.90, and the

Patch	Date of Trade	Qty	@(price)	Alleged LTP Variation	Remarks(Submissions made by Noticee)
					current trade has been executed on 04.02.2015 @ Rs 344.70, which is lower than the price of Rs 361.90. I have, thus, not contributed to any price rise as the traded price of Rs 344.70 is much below my own last traded price. The % of my volume on 4.2.2015 is 16.84 % (9600 out of 57000) but the % of number of trades is 1.88%(1 out of 53). This is not a significant volume so as to cause price manipulation.
Manju Beriwala					
5	02.01.2015	10200	287	13.00	It is submitted that the scrip had already been trade at Rs 283.90 between 10.15 and 10.25 Hrs on 21.01.2015. Thereafter it had dipped to Rs 271.10 to recover again. My trade rate of Rs 287 at 12.13 hrs is thus only Rs 3.10 above the discovered and traded price of Rs 283.90 earlier in the day. The contribution to LTP cab at best be Rs 3.10, which is marginal and insignificant for a price of Rs 287, and not Rs 13 as alleged.
5	05.01.2015	9000	312	.05	The LTP contribution, if at all , is Rs 0.05 which is insignificant and normal and does not amount to manipulative LTP.
5	07.01.2015	9600	314.50	0.05	The LTP contribution, if at all , is Rs 0.05 which is insignificant and normal and does not amount to manipulative LTP.
5	23.01.2015	4200	358.50	0.05	The LTP contribution, if at all , is Rs 0.05 which is insignificant and normal and does not amount to manipulative LTP.
5	27.01.2015	4200	363.50	17.10	The alleged LTP variation of Rs 17.10 is with reference to the previous day's closing price of Rs 346. The scrip opened at price of Rs 363.50 on 27.01.2015 and this price was sustained the whole day, as can be seen from intra day table below. This means that the price of Rs 363.50 was accepted by the market.
5	27.01.2015	1800	363.50	1.50	This trade too was executed on 27. 01.2015, like the previous trade in above. Further, Reference to immediately preceding price for calculating contributing LTP is erroneous as this trade 2 rs 363.50 executed at 13.08 hrs did not create a new price.
5	06.02.2015	6000	379	23	The price of Rs 379 was traded by me at 12.33 hrs and this price was maintained till 13.00 hrs. The price thereafter fell to Rs 354. This clearly shows that there was no manipulation in price as the price fell after my trade was executed @ Rs 379 and did not rise. There was no contribution

Patch	Date of Trade	Qty	@(price)	Alleged LTP Variation	Remarks(Submissions made by Noticee)
					to rising LTP leading to manipulation as no investor came forward to buy shares at a higher price than Rs 379.
Hari Mohan Beriwala and Others HUF					
5	08.01.2015	3000	320.90	0.90	This is a marginal and normal variation. This does not amount to contributing to LTP leading to manipulation. My % of volume generated (3000) in total volume generated for the day (94800) is 3.16%, and my single trade constitutes 1.72% of the total number of trades (58) for the day. These percentages are not sufficient to cause artificial volume or misleading appearance of trading.
5	09.01.2015	7800	324	9.00	It is highlighted that my trade for 7800 shares was executed at 2.14 hrs @ Rs 324. As is evident from intraday data above, this price of Rs 324 and above was already traded by others between 12.35 Hrs and 14.00 hrs. Thus, I did not set up any new price and the calculation of Rs 9.00 as contributing to LTP leading to manipulation is misinterpreted.
5	09.01.2015	1200	324.95	0.95	the alleged LTP is only Rs 0.95 , which is a very marginal and normal variation in a scrip having a price of around Rs 325.
5	14.01.2015	4800	330.10	23.10	My trade for 4800 shares in one trade constituted 5.40% of the daily volume of (88,800) and 2.12% in terms of total number of trades(47). This % is insignificant so as to cause artificial volume or misleading appearance of trading.
5	14.01.2015	3000	327.75	0.75	The LTP contribution, if at all , is Rs 0.75 which is insignificant and normal and does not amount to manipulative LTP.
5	19.01.2015	4200	329.90	14.40	a price higher than Rs 329.90 was already traded on 19.01.2015 itself, at 10.50 Hrs (Rs 330.40) and 10.55 Hrs (Rs 330.30), before my trade was executed at 12.54 Hrs and hence my trade did not contribute to higher manipulative LTP.
5	29.01.2015	3000	375	16.10	The price of Rs 375 traded by me on 29.01.2015 is merely Rs 0.30 higher than the price of Rs 374.70 traded on 28.01.2015 at 12.45 Hrs and 12.50 Hrs. The LTP contribution, if at all , is Rs 0.30 which is insignificant and normal and does not amount to manipulative LTP.

iv. There is inordinate delay that is prejudicial to my interests as third party rights have been created in respect of my affairs and the delay, in itself, is prejudicial to my interests. I rely on the judgements/ Orders in favour of this submission: Ashok Shivlal Rupani v SEBI (appeal 417 of 2018 dated 22.8.19), Sanjay Jethlal Soni v SEBI (appeal 102 of 2019 dated 14.11.19), SEBI v Ashok Shivlal Rupani (CA 8444-8445 of 2019 dated 15.11.2019), Ashlesh Gunvantbhai Shah v SEBI (appeal 169 of 2019, dated 31.1.20), Bharat J Patel v SEBI (Appeal 154 of 2020 dated 8.9.2020), Shriram Insight Share Brokers Ltd v SEBI (Appeal 559 of 2020 dated 4.1.2022). I am aware that there are some judgments where it has been held that proceedings under SEBI Act cannot be quashed on ground of inordinate delay as SEBI Act does not prescribe any limitation period. To the same, it is submitted that the current adjudication and penalty proceedings under SEBI Act 1992 and PFUTP Regulations 2003 are quasi-judicial and similar to proceedings under the Income Tax Act. It is trite law that where two views are possible, the view favorable to Noticee should be adopted. Reliance is placed by me on the following judgments for this proposition: CIT v Vegetable Products Ltd (88 ITR 192, Supreme Court), CIT v Poddar Cement P Ltd (226 ITR 625 Supreme Court).

v. A specific allegation of both fraudulent and unfair trade practices allegedly committed by us is required to be made in the Notice. There is no such direct allegation in the Notice as can be seen from various paragraphs of the Notice and no inference about the presence of such allegations can be drawn either by the Noticee or by SEBI. Current adjudication and penalty proceedings under the SEBI Act 1992 are civil and quasi-judicial proceedings like under the Income Tax Act. It has been held by Karnataka High Court in CIT v. SSA'S Emerald Meadows (2016 73 Taxman.com

241) that the penalty notice issued without specifying the charge is bad in law. The Supreme Court dismissed the special leave petition of the Revenue Department in this case (2016 73 Taxman. com 248). The present civil proceedings under SEBI ACT 1992 being similar to penalty proceedings under the Income Tax Act, ratio of the said decision applies mutatis mutandis to the present proceedings under the SEBI Act 1992.

vi. It is also submitted that PFUTP Regulations 2003 have no application under the facts and circumstances of the case. Thus they deny alleged violation of provisions of Section 12 A (a) (b) (c) of SEBI Act, 1992 r/w Regulation 3 (a), (b), (c), (d) and Regulations 4(1) and 4(2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter, "PFUTP Regulations").

C. **Jain Nemi Minerals Pvt. Ltd. (Noticee No. 3):**

a. It denies that, it had received funds from Frohar, Noticee No. 5, instead it has borrowed funds from Frohar and same was in the ordinary course of business and based on the same no adverse inference can be drawn against it.

b. Based on mere two trades, charge of (+) LTP has been alleged and SEBI has ignored and overlooked the details of its trading in scrip during the relevant time period. It had no intention to increase the price of the scrip as most of its trades were at zero LTP or had no impact on LTP.

c. There is nothing on record to demonstrate any kind of connection or relation or concerted understanding with other entities; and there is also no allegation of any synchronization of trades or execution of circular or reversal trades etc. Therefore, clubbing it with other entities is unfair and unjustified.

d. Only one of its trade matched with Ms. Sapna Agarwala (Noticee No. 12) and there is nothing in SCN that it is connected Ms. Sapna.

D. **<u>Anil Kumar Agarwala HUF (Noticee No. 8):</u>**

a. Adverse inferences have been drawn with regard to his off-market transfer with Massive. On the basis of said off-market transfer no adverse inference can be drawn against it and in this regard he has placed reliance upon the judgement of Hon'ble SAT in the matter of *Smitaben N. Shah (Supra)* and *Mr. Babubhai Desai v SEBI* Order dated 15.02.2016.

b. Only one of its trade matched with Quickscope Dealers Pvt. Ltd. (Noticee No. 6) and there is nothing in SCN that it is connected/ related to Quickscope.

c. Details of the trade conducted by him during the investigation period is as follows:

<u>Table 3</u>

Date	Exchange	Settlement No	Scrip	Purchase Qnty	Sale Qnty
06-12-2013	NA	IPO	Power Grid Corpn	213	
12-12-2013	NSE	2013237	L&T Ltd		25
19-12-2013	NSE	2013242	Power Grid Corpn		213
09-05-2014	NSE	2014086	State Bank of India		30
09-05-2014	NSE	2014086	Yes Bank		20
12-05-2014	BSE	2014028	Cochin Mineral 513353		100
12-05-2014	BSE	2014028	Fluidomat		58
12-05-2014	BSE	2014028	TCIDL		2
12-05-2014	NSE	2014087	DLF Ltd.		50
12-05-2014	NSE	2014087	IFCI Ltd		400
12-05-2014	NSE	2014087	Bharati Infratel		50
12-05-2014	NSE	2014087	Strides Acrolab (Star)		10
30-05-2014	NSE	2014101	Infosys Ltd	20	
13-11-2014	BSE	2014151	Sunstar Reality Ltd		6000
19-11-2014	BSE	2014155	Sunstar Reality Ltd		3600
18-06-2014	NSE	2014114	Infosys Ltd		20
09-04-2015	NSE	2015066	Inox Wind Ltd		45

E. **<u>Ms. Sapna Agarwala (Noticee No. 12):</u>**

a. 12,500 shares of Sunstar was acquired by her from Massive on January 14, 2013, much before the shares were listed on exchange. Out of 12,500 shares, she had sold 12,000 shares of Sunstar on October 29, 2014 at the price of Rs. 255.90/- and the sale was routed through SEBI authorised Broker P. Didwania & Co, which is no way connected to her.

b. She was not engaged in any "*manipulative, fraudulent and unfair trade practices*" and hence has not violated any provisions of the PFUTP Regulations.

c. At the time of purchase of share by her, share of Sunstar was not listed and therefore, shares could have been purchased *via* off-market route only.

