BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: EAD-9/SM/3479/38/2019-20]

ORDER 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 ADJUDICATION PROCEEDINGS INITIATED AGAINST SHYAM RATHI HUF [PAN: AAQHS7786D] IN THE MATTER OF SHREE SHALEEN TEXTILES LIMITED.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), initiated adjudication proceedings against Shyam Rathi HUF (hereinafter referred to as **"Noticee"**) for the alleged violation of the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**) by carrying out trading in the scrip of Shree Shaleen Textiles Limited (hereinafter referred to as **"SSTL or Scrip"**) which resulted into the alleged manipulation in the price of the scrip and created misleading appearance of trading in the scrip of SSTL.

2. SEBI had conducted the investigation in the matter relating to the trading activity of certain entities in the scrip of SSTL and the Noticee was one of these entities. The focus of the investigation was to ascertain whether there were any violations of the provisions of the SEBI Act and PFUTP Regulations. Shares of SSTL is listed on BSE Limited (hereinafter referred to as **"BSE"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide an order dated June 13, 2017, issued by SEBI, the undersigned has been appointed as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as **"SEBI Act"**) to inquire into and adjudge under Section 15HA of SEBI Act, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated December 13, 2017 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of the SEBI Act, on the Noticee for the alleged violation of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of PFUTP Regulations.

5. The Noticee did not file reply to the SCN within time as specified in the SCN. Therefore, in the interest of natural justice and in terms of Rule 4 of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on February 16, 2018, vide the Hearing Notice dated February 01, 2018. The Noticee vide its letter dated February 12, 2018 requested for extension of 4 weeks' time to file reply to the SCN and failed to attend the said hearing. The Noticee has also not file reply to the SCN. Subsequently, vide hearing Notice dated February 06, 2019 the Noticee has been granted another opportunity of personal hearing on March 11, 2019. However the Noticee has failed to appear for personal hearing on March 11, 2019. The Noticee vide its letter dated March 14, 2019 submitted that due to certain urgencies it could not attend the hearing

on the scheduled date and also requested to grant one more opportunity of personal hearing. With a view to give a final opportunity of personal hearing the Noticee was granted one more opportunity of personal hearing on April 02, 2019. However, the Noticee again did not appear for the personal hearing.

6. Consequently, the Noticee, vide its letter dated April 05, 2019 filed reply to the SCN. The relevant extracts of the aforesaid reply of the Noticee are *inter-alia* reproduced hereunder.

"……

- *At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said SCN except to the extent specifically admitted by us. Nothing contained in the said SCN may be deemed to be admitted by us by reason of non-traverse or otherwise, save and except what is expressly admitted herein. We deny all the statements, submissions, contentions, allegations and averments contained in the said SCN that are contrary to and / or inconsistent with what is stated herein below.*

- *The main allegations levelled against us in the SCN that our sale of 70 shares out of total sale of around 10,000 shares have contributed to market positive LTP of only 14.36% out of total market positive LTP.*

- *We would like to bring to your kind attention that along with the said SCN, we have also been issued Show Cause Notice dated July 26, 2017 under Section 11 (1), 11 (4) and 11B of the Securities and Exchange Board of India Act, 1992 in the scrip of Shree Shaleen Textiles Limited. It is submitted that issuing 2 (two) SCNs for the same offence amounts to double jeopardy, and is in gross violation of Article 20 (2) of the Constitution of*

India. Issue of 2 (two) Show Cause Notices in the same matter not only causes the mental and physical trauma, but also increases our legal costs for no reason.