F. **Ms. Sarwani Devi Modi (Noticee No. 23):**

a. On the ground of delay and laches alone the present SCN is liable to be set aside. The Noticee has placed reliance upon the judgements of Hon'ble SAT in the matters of Yatin Pandya HUF vs SEBI (Order dated March 24, 2022 Appeal No 719 of 2021), Ashlesh Gunvantbhai Shah vs SEBI (Order dated 31.1.2020), Mr. Rakesh Kathotia & ors. vs SEBI (Order dated 27.5.2019), Ashok Shivlal Rupani vs SEBI, Sanjay Jethalal Soni & Ors. vs SEBI, Parag Sarda vs SEBI (Order dated 12.11.2020) and ICICI Bank Ltd. vs SEBI (Order dated 8.7.2020). She placed reliance upon the judgement of Hon'ble Whole Time Member ("WTM") of SEBI in the matter of Monarch Networth Capital Ltd. (Order dated December 30, 2021).

b. She would like to rely upon the Enforcement Action Policy ("EAP") in respect of Long Term Capital Gains ("LTCG") dated December 29, 2016 (Memo No. 04/2017), which clearly states that as per SEBIs own policy, no action is to be taken against beneficiaries.

c. The alleged connection highlighted in the SCN on basis of off-market transfer with Massive. In multiple other cases SEBI has exonerated many promoters / promoter related entities who have indulged in off-market transfers stating "no involvement in manipulation has been found or established during investigation". She has further placed reliance upon the judgement of Hon’ble SAT in the matter of Umang Dhanuka (Appeal No. 102 of 2020).

d. With regard to shares of the Company sold by her to Dhanaseth Properties Ltd. (Noticee No. 16) in the year 2014-2015 during the Investigation Period, she stated that she has merely sold her shares and made a profit on this transaction and has in no way contributed towards manipulation. This sale was done through an automated system and therefore there was no way she was aware of who the buyer was. Further, there is no relationship/connection between the her and Dhanaseth and the SCN does not make any allegation of a connection between them, nor is there any *iota* of evidence in the SCN to highlight the meeting of minds between her and Dhanaseth. Even if it is assumed that by selling her shares, she contributed towards a price rise, the SCN itself states that the price rise contributed by her is merely 0.10%.

e. With regard to penalty she has placed reliance upon – i) the order of Adjudication Officer in the matter of *Gallops Enterprise Limited* (Order No. EAD-8/KS/AA/AO/232/2018-1 dated 22.22019); ii) judgement of Hon’ble SAT in the matters of P.G. Electroplast Ltd. & Ors. vs Sebi (order dated 2 August, 2019); and iii) Hon’ble Supreme Court in the matter of SEBI vs. Bhavesh Pabari ((2019) 5 SCC 90).

CONSIDERATION OF ISSUES AND FINIDNGS:

13. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees No. 3, 8, 10, 12, 18, 19 and 23 made during the instant proceedings before the undersigned and I find that in this case, the following issues require consideration:

Issue I: *Whether the Noticees are connected entities?*

Issue II: *Whether the acts of trading in the scrip of the Company by the Noticee No 1 to 12 during the Patch-3 and the Noticee No 1, 2, 4, 6, 9 and 13 to 23 during the Patch-5 of the Investigation Period have resulted in* *violations of the provisions of Sections 12A(a), (b) and (c) of SEBI Act, 1992, Regulations 3(a), (b), (c), (d) and Regulation 4 (1) and 4 (2) (a) and (e) of PFUTP Regulations, 2003?*

14. I further note that, the Noticees who have filed their respective replies have raised several technical contentions during the proceedings. Therefore, before dealing the aforementioned issues on the basis of merit of the case, I will deal with the technical objections undertaken by the respective Noticees as follows:

A. **Delay in initiation of Adjudication Proceedings:**

a. Noticee No. 10, 18, 19, and 23 has stated that the SCN in this matter has been issued after much delay. In this regard, I note that, Surveillance Department of SEBI ("ISD") had received a reference from BSE during 2014 w.r.t. disclosure violation by one of the promoters of Sunstar. Accordingly, ISD initiated preliminary examination for the period 26.11.2013 to 31.12.2014 in the scrip of the Company, wherein, it was observed that there was substantial abnormal rise in the price of the scrip pursuant to (+) LTP contribution by certain entities. Accordingly, on February 25, 2015, ISD recommended for further detailed investigation in the scrip of the Company. Accordingly, after seeking several other details relating to price movements, trades, LTP contributions, etc. the investigation in this matter has been approved on October 10, 2015. An extensive investigation was carried out by SEBI, which included - calling for information from stock exchange, depositories, company and entities; analysis of trade and order data; analysis of the information received from stock exchange, depositories, company and entities; examination and identifying connections among suspected entities depending upon outcome of trading analysis; obtaining bank statements, comments, information; and detailed analysis of fund flows, bank account statements, fund trails, Unique Client Code details etc. During investigation, ISD received a reference from Department of Income Tax on July 27, 2016 w.r.t. sudden trades of 6 entities in the scrip of the Company and same have increased the scope of the investigation in terms of analysis of trades of several other entities. Further, during 2017, ISD received a Suspicious Transaction Report ("STR") from Financial Intelligence Unit and referred to the transactions undertaken during June 2014 to December 2014 related to impugned scrip of Sunstar. Subsequently, after extensive investigation, the final investigation report was presented on September 25, 2017 and the action was approved on September 27, 2017. Thereafter, Shri Jeevan Sonparote (erstwhile Adjudicating Officer) was appointed as Adjudicating Officer vide communication order dated March 28, 2018 and on receipt of records, the SCN to the Noticees have been issued on May 08, 2018 in this matter.

b. In this regard, I would like to highlight the pertaining remark made by the Hon'ble SAT in the matter of *Hemant Madhusudan Sheth and Ors. vs. SEBI* (Appeal No. 06 of 2020; Date of Decision: 24.06.2021) – "*We find that the show cause notice was issued within a period of four years after analysing the facts given in the investigation report. Since a large number of trades were examined we are satisfied that in the given case there was no laches on the part of the respondent in initiating the proceedings*". In this case, investigation was initiated in 2015 and after completion of investigation in September, 2017, the SCN was issued to the Noticees on May 08, 2018. Considering the complexity of the case, fraudulent charge and references from other agencies, I, therefore, find that there was no delay in issuance of SCN and no prejudice has been caused to the Noticees due to extensive procedure followed for completion of investigation.

c. The Noticees have placed reliance upon various judgements of Hon'ble SAT on the question of delay. In this regard, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any proceedings/ action under the SEBI Act. For establishing the delay, if any, in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. I further note that, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings. Also, it is a settled principle that a delay in a particular case depends on the facts and circumstances of each case. These Noticees have placed reliance upon the following judgements of the Hon'ble SAT in the matters of *Yatin Pandya HUF vs SEBI (Order dated March 24, 2022 Appeal No 719 of 2021), Ashlesh Gunvantbhai Shah vs SEBI (Order dated 31.1.2020), Mr. Rakesh Kathotia & ors. vs SEBI (Order dated 27.5.2019), Ashok Shivlal Rupani vs SEBI, Sanjay Jethalal Soni & Ors. vs SEBI, Parag Sarda vs SEBI (Order dated 12.11.2020) and ICICI Bank Ltd. vs SEBI (Order dated 8.7.2020), Bharat J Patel v SEBI (Appeal 154 of 2020 dated 8.9.2020), Shriram Insight Share Brokers Ltd v SEBI (Appeal 559 of 2020 dated 4.1.2022) and order of Ld. WTM in the matter of Monarch Networth Capital Ltd*. In this regard, I note that, in the judgement relied upon by the Noticee in the matter of *Ashlesh Gunvantbhai Shah* (*Supra*), the Hon'ble SAT has made the following pertinent remarks:

> *"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. <u>What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this</u>*

question would depend on the facts of each case. *This proposition of law has been consistently reiterated by the Supreme Court ... (emphasis applied)*

d. I further note that in *Pooja Vinay Jain vs. SEBI* (Appeal No. 152 of 2019) decided on March 17, 2020, the Hon'ble SAT *inter alia* held the following:

> *"On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under….*
>
> *The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.*
>
> *……It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same."*

e. I also note that, Hon'ble Supreme Court recently in the case of Adjudicating Officer, *SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294* held:

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time,*

would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

f. In the view of above facts and circumstances, I note that Hon'ble Supreme Court and Hon'ble SAT has qualified through aforesaid rulings by saying that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. I am of the view that present proceedings do not suffer from any infirmity on the ground of delay. Further, I have also perused the Apex Court orders in the matter of CIT v Vegetable Products Ltd (88 ITR 192, Supreme Court), CIT v Poddar Cement P Ltd (226 ITR 625 Supreme Court). I note that it is well settled principle of law that in case of beneficial construction of statute is possible, benefit has to be given to the Noticee. However, as it has already been discussed above that whether adjudication proceeding caused prejudice to the Noticee depends upon the facts and circumstances of the case. Therefore, aforementioned case laws are factually distinguishable from the present adjudication proceeding. Moreover, I am also of the opinion that, even if there is any delay as alleged, same cannot be the sole ground to exonerate these Noticees from liability of penalty under SEBI Act, if the charges and allegations are established on desired preponderance of probability.

B. **SCN issued in the matter is vague and without proper evidence:**

a. The Noticees have contended that the SCN is ambiguous and vague and does not clearly make any specific allegations or case against the Noticees, nor does it give any details of the grounds on which such allegations have been levied. In this regard, I note that in the SCN, i) para 3 provide details of price and volume in the scrip of the Company, across 5 patches and pre and post period of the investigation period; ii) para 4 provide details of the connections among the suspected group entities; iii) para 5 and 6 discuss in detail about the price rise during the investigation period, LTP contributions of the group entities, Noticees role in price rise of the scrip on either being a buyer or seller and in creation of misleading appearance of trading in the scrip and thus, the violations of relevant provisions of the SEBI Act and the PFUTP Regulations; iv) para 7 provide details of 4 Noticees, who being seller, sold scrip in excess of Rs 50 lakh value shares of the Company during the relevant period; v) para 9 provides details of the charging provisions; and vi) para 10 provides details of action taken against 10 of the Noticees previously in other case by the SEBI, to show that they are repeated violators of securities market law. I further note that, SCN has been accompanied with the copies of Know Your Customer documents, UCC data received from BSE, details obtained from MCA website, bank account statements, off-market transactions details, relevant extract of trades among the group entities from BSE trade log, communication order, etc., which are the relied upon and relevant document in the instant proceedings.

b. I also note that, the SCN in the instant proceeding is issued for violations of the SEBI Act read with the PFUTP Regulations and same has been clearly spelt out in the SCN. The connection among the Noticees and the analysis of group entities trades during relevant period of time has been brought out in detail in the SCN. The charging provisions for aforementioned violations of the SEBI Act read with PFUTP Regulations has been mentioned in SCN and I note that there is no ambiguity regarding the same. The Noticees have placed reliance on the rulings of several judgements of Hon'ble Supreme Court in the cases of *Varanasaya Sanskrit VishwaVidyalaya & Anr. Vs. Dr. Rajkishore Tripathi and Anr., Bank of India v. Degala Surya Narayana (AIR 1999 SC 2407), M.S.Bindra V Vol (1998) 7 SCC 310, Union of India v. H. C. Geol (AIR 1964 SC 364), L. D. Jaisinghani v. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376, Razik Ram v. J. S. Chauhan - AIR 1975 SC 667: (1975) 4 SCC 769, Gulab D Chand V Kudilal (AIR 1966 SC*

1734) and judgements of Hon'ble SAT in the matter of Smitaben N. Shah vs. SEBI order dated July 30, 2010, *Dhanalakshmi Bank Limited v. SEBI* (order dated 20th April, 1999) and *M/S Vintel Securities Private Limited v. SEBI* (Appeal No. 219/2009), Karnataka High Court in CIT v. SSA'S Emerald Meadows (2016 73 Taxman.com 241). I have perused the aforesaid judgements relied upon by the Noticees and I found that these principles pronounced through these judgements has been duly complied with while issuing the show cause notice in the instant proceedings. I therefore do not agree with the contention of the Noticee that the charge in the SCN is vague or not clear.

C. Notice No. 23 has contended that as per the EAP dated December 29, 2016 in respect of LTCG cases, no action is to be recommended against the beneficiaries. In this regard, I note that, in the SCN the charge on Noticee No. 23 has been casted on the basis of being a seller counterparty to the impugned transaction, wherein, being a counterparty to the buy transaction, she has assisted connected entity in raising the price of the scrip through (+) LTP contributions in the scrip of the Company during relevant period of time. As per the referred EAP policy, the Noticee No. 23 was beneficiary being the seller to the impugned trades. Noticee No. 23 has referred to para 7.1.2 of EAP, which states that "*SEBI will refer the findings of the investigation along with the details, if any, of beneficiaries (sellers), exit providers (buyers) and their trades to DIT, for necessary action at their end*". In this regard, I note that para 7.1.1 of EAP states that – "*SEBI will initiate enforcement proceedings such as 11B proceedings under Chapter IV and Adjudication proceedings under Chapter VIA of the SEBI Act, 1992, against the following: <u>entities involved in price manipulation, i.e. LTP contributors</u>*". In this case charge casted upon the Noticee No. 23 inter alia is that "*by trading among themselves at prices higher than LTP, contributed to price rise in the scrip…. and thereby indulged in the act which created false and misleading appearance of trading amounting to manipulation of the price of the scrip during January 01, 2015 to June*

03, 2015." Therefore, the charge casted upon Noticee No. 23 in these proceedings falls under the Clause 7.1.1 of the EAP and considering the same, I found that the Noticee No. 23 contentions are not tenable. I further like to rely on the observations of Hon'ble SAT wherein a contention similar was considered in the matter of *Mayank Dhanuka vs. SEBI (Date of order: 15.12.2017)* and the Hon'ble SAT has held that*:*

"Fact that Clause 7.1 of the Information Memorandum dated 29.12.2016 records that SEBI would proceed against the entities involved in price manipulation i.e. LTP contributors and the listed companies and its Whole Time Directors (if connection between them is established) <u>cannot be construed to mean that other entities</u> <u>who are also found to be connected with the entities committing fraud are</u> <u>liable to be exonerated. Clause 7.1 of the Information Memorandum has to be</u> <u>read harmoniously so as to hold that all entities including the beneficiaries who are found to be connected with the entities committing fraud would be</u> <u>proceeded against</u>." <u>(emphasis supplied)</u>

D. With regard to the argument advanced by the *Noticee no. 23* drawing a parallel of the instant matter with the cases of Illiquid options and seeking exoneration on the ground that no action was initiated by SEBI in the matter of Illiquid options, I find that the contention of the *Noticee* is factually incorrect as well as misleading. It is to be noted here that SEBI from time to time has issued various directions and has also imposed penalties against the entities involved in the matter of manipulative trading in Illiquid options. Further, in my considered view the instant proceedings require me to ascertain, on the basis of facts and other materials available on record, as to whether or not, the alleged trades of the *Noticees* are fair, normal and non-manipulative in nature. Further, it is a trite law to state that in the quasi-judicial proceedings, the adjudicator is bound to conduct the proceedings within the realms of the show cause notice presented before him for adjudication. Not proceedings against other entities in some other differently placed matter would not take away the fraudulent trade practice indulged in by

Noticees who, by repeatedly executing the alleged trades amongst each other over and above the LTP on a continuous basis, have glaringly contributed to the price rise in the scrip of the Company during different patches of the Investigation Period. Considering the above, I reject such contention of the *Noticee,* holding the same as irrelevant.

Issue I: Whether the Noticees are connected entities?

15. The SCN has alleged that the *Noticees no. 1* to 23 were part of a group (***group entities***) and were connected to each other directly indirectly (through common *group entities*) on the basis of common addresses, common email ids, common directorship, fund transactions, off-market transfers etc. The details of connection among the Noticees is placed below:

Table-4: Details of connection amongst the *Noticees*

Noticee	**Source of Connection**	**Type of Connection**
1	Share common address "*16, Indian Exchange Place, 1st floor, Kolkata – 700001"* with *Noticee no. 9 (*Ecstatic Merchandise Pvt. Ltd) and one of the *group entities.* Common Director "Arunava Banerjee (DIN – 06576758)" with *Noticee no. 13 (*Dhanaasha Developers Pvt. Ltd.), *Noticee no. 17* (Pragyan Realty Pvt. Ltd). and one of the *group entities* (Shivsakti Exports Pvt. Ltd). Common email id "companypvt13@gmail.com" with one of the *group entities (*Saktimata Marketing Private Limited).	Direct and Indirect
2.	Fund transfer with *Noticee no. 15* (Nirdesh Trading Pvt. Ltd.).	Direct and Indirect
3.	Fund transfer with *Noticee no. 5* (Frohar Trading Pvt. Ltd.).	Direct and Indirect
4.	Common Director "Krishnendu Ghosh (DIN – 06632267)" with *Noticee no. 14* (Panchmadhu Projects Pvt. Ltd.) and one of the *group entities.* Shares common address viz. "*14/c, Jaihind Co-CHS Gulab Nagar Khar Danda Khar-west Mumbai-52*" and common email id viz. "companyprivate45@gmail.com" with one of the *group entities* (Keshavah Dealtrade Pvt. Ltd.).	Direct and Indirect

Noticee	**Source of Connection**	**Type of Connection**
5.	Fund transfer with the *Company*. Transferred funds to *Noticee no. 3* (Jain Nemi Minerals Pvt. Ltd.) and to one of the *group entities (*Shivsakti Exports Pvt. Ltd). Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited).	Direct and Indirect
6.	Common Director "Gopa Banerjee (DIN – 06599733)" with *Noticee no. 16* (Dhanaseth Properties Pvt. Ltd) Common Director "Abhishek Modi (DIN – 06590792)" with *group entities.* Common Director "Gopal Chandra Saha (DIN – 06576695)" with *group entities.*	Direct and Indirect
7.	Common Director "Dinesh Mishra (DIN – 02353844)" with one of the *group entities (*Saktimata Marketing Private Limited).	Indirect
8.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited).	Indirect
9.	Shares common address "*16, Indian Exchange Place, 1st floor, Kolkata – 700001*" with *Noticee no. 1* (Maxtor Conclave Pvt. Ltd.) and one of the *group entities.* Common Director "Rabindranath Verma (DIN – 06579597)" with one of the *group entities* (Bholebaba Suppliers Pvt. Ltd.) Shares common email id "privatecos26@gmail.com" with some of the *group entities.* (Wondrous Marketing Pvt. Ltd., Sonnet Mercantile Pvt. Ltd., Tremendous Commodeal Pvt. Ltd. and Shivsakti Exports Pvt. Ltd.)	Direct and Indirect
10.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited).	Indirect
11.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited).	Indirect
12.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited).	Indirect
13.	Fund transfers with the *Company*. Common Director "Arunava Banerjee (DIN – 06576758)" with *Noticee no. 1* (Maxtor Conclave Pvt. Ltd.), *Noticee no. 17* (Pragyan Realty Pvt. Ltd.) and one of the *group entities (*Shivsakti Exports Pvt. Ltd).	Direct and Indirect

Noticee	**Source of Connection**	**Type of Connection**
14.	Common Director “Krishnendu Ghosh (DIN – 06632267)” with *Noticee no. 4* (Keshavah Mercantile Pvt. Ltd.) and one of the *group entities* (Speedfast Residency Pvt. Ltd.) Common Director “Gourab Ray Chaudhuri (DIN – 06610580)” with one of the *group entities* (Sonnet Mercantile Pvt. Ltd.)	Direct and Indirect
15.	Transferred funds to Blueview Tradevin Pvt. Ltd. (*Noticee no. 2*) and to the *group entities* (Saktimata Marketing Pvt. Ltd. and Gainsay Property Pvt. Ltd.)	Direct and Indirect
16.	Common Director “Abinash Rudra (DIN – 06576749)” with *Noticee no. 1* (Maxtor Conclave Pvt. Ltd.). Common Director “Gopa Banerjee (DIN – 06599733)” with *Noticee no. 6* (Quickscope Dealers Pvt. Ltd.) and other *group entities* (Wondrous Marketing Pvt. Ltd. and Aryanraj Properties Pvt. Ltd.)	Direct and Indirect
17.	Received funds from the *Company* Common Director with “Kartick Chandra Varma (DIN – 06586081)” with one of the *group entities* (Tremendous Commodeal Pvt. Ltd.) Common Director “Arunava Banerjee (DIN – 06576758)” with *Noticee no. 13* (Dhanaasha Developers Pvt. Ltd.) , *Noticee no. 1* (Maxtor Conclave Pvt. Ltd.) and one of the *group entities (*Shivsakti Exports Pvt. Ltd.)	Direct and Indirect
18.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited)	Indirect
19.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited)	Indirect
20.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited)	Indirect
21.	Shares common Phone no. – “8820982870” with one of the *group entities* (Wondrous Marketing Pvt. Ltd.)	Direct and Indirect

Noticee	Source of Connection	Type of Connection
22.	Shares common address "*T-1, 3rd floor, House no 99, Shivam Apartments A K Azad Road, Rehbari Guwahati Kamrup, Assam – 781008*" with *Noticee no. 21* (Sarda Solutions Pvt. Ltd.) and one of the *group entities* (Malakar and Das Broking Services Private Limited). Common Director "Ajay Malakar (DIN – 06574842)" with one of the *group entities* (Malakar and Das Broking Services Private Limited).	Direct and Indirect
23.	Off-market transfer with one of the *group entities* (Massive Management Consultancy Private Limited)	Indirect

16. Before discussing alleged connection and the basis of such allegation, I find it relevant to observe that the alleged connection amongst the *Noticees*, whether direct or indirect, has been considered as one of the basis for alleging the violations against the *Noticees* and not the violation in itself. The alleged connection of each of the *Noticees* has been used in the SCN as a strong corroboration to their trading pattern, *viz.*, peculiar ways of trading in the scrip of Sunstar. It is in this background that the trading done by the Noticees coupled with the connections allegedly enjoyed by them amongst each other assume significance to understand and appreciate the violation of various legal provisions committed by the Noticees as alleged in the SCN. As mentioned in the SCN and the Annexure-1 thereto, the connection amongst the *Noticees* has been alleged based on the analysis of their KYC UCC details, details on the MCA website, off-market transfers and bank account statements of each of the *Noticees*. In fact, the analysis of the aforesaid details had imputed connection amongst a larger group (referred to as "***Group entities***" in the SCN), out of which 23 entities have been identified on the basis of their alleged manipulative trades in the scrip of the Company. Some of these Noticees are directly connected to each other based on having common director, common address, fund transactions, off-market transactions, etc. While, other Noticees allegedly have shared connections amongst themselves by virtue of being connected to other group entities, who have not been proceeded with in the instant proceedings.

17. I note that the details for the alleged connections have been provided to all the *Noticees* through Annexure-1 of the SCN. On perusal of Annexure-1 of the SCN (*also refer above Table 4*), I observe that some of the Noticees are directly connected, while others are indirectly connected through other common group entities. Similarly, some of the Noticees are also found to be connected with the Company. From the table no. 4 above, I have noted several instances such as - *Noticee no. 1*, *Noticee no. 9* and one of the other *group entities* shared common address, located at *16, Indian Exchange Place, 1st floor, Kolkata – 700001*. Similarly, as per the UCC details, *Noticee no.* 21, *Noticee no. 22* and one of the other *group entities* shared common address located at *T-1, 3rd floor, House no 99, Shivam Apartments A K Azad Road, Rehbari Guwahati Kamrup, Assam – 781008*. Also, I observe that as per the MCA data, one Arunava Banerjee (DIN – 06576758) was a common Director in *Noticee no. 1, Noticee no. 13*, *Noticee no. 17* and in one of the other *group entities.* Similarly, one Krishnendu Ghosh (DIN – 06632267)" was a common Director in *Noticee no. 4, Noticee no. 14* and in one of the other *group entities.* With regard to fund transfers, I note from the above table that there were fund transfers between *Noticee no. 2* and *Noticee no. 15*, between *Noticee no. 3* and *Noticee no. 5,* and also between the *Company* and *Noticee no. 5 & Noticee no. 13 etc.* which again indicates a strong connection between such entities.

18. I note that some of the *Noticees* (*Noticee nos. 7, 8, 10, 11, 12, 18, 19, 20 and 23)* although are not alleged to be directly connected with other *Noticees*, however, they are found to be connected with various *group entities* which are connected directly or indirectly to other *Noticees*. For instance, *Noticee no. 7* is connected to one of the *group entities* namely Saktimata Marketing Pvt. Ltd., through off-market transfer of shares, which in turn is connected with *Noticee no. 1* through common email id as well as with *Noticee no. 15* through fund transfer. Similarly, *Noticee nos. 8, 10, 11, 12, 18, 19, 20 and 23* are connected to one common *group entities* namely, Massive, through off-market transfers. It is a common knowledge that off-market share transactions between two parties can happen only when both the entities are expected to be known and familiar to each other, hence off-market transfer of shares gives a strong presumption

of pre-existing connection between the entities. Therefore, considering the fact the aforesaid *Noticees* had off-market transactions with one common entity, these *Noticees* can very well be presumed to be connected or at least known to each other through the other *group entities* with whom they had undeniably entered into off-market share transactions.

19. Noticee No. 23 has contended during the proceedings that in past SEBI has exonerated many promoters / promoter related entities who have indulged in off-market transfers stating "*no involvement in manipulation has been found or established during investigation*". She has further placed reliance upon the judgement of Hon'ble SAT in the matter of Umang Dhanuka (Appeal No. 102 of 2020). In this regard, I want to once again emphasise on the fact that off-market trade is only one of the facet, which establishes connection among the Noticees. Other facet is their trades in the scrip of the Company with the connected entities, wherein, they have acted as counterparty seller to their buy trades and assisted them in substantial contribution towards (+) LTP in the scrip of the Company during the relevant period. It has been found that Noticee No. 23 net sell value during the relevant period was Rs. 1.59 crores. Considering the aforesaid facts and circumstances, I am of a view that, once a natural presumption of connection is observed amongst the afore-stated *Noticees*, it provides *ipso facto* a strong basis to the suspect the *bona fide* of their conduct while trading in the scrip of the Company. Considering the above, I reject such contention of the Noticee. I have perused the aforesaid judgement of Hon'ble SAT in the matter of Umang Dhanuka (Supra) and in terms of aforesaid discussion in this para and distinctive facts, I found that the aforesaid judgement is not applicable in this case.

20. As already mentioned in paras 8 -11 of this order, certain *Noticees* (Noticee No. 1, 2, 4 – 7, 9, 13 – 17 and 20 - 22) have chosen not to file any reply to the SCN and even have preferred to abstain from personal hearing. Therefore, in the absence of any material contrary to the allegations, I find that materials on record are sufficient enough to reasonably conclude that these *Noticees* were closely connected among themselves.

21. I note that Noticees No. 10, 18 and 19 have contended that they are not aware of any entity by name of Frohar (Noticee No. 5) and/ or Bluview (Noticee No. 2) and supporting documents annexed with SCN has failed to establish any connection of these Noticees. Further, Noticee submitted that the common link shown is off market transaction between us and nothing else. In this regard, I note that the connection of these Noticees with Frohar has been alleged on the basis of their connection with Massive. Massive is an entity from whom, each of these Noticees have admittedly purchased 1 lakh shares of the Company during January, 2013 via off-market route. Further, Frohar had also been found connected to Massive on the basis of off-market transfer between them. I also found that Bluview is part of the suspected group entities who have been found to be indulged in impugned trades. Therefore, from the above, it has been found by me that these entities are connected to Frohar on the basis of their common connection with massive. Moreover, I note that common link shown is Off market transaction give strong presumption of connection between the entities. Further, these Noticees have been alleged on the basis of being part of a closed connected group. Considering the same, I found these Noticees contention not tenable with regard to aforementioned connection.

22. Noticee No 10, 18, 19 contended that there is no price manipulation can be inferred from their trades [paragraph12(B)(f)(iii) of the present order]. In this regard, I note that said Noticees are part of group entity and therefore, I emphasised on the fact that contribution as whole has to be seen and not the individual trades of the Noticees. In this regard, reliance has been placed on *Giriraj Kumar Gupta HUF Vs. SEBI* (Order dated February 25, 2020)*, "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."* It is also noted that for the purpose of alleged LTP contribution reference point is the last traded price of a particular stock. Therefore, for the purpose of analysis of a situation whether a positive LTP contribution has been done or not, it has to be compared with the last traded price of the scrip.

23. Further, from the perusal of trade log of the said Noticees, I note that said Noticees during the reference period have acted as sellers and in all of their impugned sell trades, they have placed the sell orders first and subsequently, a buy order has been placed by the connected group entities, respectively, within the range of a second to 2 minutes, except one of the trade. It shows that the said Noticees who have acted as sellers were dictating the price movement in the scrip of the Company, wherein, in few of the cases their LTP contribution was as high as Rs. 17.1, Rs. 23.1 and 21.90. Such a trading pattern adopted by the said Noticees cannot be considered as genuine one. Such concentrated trades of these Noticees, have facilitated the positive LTP by placing sell order which is significantly higher than the prevalent market price. Also, it cannot be just a coincidence that in none of the impugned trades they have matched already existing buy order, instead, they were placing sell orders above the LTP and same were matched by the connected buyer entities. For illustration purpose, it can be seen from the table below that Noticee No. 10 placed order at 13:50:20 on 04/02/2015 which got immediately matched *i.e.* within a second. This led to LTP contribution of Rs 10.1. Similarly, Noticee No. 18 placed order at 14:14:00 on 09/01/2015 which got immediately matched *i.e.* within a second. This led to LTP contribution of Rs 9. Noticee No. In the same way, 19 placed sell order at 13:10:23 on 14/01/2015 which got immediately matched *i.e.* within 2 minutes. This led to LTP contribution of Rs 23.1.

24. The details of the trade log of the said Noticees during reference period as given below: -

TRADE_DATE	CLIENTNAME	CP_CLIENTNAME	ORDER_TIME	CP_ORDER_TIME	Trade Time	LTP Contribution
02/01/2015	Dhanaasha Developers Private Limited	Manju Beriwala	12:13:31	12:13:19	12:13:31	13
05/01/2015	Dhanaasha Developers Private Limited	Manju Beriwala	12:33:04	12:32:35	12:33:04	0.05
07/01/2015	Dhanaasha Developers Private Limited	Manju Beriwala	11:32:53	11:31:25	11:32:53	0.05
08/01/2015	Panchmadhu Projects Private Limited	Hari Mohan Beriwala And Others Huf	11:51:00	11:50:52	11:51:00	0.9
09/01/2015	Keshavah Mercantile Private Limited	Hari Mohan Beriwala And Others Huf	14:14:01	14:14:00	14:14:01	9

TRADE_DATE	CLIENTNAME	CP_CLIENTNAME	ORDER_TIME	CP_ORDER_TIME	Trade Time	LTP Contribution
09/01/2015	Maxtor Conclave Private Limited	Hari Mohan Beriwala And Others Huf	15:14:54	15:14:53	15:14:54	0.95
14/01/2015	Dhanaasha Developers Private Limited	Hari Mohan Beriwala And Others Huf	13:12:05	13:10:23	13:12:05	23.1
14/01/2015	Pragyan Realty Private Limited	Hari Mohan Beriwala And Others Huf	14:39:30	14:39:15	14:39:30	0.75
19/01/2015	Panchmadhu Projects Private Limited	Hari Mohan Beriwala And Others Huf	14:54:48	14:54:46	14:54:48	14.4
23/01/2015	Pragyan Realty Private Limited	Manju Beriwala	12:44:40	12:44:38	12:44:40	0.5
27/01/2015	Dhanaasha Developers Private Limited	Manju Beriwala	12:55:20	12:55:18	12:55:20	17.1
27/01/2015	Keshavah Mercantile Private Limited	Manju Beriwala	13:08:42	13:08:40	13:08:42	1.5
29/01/2015	Keshavah Mercantile Private Limited	Hari Mohan Beriwala And Others Huf	12:34:12	12:34:09	12:34:12	16.1
04/02/2015	Maxtor Conclave Private Limited	Hari Mohan Beriwala	13:50:20	13:50:19	13:50:20	10.1
06/02/2015	Maxtor Conclave Private Limited	Manju Beriwala	12:33:52	12:33:50	12:33:52	23
11/11/2014	Frohar Trading Private Limited	Hari Mohan Beriwala	15:22:02	12:03:36	15:22:02	0.05
26/11/2014	Blueview Tradevin Private Limited	Hari Mohan Beriwala	12:32:51	12:31:04	12:32:51	21.90

25. In the view of the above, I note that Noticee 10, 18, 19 contention made by the said Noticees [paragraph12(B)(f)(iii) of the present order] is of no use. Further, Noticees placed reliance on the Ketan Parekh vs Securities & Exchange Board of India (Appeal No 2 of 2004 dated 14.07.2006). In this regard, I am of the view that trading pattern in the case of Ketan Parekh has not been inferred as fraudulent. However, the same is not true for the Noticee 10, 18, 19 trade logs. Therefore, I note that aforesaid Hon'ble SAT order can be factually distinguishable from the present case.

26. Noticee No. 3 has contented its connection with Frohar and stated that the fund transaction among them was a loan transaction in ordinary course of business. In this regard, I note that, Noticee No. 3 had not produced any document before me during the instant proceedings to substantiate his claim of loan transaction, therefore, I reject such contention of the Noticee No. 3 due to absence of any supporting documents.

27. Noticee No. 8 has contended that only one of its trade has matched with Quickscope (notice No. 6) and there is nothing in SCN that it is connected/ related to Quickscope. Similarly, Noticee No. 23 has contested her connection with the Dhanaseth (Noticee No. 16) with whom, she had undertaken the trades in the scrip of the Company. In this regard, I note that, Noticee No. 8 and 23 have been found to be connected with Massive on the basis of off-market transfer and therefore, considering the discussion so far, it is found to be connected with other entities, who are connected to Massive and thus, it is found to be part of a closely connected group. Further, Quickscope and Dhanaseth is also found to be connected with the other Noticees or group entities in aforesaid closely connected group. I note that, these Noticees have been alleged on the basis of being part of a closed connected group. Considering the same, I found the Noticee No. 8 contention is not tenable.

28. I note that some of the *Noticees* have vehemently emphasized that establishing connections amongst the *Noticees* on the basis of common addresses, common emails, Common Directors, etc. is legally untenable and unsustainable. In this regard, the *Noticees* have relied upon and cited decisions of the Hon'ble SAT in the matter of *Babubhai Desai (supra)* and *Smitaben N. Shah (supra).* I have perused the judicial decisions relied upon by the *Noticees* in support of their aforesaid contention to rebut the connections alleged in the proceedings. First of all, it goes without saying that the facts and attending circumstances specific to each cited case are factually distinguishable and have to be taken into consideration while deciding as to whether enough material is available on record to justify the *inter* connectedness amongst the entities. For instance, in the matter of *Smitaben N. Shah (supra),* as highlighted by Hon'ble SAT, the connection amongst the appellants were jumbled up and further no details of financial relations were provided in the show cause notice, constraining the Hon'ble SAT to observe that the name of the appellants in the annexures to the show cause notice depicting the financial relation were missing. However, in the instant proceedings, as mentioned in the table no. 4 and in the preceding paragraphs of this Order, some of the *Noticees* share one to one connection with other *Noticees* and some of the *Noticees* were

connected through a common group entity. Further, after perusing the observations of Hon'ble SAT in the matter of *Babubhai Desai (supra),* I note that the order impugned therein was remanded primarily on the ground of non-supply of relevant documents. The observations pertaining to connection are specific to that case and the *Noticees* herein have failed to bring that they are placed in identical situation as in the aforesaid case cited by them. The Hon'ble SAT had restored the proceedings *[Babubhai Desai (supra)]* to the file of the Adjudicating Officer for passing fresh order after considering replies of the appellants, whereas, in the instant matter, the connections between the *Noticees* through fund transfers, common addresses, common email ids, off-market transfers have not been disputed by the *Noticees. Noticees*, while contesting the allegations made in the SCN have offered no explanation justifying the rationale for using such common addresses, email ids, or making off market transactions, funds transfers etc. The contention of the *Noticees* that mere connection amongst various entities cannot be taken as basis to allege fraudulent trades is ill-conceived and has no merit. Principally, it is the conduct of *Noticees* while trading in the scrip, that is seen and alleged as fraudulent and the said allegation gets further reinforced after noticing such close connections existing amongst a larger group of entities including the *Noticees* of the present proceedings which make it glaring that the *Noticees* have indulged in such trading behaviour not only as individual entities but also as a cohesive group. In the instant matter, in my considered view, materials on records are sufficient to establish connection amongst the *Noticees*. Therefore, the aforesaid contentions of the *Noticees* regarding their connections are rejected as unfounded on facts, devoid of any merit as well as farfetched hence are liable to be rejected.

29. I further note that certain *Noticees* have contended that the fund transactions and off market transfers of shares with the other *Noticee(s)* or with other *group entities* were executed in the ordinary course of business and therefore no adverse inference can be drawn against the *Noticee*s relying on such transactions. The contention of the *Noticees* may appear satisfactory on its face value, however, none of the *Noticees* has submitted any supporting evidence

or justification to substantiate the claim that the said fund transactions were carried out in the course of ordinary business transactions. Further, with regard to submission made by some of the *Noticees* relating to their fund transfers supposedly towards loans / borrowings, I note that none of these *Noticees* has submitted any documents pertaining to those loans in the form of a loan agreement, or loan confirmation certificate, evidence of payment of interest, or towards re-payment of loan, etc. to further their argument. Considering the foregoing, I reject this contention of the *Noticees* and do not find it necessary to further deal with the same.

30. Considering the aforesaid discussions and the fact that there are materials sufficient enough to suggest that strong *inter se* connections existed amongst these entities which, coupled with the undisputed facts of their trades in the scrip of the *Company* during the relevant period, wherein the *Noticees* are seen to have traded posing as counterparties and from their unusual trading pattern as noticed in the scrip of the *Company* , it can be stated with confidence that the matching of trades amongst the *Noticees* did not happen as mere coincidences but was possible due to the commonality of intent and purpose that existed amongst the *Noticees* while dealing in the scrip of *Sunstar*. In view of the above and in the absence of any material contrary to the allegations, I find that it can be reasonably concluded that the *Noticees* were enjoying close connections amongst themselves.

Issue II: Whether the acts of trading in the scrip of the Company by the Noticee No 1 to 12 during the Patch-3 and the Noticee No 1, 2, 4, 6, 9 and 13 to 23 during the Patch-5 of the Investigation Period have resulted in violations of the provisions of Sections 12A(a), (b) and (c) of SEBI Act, 1992, Regulations 3(a), (b), (c), (d) and Regulation 4 (1) and 4 (2) (a) and (e) of SEBI PFUTP Regulations, 2003?

31. I note that during *Patch-3*, it has been observed that the price of the scrip opened at ₹229.9, reached a high of ₹425.95 and closed at ₹424.9 i.e., witnessing a rise of 84.82% from the opening price. The SCN has *inter alia* alleged that *Noticee nos.* 1 *to 12* (hereinafter referred to as *"12 Noticees*") by executing 09 trades amongst themselves have contributed ₹63.05 (15.61% of

the total market positive LTP) towards the positive LTP in the scrip of the *Company* during *Patch-3* of the Investigation Period. In this regard, from the available records, I note that, 15.61% of (+ve) LTP contribution in the scrip by the *12 Noticees* has been generated out of only 2.64% of the total market volume (18000 shares out of a total of 679750) of the shares of the *Company* traded during Patch 3. Further, these 18000 shares were traded in 9 trades, which was only 2.12% of the total number of trades (424 trades) executed in the scrip during *Patch-3*. Considering such peculiar fact and circumstances, the 9 trades executed by the *12 Noticees* during Patch 3 raises a strong suspicion about the true intent of 12 *Noticees* behind their acts of raising the price of the scrip higher than the LTP through every single trade that they have executed among themselves during the said period. I also note that these impugned 9 trades have led to contribution of positive LTP of ₹63.05 i.e. 15.61% of total market positive LTP contribution in the scrip in Patch 3, wherein, *Noticee No. 1 to 7* have traded as buyers while *Noticee No. 3 and 8 to 12* have traded as the counterparties / sellers to the alleged 9 trades. The details of LTP contribution through the 9 trades executed by each of these *12 Noticees* are as follows:

Table-5: Details of 9 trades during Patch-3

	+ve LTP (No. of trades)						**Total +ve LTP (% of market +ve LTP)**
Sellers □ / **Buyers ↓**	Anil Kumar Agarwala HUF (*Noticee no. 8*)	Ecstatic Merchandise Pvt. Ltd. (*Noticee no. 9*)	Hari Mohan Beriwala (*Noticee no. 10*)	Jain Nemi Minerals Pvt. Ltd. (*Noticee no. 3*)	Santosh Devi Agarwal (*Noticee no. 11*)	Sapna Agarwala (*Noticee no. 12*)	
Maxtor Conclave Pvt. Ltd. (*Noticee no. 1*)	-	22.95 (1)	-	-	-	-	22.95 (5.68)
Blueview Tradevin Pvt. Ltd. (*Noticee no. 2*)	-	-	21.90(1)	-	-	0.90 (1)	22.80 (5.64)
Jain Nemi Minerals Pvt. Ltd. (*Noticee no. 3*)	-	-	-	-	-	10.90 (1)	10.90 (2.70)
Keshavah Mercantile Pvt. Ltd. (*Noticee no. 4*)	-	-	-	0.95 (1)	5.30 (1)	-	6.25 (1.55)
Frohar Trading Pvt. Ltd. (*Noticee no. 5*)	-	-	0.05 (1)	-	-	-	0.05 (0.01)
Quickscope Dealers Pvt. Ltd. (*Noticee no. 6*)	0.05 (1)	-	-	-	-	-	0.05 (0.01)
Ambuja Commosales Pvt. Ltd. (*Noticee no. 7*)	-	-	-	-	0.05 (1)	-	0.05 (0.01)
Total							**63.05 (15.61)**

32. From above Table No. 5, I not that, Noticees No. 3 and 8 – 12 have sold shares of the Company at prices higher than the LTP to other connected entities i.e. Noticees No. 1 – 7. Further, Noticee no. 3 has traded both as a buyer and seller during Patch 3. Therefore, by indulging in such orchestrated trades amongst themselves, Noticees nos. 1 to 7, by buying the shares of *Sunstar* from the sellers (*Noticee nos. 3, 8 to 12*), have aided in contributing to the price rise in the scrip during Patch 3. I have also perused the trade logs and I note that in each of the impugned 9 positive LTP contributing trades, sell orders were placed prior to the respective buy orders. The trade wise order details of aforesaid 9 trades that contributed to the positive LTP in the scrip is as follows:

Table-6: Order logs of alleged 09 trades during *Patch-3*

Sr. No.	Trade Date	Buyer	Seller	Time Diff Between Buy order and sell order	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Trade QTY
1.	23/10/2014	Maxtor Conclave Private Limited (*Noticee no. 1*)	Ecstatic Merchandise Private Limited (*Noticee no. 9*)	00:00:07	229.9	229.9	229.9	22.95	11.09	600
2.	29/10/2014	Blueview Tradevin Private Limited (*Noticee no. 2*)	Sapna Agarwala (*Noticee no. 12*)	00:09:26	255.9	255.9	255.9	0.9	0.35	1800
3.	29/10/2014	Jain Nemi Minerals Private Limited (*Noticee no. 3*)	Sapna Agarwala (*Noticee no. 12*)	00:43:45	255.9	255.9	255.9	10.9	4.45	2400
4.	11/11/2014	Frohar Trading Private Limited (*Noticee no. 5*)	Hari Mohan Beriwala (*Noticee no. 10*)	03:18:26	311.95	311.95	311.95	0.05	0.02	3000
5.	19/11/2014	Quickscope Dealers Private Limited (*Noticee no. 6*)	Anil Kumar Agarwala Huf (*Noticee no. 8*)	00:11:11	329	329	329	0.05	0.02	600
6.	26/11/2014	Blueview Tradevin Private Limited (*Noticee no. 2*)	Hari Mohan Beriwala (*Noticee no. 10*)	00:01:46	361.9	361.9	361.9	21.9	6.44	1200
7.	27/11/2014	Ambuja Commosales Private Limited (*Noticee no. 7*)	Santosh Devi Agarwal (*Noticee no. 11*)	00:11:18	361.85	361.85	361.85	0.05	0.01	2400
8.	10/12/2014	Keshavah Mercantile Private Limited (*Noticee no. 4*)	Jain Nemi Minerals Private Limited (*Noticee no. 3*)	00:00:39	425.85	425.85	425.85	0.95	0.22	3000

Sr. No.	Trade Date	Buyer	Seller	Time Diff Between Buy order and sell order	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Trade QTY
9.	15/12/2014	Keshavah Mercantile Private Limited (*Noticee no. 4*)	Santosh Devi Agarwal (*Noticee no. 11*)	00:01:09	424.2	424.2	424.2	5.3	1.27	3000

33. From above Table No. 6, I note that in all of the said 9 trades, the buy orders were placed by the *Noticee nos. 1 to 7,* only after the respective sell orders were placed by the six seller *Noticees* (*Noticee nos. 3, 8 to 12*). I further note that the buy orders in said 9 trades, always matched the prices offered by the sell orders, which were already pending in the stock exchange's system and such offer price was always higher than the LTP as a result. I found that, matching of prices by the buy orders with the pending sell orders in such a manner has always resulted into creation of positive LTP in the scrip. For example, in the trade mentioned at Sr. No. 1 above, the buy order was placed by the *Noticee no. 1* at ₹229.9 on October 23, 2014 and said buy order got matched with already pending sell order placed by the *Noticee no. 9* at the price of ₹229.9, thereby resulting in contributing to the positive LTP of ₹22.95, which was 11.09% of total market positive LTP in *Patch-3* in the scrip of the *Company*. Similarly, for the trade mentioned at Sr. No. 6 undertaken on November 26, 2014, the sell trade was placed by *Noticee no. 10* at a price of ₹361.9 and within 2 minutes (1 minutes 46 seconds) a buy order at the same price of ₹361.9 was placed by *Noticee no. 2,* which resulted into execution of trade that contributed ₹21.9 to the LTP, which was 6.44% of total market positive LTP in *Patch-3* in the scrip of *the Company*. I note that, during instant proceedings, seven buyer *Noticees (Noticee nos. 1 to 7)* have failed to provide rational reasons for buying shares at such a price higher than the LTP, which was in disconnect with the ongoing price in the market at relevant point of time.

34. I note that during Patch-5, the price of the scrip opened at ₹252.00, reached a high of ₹419.90 and closed at ₹401.20 i.e. resulting in a rise of 66.63% from the opening price of the scrip during the said period. The SCN has *inter alia* alleged that *16 Noticees* viz. *Noticees No. 1*, 2, 4, 6, 9 and *13* to *23,* by executing 39

trades among themselves have contributed to 10.80% (₹171.00) of total market (+ve) LTP in the scrip of *Sunstar during Patch 5.* Details of the said 39 trades executed by *16 Noticees* is as follows:

Table-7: Details of alleged 39 trades during *Patch-5*

Sr. no.	Buyers	Sellers (+ve LTP)	+ve LTP	% of mkt +ve LTP	No. of Trades
1	Dhanaasha Developers Pvt. Ltd.	1) Manju Beriwala (30.20) 2) Hari Mohan Beriwala and Others HUF (23.10) 3) Saurabh Kumar Agarwal HUF (8.90) 4) Quickscope Dealers Pvt. Ltd. (4.65) 5) Ecstatic Merchandise Pvt. Ltd. (0.70) 6) Proficient Managerial Solutions Pvt. Ltd. (0.20)	67.75	4.28	12
2	Maxtor Conclave Pvt. Ltd.	1) Manju Beriwala (23.00) 2) Hari Mohan Beriwla (10.10) 3) Panchmadhu Projects Pvt. Ltd. (2.80) 4) Hari Mohan Beriwala and Others HUF (0.95) 5) Ecstatic Merchandise Pvt. Ltd. (0.70) 6) Quickscope Dealers Pvt. Ltd. (0.40)	37.95	2.40	9
3	Keshavah Mercantile Pvt. Ltd.	1) Hari Mohan Beriwla and Others HUF (25.10) 2) Manju Beriwala (2.50) 3) Quickscope Dealers Pvt. Ltd. (0.20)	26.80	1.69	4
4	Panchmadhu Projects Pvt. Ltd.	1) Hari Mohan Beriwala and Others HUF (15.30)	15.30	0.97	2
5	Nirdesh Trading Pvt. Ltd.	1) Ecstatic Merchandise Pvt. Ltd. (13.00)	13.00	0.82	1
6	Dhanaseth Properties Pvt. Ltd.	1) Sarda Solutions Pvt. Ltd. (5.90) 2) Panchmadhu Projects Pvt. Ltd. (0.80) 3) Ecstatic Merchandise Pvt. Ltd. (0.40) 4) Sarwani Devi Modi (00.10) 5) Maxtor Conclave Pvt. Ltd. (0.10) 6) Quickscope Dealers Pvt. Ltd. (0.05)	7.35	0.46	6
7	Quickscope Dealers Pvt. Ltd.	1) Dhanaseth Properties Pvt. Ltd. (1.10) 2) Pragyan Realty Pvt. Ltd. (0.20)	1.30	0.08	2
8	Pragyan Realty Pvt. Ltd.	1) Hari Mohan Beriwala and Others HUF (0.75) 2) Manju Beriwala (0.50)	1.25	0.08	2
9	Ecstatic Merchandise Pvt. Ltd.	1) Dhanaseth Properties Pvt. Ltd. (0.30)	0.30	0.02	1
	Total		**171.00**	**10.80**	**39**

35. From above Table No. 7, I note that out of the *16 Noticees*, 9 *Noticees* have traded as buyers and 13 *Noticees* have traded as sellers, while 6 *Noticees* have traded both as buyer and seller in the impugned 39 trades during Patch-*5*. From perusal of the trade logs for Patch 5, I note that, trading pattern similar to the

Patch 3 have been followed by the *Noticees* during *Patch 5*, in each of the said 39 positive LTP contributing trades, wherein, sell orders were placed first and then the respective buy orders were placed by the connected Noticees, resulting in matching of orders and execution of trades. I further note that, the buy orders in said 39 trades were placed at a price exactly similar to respective sell orders, which were already pending in the stock exchange's system. I found that, such offer price was invariably higher than the LTP and on account of matching orders placed by the buyer *Noticees*, the resultant trades always contributed to positive LTP in the scrip of *the Company.* Extracts of some of the said 39 trades is as follows:

Table-8: Extracts of Order / trade logs of few of alleged 39 trades during *Patch-5*

Sr. No.	Trade Date	Buyer	Seller	Time Diff Between Buy order and sell order	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Trade Qty	Buy Order Qty	Sell Order Qty
1.	19/01/2015	DHANAASHA DEVELOPERS PRIVATE LIMITED (*Noticee no. 13*)	QUICKSCOPE DEALERS PRIVATE LIMITED (*Noticee no. 6*)	00:00:01	330.4	330.4	330.4	2.55	0.78	600	600	600
2.	19/01/2015	PANCHMADHU PROJECTS PRIVATE LIMITED (*Noticee no. 14*)	HARI MOHAN BERIWALA AND OTHERS HUF (*Noticee no. 18*)	00:00:01	329.9	329.9	329.9	14.4	4.56	4200	4200	4200
3.	27/01/2015	DHANAASHA DEVELOPERS PRIVATE LIMITED (*Noticee no. 13*)	MANJU BERIWALA (*Noticee no. 19*)	00:00:02	363.5	363.5	363.5	17.1	4.94	4200	4200	4200
4.	04/02/2015	MAXTOR CONCLAVE PRIVATE LIMITED (*Noticee no. 1*)	HARI MOHAN BERIWALA (*Noticee no. 10*)	00:00:01	344.7	344.7	344.7	10.1	3.02	9600	9600	9600
5.	06/02/2015	MAXTOR CONCLAVE PRIVATE LIMITED (*Noticee no. 1*)	MANJU BERIWALA (*Noticee no. 19*)	00:00:01	379	379	379	23	6.46	6000	6000	6000

36. From above Table No. 8, I note that on several instances the time difference between the sell orders and the buy orders placed by the respective *Noticees* were in the range of a few seconds only. For example, in the trade mentioned

at Sr. No. 1 above, the time difference between the sell order and the respective buy order was of 1 second and the matched order of 600 shares in the scrip got executed at a price of ₹330.40 resulting in contribution of positive LTP of ₹2.55 (0.78% of total positive LTP). Similarly, in the trade mentioned at Sr. No. 5, *Noticee no. 1* placed a buy order at a price of ₹379, which got matched with the pending sell order that was placed just a second ahead by the *Noticee no. 19* for same quantity & same price and the executed trade contributed towards positive LTP of ₹23 (6.46% of total positive LTP). I further note that in majority of the buy / sell orders in said 39 trades, the buy and sell orders were placed for identical quantities of shares by the *16 Noticees*. Considering such trading pattern followed by the *16 Noticees,* including their timing of placing of buy / sell orders, prices quoted/offered while placing such orders and the quantity of shares involved in such orders, coupled with the fact that all *16 Noticees* were part of a connected group entities, in no manner impugned 39 trades can be considered as usual trades executed in ordinary course of trading in securities market, instead I found such trading pattern to be abnormal one and executed with *mala fide* intention by the *16 connected Noticees* in the scrip of the Company during Patch 5.

37. Some of the Noticees have contended that by trading in the scrip of the Company, they have not made any gains or gained any unfair advantage and have not caused loss to investors or anybody, which indicate that they had no intention to manipulate the price of the scrip. At the outset, it needs to be clarified that the acts of placing orders higher than the LTP and executing trades with the connected entities by acting in concert as well as contributing majorly to the price rise in the scrip, even at the cost of not making any gains or sustaining personal losses, cannot be viewed as trades executed prudently in the normal course of trading in securities. The argument of not making gains while dealing in the scrip would rather go against the vary intent of the buyer Noticees. It is but natural that any person is bound to incur loss when he/she indulges in executing buy trades on a repeated basis, by imprudently placing buy orders higher than the LTP. The trading pattern followed and actual trading conduct displayed by the Noticees do not indeed support the arguments

advanced by them and would rather vindicate the allegations made against them in the SCN. It is also noted that an investigation into the scrip of the Company was, inter alia, triggered on account of a reference received from of the Income Tax Department, alleging therein that certain persons appeared to have traded against the market mechanism with mala fide motive. The claim of the Noticees of incurring loss further signifies the fact they had no bona fide intention to trade as a normal trader of securities market, rather their alleged trades seem to have been executed with a hidden intent to trade in the scrip of the Company so as to distort the settled market mechanism. Therefore, the trades which were admittedly not profitable to the Noticees but execution of which were only contributing positive LTP in the scrip for which no convincing explanation has been offered by the Noticees, the only argument advanced by them that they did not gain anything from these trades cannot in isolation justify these trades as normal and bona fide trades.

38. I further note that an argument has been advanced on behalf of the seller Noticees justifying that their acts of selling shares at prices higher than LTP cannot be alleged as fraudulent as it is in line with the settled principle that sellers would want to sell at a higher price. The arguments of the seller Noticees may prima facie appear to be convincing, however, on a closer scrutiny and analysis, such contentions are found to be fallacious and devoid of merit on the basis of trading pattern adopted by them. From perusal of the Noticees trades, I found that, 9 trades executed by the 12 Noticees in Patch 3 and majority of the 39 trades executed by 16 Noticees during Patch 5 have resulted into contribution of positive LTP in the scrip of the Company were executed turn by turn on different trading days. It is further found that all 23 Noticees turn by turn, were placing their LTP contributing sell and buy orders on different trading days, which clearly signifies a manipulative trading pattern. These 23 Noticees have traded in scrip with a pre-meditated mind-set of sustaining the price rise of the scrip of the Company continuously over a longer period of time by way of contributing to the (+) LTP of the scrip, turn by turn, placing trades on different trading days without coming together to the market on any given day, as the same would have quickly exhausted their efforts and shares in a few days

defeating their actual intent to prolong the price rise in the scrip of the Company over a longer period of time. I also note that the seller Noticees have not provided any explanation as to why their alleged sell trades got matched with the connected buyer entities. In the absence of any plausible reasons offered by the Noticees apart from merely stating that they were trading to make profit out of their trades; and in the backdrop of the established connection among the Noticees, I opined that the impugned trades in the scrip during the relevant period of time have been executed with a premediated mind to escalate the price of the scrip of the Company and such trading pattern has been found to be against the settled market norms. I further note that, though the trades executed by them are not very high in number, however, in the backdrop of connections enjoyed by the Noticees amongst themselves and substantial contribution towards the positive LTP in the scrip of the Company (15.61% of the total market positive LTP during Patch 3 and 10.80% of the total market positive LTP during Patch 5), I found these trades to be orchestrated one executed with a manipulative intent, which is evident from the trading behaviour of the Noticees. Considering such a manipulative trading pattern of the sellers Noticees in the scrip of the Company, I reject the contentions of these Noticees in this regard.

39. The Noticees have also contended that they have no direct connection with their counterparties and SCN also does not allege the same. In this regard, I note that the Noticees are found to be part of the common group entities and the impugned trades were executed by them with each other in a concerted manner. I further note that, when the Noticees have been found to be part of a connected group, it is not required that one to one connection between buyer and the counterparty seller is required to be established for each of the alleged trades to establish the charge of unfair and manipulative trades levelled against them in the SCN. Instant proceedings before me are civil in nature, wherein the alleged violations are required to be established following the principle of preponderance of probabilities. 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 so made against the *Noticees*. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof, an adjudicating authority cannot be rendered helpless. It is the duty of the authority 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 be a reasonable inference borne out of the circumstances. The test would always be as to what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion. While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming and the test would be one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the *SEBI Act, 1992* or the provisions of the Regulations framed thereunder is concerned.

40. Accordingly, in terms of foretasted principle and applying the aforementioned settled test in the facts and circumstance of this case, in my view, matching of buy/sell orders only among the connected *Noticees* cannot be considered as co-incidence. Matching of trade on stock exchanges works on the principle of anonymity, wherein parties to a trade are not expected to be known to each other and therefore, the circumstances of matching orders placed by such known persons/entities are very remote. However, where it is seen that the trades are executed between parties who enjoy connections amongst themselves directly or indirectly, the possibility of such matching of trade orders amongst connected entities presupposes the existence of a prior meeting of minds and on considering the frequency of matching of such trades as observed in this case, it can be reasonably held that the impugned trades were executed with an ulterior motive. I further note that, the time duration between the sell and buy orders placed by the seller *Noticees* followed by the buyer *Noticees* were very close (with a time difference of only a few seconds) and the seller Noticees have failed to plausibly explain such abnormal trading pattern

in the scrip. Considering the fact of *inter se* connections among the Noticees and their identical trading pattern, I reject their contentions in this regard.

41. The Noticees have contended that their trades have been cherry picked to fastened the charge of fraudulent trades upon them. In this regard, I note that the SCN has charged those trades of the Noticees, which has been executed by them with the connected group entities. Further, it has been established in above paras that through impugned trades, these Noticees have substantially contributed in the price rise of the scrip during relevant patches of the investigation period. It has to be therefore appreciated that the investigation did not have to scrutinize all the trades of the Noticees with a lens of suspicion as its focus was clearly on only those trades that are soaked with the twin elements i.e. connection with the counterparty and contribution to the LTP. I found that instead of offering explanations for executing impugned trades, the Noticees deliberately trying to divert attention to their other trades which were never a matter of investigation or of the SCN, hence, do not deserve to be deliberated now during instant proceedings. Considering the aforesaid facts, I am of a view that only manipulative trades of the Noticees have been considered for violations on the basis of connection among the Noticees and abnormal trading pattern and therefore, I reject such contentions of the Noticees.

42. From the available records, I note that during the relevant period, there were no significant corporate announcements made by the Company, which could have been considered to be boosting factors for the market sentiment pertaining to the scrip of the Company, so as to justify the abnormal price rise during the relevant period. The financial results pertaining to the performance of the Company were also not impressive during the period so as to entice the investors to trade in the securities of the Company and that too at a price higher than the LTP on a frequent basis. From Table 6 and 8 above, I note that, on a number of occasions the buyer Noticees have placed orders apparently with a view to match the pending sell orders, which were placed at a higher price. In this regard, I note that the buyer Noticees have not furnished any reason for placing their buy orders at such high price in a scrip which had no locus standi

in terms of financial performance or market fundamentals. Placing of order without any corroborative justification, rational or market linked support can lead to no other inferences other than that the said trades were placed only to match the pending sell orders so as to create a new higher LTP, every time such trades were executed by the Noticees. After considering all the relevant facts in the backdrop of the Noticees enjoying close connections amongst themselves, their acts of placing orders above the LTP only with a view to chase and match the pending sell orders coupled with the extremely narrow time gap in the execution of trades, indicates towards employment of a deceptive and manipulative device and scheme by the Noticees to manipulate the price of the scrip and give glimpse of misleading appearance of trading in the scrip during the relevant period of time.

43. With reference to question of standard of proof raised by the Noticees before me during the instant proceedings and the case laws relied upon by them, I note that the standard of proof in matters of fraud arising out of violation of the *SEBI Act, 1992* or the provisions of the Regulations framed thereunder, is actually the test of preponderance of probability, as has been laid down in the following judgments of the Hon'ble Supreme Court, wherein, it was held that:

<u>SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368</u>

"......While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. The conclusion has to be gathered from various circumstances like the volume of the trade affected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of

a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. ....”

SEBI vs. Rakhi Trading Pvt. Limited (MANU/SC/0096/2018)

“We are fortified in our conclusion by the judgment of this Court in Securities And Exchange Board of India v. Kishore R. Ajmera, though it is a case pertaining to brokers, wherein it has been held at paragraph 25:

> *“25. The SEBI Act and the Regulations framed thereunder are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors’ confidence in the capital/securities market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors’ confidence in the capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.”*

In this case it was also held that in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or the provision of the Regulations is concerned.”

44. Therefore, the Hon’ble Supreme Court while laying down the principle relating to evidentiary value has observed that in the absence of direct evidences, the attendant facts and circumstances which surround the allegations levelled

(against the *Noticees*) may also form the basis of an inference to prove culpability. The Hon'ble Supreme Court, in the said matter, while appreciating the purpose of SEBI Act, 1992 and the regulations framed thereunder, have observed that measures under the said enactments/regulations are taken to pre-empt manipulative trading and to contain the impermissible conduct so as to boost the investors' confidence in securities market. The Hon'ble Supreme Court, in yet another matter of *Kanaiyalal Baldev Bhai Patel vs. SEBI* (2017) 15 SCC 1, while analyzing the import of Regulation 2 (c) of *PFUTP Regulations, 2003* have observed that irrespective of the fact that an act is done in a deceitful manner, if such an act or omission has an effect of inducing another person to act in a manner, in which he would not have acted had such inducement not been there, such act will constitute a fraudulent act. Considering the aforesaid principle pronounced by the Hon'ble Supreme court and peculiar facts and circumstances of the instant case, I hold that, the trading pattern imparted by the Noticees in the scrip of the Company during Patch 3 and 5 of the investigation period were fraudulent and manipulative, and was designed to induce the investors in securities market, since a misleading picture of trading in the scrip of *the Company* at a higher price, has been painted before the public by their acts and trading behavior.

45. The Noticees have contended that neither BSE nor SEBI has questioned or raised alarm w.r.t. their impugned trades at the time of execution of trades. Further, in anonymous trading platform it is not possible to know the counterparty to their trades. In this regard, I note that the Hon'ble Supreme Court in *Rakhi Trading (supra)* case held that such undesirable transactions would certainly include unfair practices in trade and thus, orchestrated trades are a misuse of the market mechanism. Thus, the Noticee's contention regarding non availability of on-line preventive measure and checks and balances from BSE and SEBI is devoid of any merit and rejected hereby. In terms of foregoing findings, I further note that the trading pattern of the Noticees in terms of placing sell trades above LTP with a large variance in LTP and subsequently, placing of matching buy trades by other connected group entities and thus, resulting in significant (+) LTP contribution in the scrip, clearly

demonstrates the manipulative practice adopted by the Noticees by using the stock exchange platform to carry out orchestrated trades with the aim to execute such trades for various manipulative purposes. I note that the Hon'ble Supreme Court in the matter of *SEBI vs. Rakhi Trading Private Ltd.* (*supra*), held that - *"The platform of the stock exchange has been used for a non-genuine trade. ….The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors…. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

46. In view of the above discussion on issues no. I and II and in terms of peculiar facts and circumstances of this case, I found that Noticees No. 1 – 10 and 12 - 23 were instrumental in artificially sprucing the price of the scrip of the Company during respective Patch 3 and 5 of the investigation period, through their concentrated effort of placing orchestrated trades in the scrip. Therefore, I found the trading pattern of the Noticees No. 1 – 10 and 12 -23 in the scrip during Patch 3 and 5 of the investigation period to be manipulative and fraudulent, as through such manipulative and fraudulent trades they have manipulated the price of the scrip of the Company and have created misleading appearance of trading in the scrip of the Company during relevant period of time, and thus, these Noticees have violated the provisions of Sections 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4 (2) (a) and (e) of the PFUTP Regulations, 2003. Since, the allegation of violation of the aforesaid provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 stands established against the aforementioned Noticees, I hold these Noticees liable for penalty under Section 15HA of the SEBI Act, 1992. The provisions under Section 15HA of the SEBI Act reads as under: -

> *"15HA. 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."*

47. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as follows: -

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."

Explanation. *—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

48. Having regard to the factors listed in Section 15J of the SEBI Act and the guiding principles laid down by the Hon'ble Supreme Court in the matter of *SEBI v/s Bhavesh Pabari (Supra)*, it is noted from the material available on record, that quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. However, it is found in this case that 12 Noticees have contributed positive LTP of Rs. 63.05/- amounting to 15.61% of total market LTP through 9 impugned trades during Phase 3 of the investigation period; and 16 Noticees have contributed positive LTP of Rs. 171.00/- amounting to 10.80% of total market LTP through 39 impugned trades during Phase 5 of the investigation period. I further note that 3 seller Noticees *viz*. Noticees No. 10, 18 and 19 have sold the shares of the Company having net sell value of Rs. 3.46 crores, Rs 3.34 crores and Rs. 3.29 crores, respectively, during the relevant period. I also found that SEBI has initiated prosecution proceedings w.r.t. the aforesaid 3 Noticees. Considering the aforesaid facts and circumstances of this case, I am of a view that, through such fraudulent and manipulative trades, these connected Noticees were instrumental in artificially inflating the price of the scrip during Patch 3 and 5 of the investigation period and thus crated misleading appearance of trading in the scrip of the Company. Therefore, I am of the opinion that the fraudulent act as found in this case has a potential to defraud the investors and same cannot be in the interest of securities market.

49. The importance of curbing manipulative practices in the securities market has been stressed upon by no less than Hon'ble Supreme Court while delivering its judgments in various matters. The Hon'ble Supreme Court in the matter of *N. Narayanan v. SEBI* [(2013) 12 SCC 152] have *inter alia* observed that *"if market abuse is not properly curbed, then it would result in defeating the very object and purpose of SEBI Act. …..Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law."* Recently, in the matter of *Rakhi Trading v. SEBI* (*Supra*), the Supreme Court have held that *"The smooth operation of the securities market and its healthy growth and development depends upon large extent on the quality and integrity of the market. Unfair trade practices affect the integrity and efficiency of the securities market and the confidence of the investors."*

50. I note that, with regard to imposition of penalty, Noticee No. 23 has placed reliance upon the - i) order of Adjudication Officer in the matter of Gallops Enterprise Limited (Order No. EAD-8/KS/AA/AO/232/2018-1 dated 22.22019); and ii) judgement of Hon'ble SAT in the matters of P.G. Electroplast Ltd. & Ors. vs Sebi (order dated 2 August, 2019). I have perused the aforesaid order/ judgement and I note that, in matter of *Gallops Enterprise Limited (Supra),* Adjudicating Officer has found the error to be technical and devoid of *mala fide* intention. Similarly, Hon'ble SAT in *P.G. Electroplast Ltd. & Ors. vs Sebi (Supra)* held that imposition of penalty can be refused where there is a technical or venial breach of the Act. In this regard, I am of a view that default in this case is neither technical nor venial in nature. Further, Noticee No. 23 has not represented before me regarding technical and venial nature of her manipulative and fraudulent trades in the scrip. I am also of a view that no bona fide intention has been found by me with respect to the impugned trades in this case. Therefore, after considering peculiar facts and circumstances of this case, I found that both the judgement relied upon by the Noticee No. 23 is not applicable in this case.

51. I note that, the law does not permit any allowance to be made for such fraudulent act as found in this case. The fraudulent act as found in this case,

had clearly defeated the purposes of the Regulations i.e. investor protection and orderly development of the securities markets. While noting so, I am aware of the fact that the default in question in this case relates to a period of 2014 and 2015, and in my view sane can be a mitigating factor in this case. I have also perused the order dated March 19, 2021 of the Ld. WTM in the same matter on identical facts, wherein, Ld. WTM has found the foretasted fraudulent and manipulative trades of the aforesaid Noticees in violation of the SEBI Act, 1992 and the PFUTP Regulations, 2003 and accordingly, issued directions of prohibiting these Noticees from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for the period ranging from 6 months to 1 year, and same is another mitigating factor in this case. Considering the aforesaid facts and circumstances, I am of the view that the default by these Noticees is grave and the gravity of this matter cannot be ignored and therefore, this case deserves imposition of monetary penalty for the fraudulent act of the Noticees No. 1 – 10 and 12 – 23.

Order

52. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, the factors under 15J, the principle pronounced under the judgement of *Bhavesh Pabari (Supra),* the mitigating factors of delay and direction in member proceedings and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose following penalty under Section 15HA of the SEBI Act, 1992 on the following Noticees:

S.N.	Name of the Noticee	Penalty
1.	Maxtor Conclave Pvt Ltd. (Noticee No. 1)	Rs 200000/- (Rupees two Lakh Only)
2.	Blueview Tradevin Pvt. Ltd. (Noticee No. 2)	Rs 200000/- (Rupees two Lakh Only)
3.	Jain Nemi Minerals Pvt. Ltd. (Noticee No. 3)	Rs 100000/- (Rupees one Lakh Only)
4.	Keshavah Mercantile Pvt. Ltd. (Noticee No. 4)	Rs 200000/- (Rupees two Lakh Only)
5.	Frohar Trading Pvt. Ltd. (Noticee No. 5)	Rs 100000/- (Rupees one Lakh Only)
6.	Quickscope Dealers Pvt. Ltd. (Noticee No. 6)	Rs 200000/- (Rupees two Lakh Only)
7.	Ambuja Commosales Pvt. Ltd. (Noticee No. 7)	Rs 100000/- (Rupees one Lakh Only)
8.	Anil Kumar Agarwala HUF (Noticee No. 8)	Rs 100000/- (Rupees one Lakh Only)
9.	Ecstatic Merchandise Pvt. Ltd. (Noticee No. 9)	Rs 200000/- (Rupees two Lakh Only)

S.N.	Name of the Noticee	Penalty
10	Hari Mohan Beriwala(Noticee No. 10) Hari Mohan Beriwala and Others HUF (Noticee No. 18) Manju Beriwala (Noticee No. 19)	Jointly & Severally Rs 300000/- (Rupees three Lakh Only)
12.	Sapna Agarwala (Noticee No. 12)	Rs 100000/- (Rupees one Lakh Only)
13.	Dhanaasha Developers Pvt. Ltd. (Noticee No. 13)	Rs 100000/- (Rupees one Lakh Only)
14.	Panchmadhu Projects Pvt. Ltd. (Noticee No. 14)	Rs 100000/- (Rupees one Lakh Only)
15.	Nirdesh Trading Pvt. Ltd. (Noticee No. 15)	Rs 100000/- (Rupees one Lakh Only)
16.	Dhanaseth Properties Pvt. Ltd. (Noticee No. 16)	Rs 100000/- (Rupees one Lakh Only)
17.	Pragyan Realty Pvt. Ltd. (Noticee No. 17)	Rs 100000/- (Rupees one Lakh Only)
18.	Hari Mohan Beriwala And Others HUF (Noticee No. 18)	Refer S.N. 10
19.	Manju Beriwala (Noticee No. 19)	Refer S.N. 10
20.	Saurabh Kumar Agrawal Huf (Noticee No. 20)	Rs 100000/- (Rupees one Lakh Only)
21.	Sarda Solutions Pvt. Ltd. (Noticee No. 21)	Rs 100000/- (Rupees one Lakh Only)
22.	Proficient Managerial Solutions Pvt.Ltd. (Noticee No. 22)	Rs 100000/- (Rupees one Lakh Only)
23.	Sarwani Devi Modi (Noticee No. 23)	Rs 100000/- (Rupees one Lakh Only)

In my view, the aforesaid penalty commensurate with the violations committed by these Noticees in this case.

53. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

54. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to *"The Division Chief, EFD-DRA-V, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 051."* and also to e-mail id:- tad@sebi.gov.in:

1	Case Name	
2	Name of the ‘Payer/Noticee’	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for(like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

55. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

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

Date: June 30, 2022 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**