- *We categorically deny that we have violated Regulations 3(a), (b), (c), (d); Regulation 4(1), 4(2)(a) and (e) of PFUTP Regulations.*

- *One of the net top 10 sellers which contributed to LTP - As regards being one of the sellers who have contributed to LTP, our submissions are as under:-*

  i) *To repeat the allegation, we would like to bring to your kind notice that it has been alleged that we have sold around 70 shares which have resulted into positive LTP of 12.98 and it is also 14.36% of the market positive LTP. It is submitted that we have sold a total quantity of 9870 shares and out of that only 70 shares had resulted in positive LTP.*

  ii) *We submit that we have sold around 9870 shares and our sale of only 70 shares have matched with buy order of some entity which has contributed to high LTP on the anonymous and screen based trading platform of the stock exchange. This matching of 70 shares is only 0.71 percentage of our total sale to warrant serious allegation of fraudulent and unfair trade practice.*

  iii) *We submit that this was purely unintentional and the SCN also does not allege any malafide intention on our part.*

  iv) *It is further submitted that the analysis of trade log reveals that we have entered the sale order after nearly four to five hours of the buy order being entered into the system. Further, for a trade to happen at the Stock Exchange, the buy order matches with the sell order or vice-versa and no malafide intention can be attributed for such kind of behaviour.*

v) *A brief snapshot of our trading as culled out from the trade log is as follows.*

Trade Date	Client Name	CP Client Name	Order Time	CP Order Time	Trade Time	Difference (S>B)	Trade Rate	LTP Rate	LTP %	Qty.
19-10-2012	Bimla Aggarwal	Shyam Rathi HUF	09:15:00	14:28:02	14:28:02	05:13:02	20.7	0.98	4.97	10
08-11-2012	Pravinchandra N Shah	Shyam Rathi HUF	09:15:00	12:59:52	12:59:52	03:44:52	23.9	1.1	4.82	10
21-11-2012	Bhanwarlal Babulal Suthar	Shyam Rathi HUF	09:15:01	10:48:38	10:48:38	01:33:36	27.6	1.3	4.94	10
07-01-2013	Taran Kumar Rungta	Shyam Rathi HUF	09:15:00	14:11:33	14:11:33	04:56:33	42.5	2	4.94	10
17-01-2013	Girdhari Kumar Agrawal	Shyam Rathi HUF	09:15:00	14:38:01	14:38:01	05:23:01	51.55	0	0	10
01-02-2013	Rajesh Maganbhai Bhajlwala	Shyam Rathi HUF	09:15:00	15:05:19	15:05:20	05:50:19	68.9	3.25	4.95	10
22-02-2013	Rajat Share Broking Pvt. Ltd.	Shyam Rathi HUF	09:15:00	10:52:53	10:52:53	01:37:53	92.1	4.35	4.96	10

vi) *The above trade log reveals that our trades which have contributed to positive LTP are not on daily basis and there is a lot of gap between the two trades. Further, the buy order was entered in the system in the morning and we have entered the sell order after nearly four to five hours which have matched with the buy orders.*

vii) *Our sale order of 70 shares on various dates matched with various buyers which establishes that there was no concerted effort to manipulate the price and to warrant serious allegation of fraudulent and unfair trade practice.*

viii) *We submit that we sold shares on electronic, faceless and electronic platform approved by SEBI. We further submit that we have told our broker namely Systematix Shares and Stock Brokers to enter the orders on the anonymous trading platform of the stock exchanges and by no stretch of imagination we would be aware about the counter party.*

ix) The trade log reveals that at majority times, we have entered sale order much after the buy order and there is no allegation of synchronized trades on us.

x) No action has been taken or initiated by SEBI against the buyers with whom our orders matched since they have also contributed to the rise in price.

xi) We sold the shares through SEBI registered stock broker on the electronic, faceless and anonymous trading platform of the stock exchange wherein the counter party is not known, hence, the allegation is baseless and is based on surmises and conjectures.

xii) It is submitted that we have sold the shares in tranches as we wanted to maximize the profit and further, neither there is any rule to sell or buy the shares at one go nor any embargo to sell or buy the shares in tranches. Every investor has got its own investment pattern as per the wisdom, current market scenario and economic scenario etc. to allege any kind of wrong doing.

xiii) We deny that we have contributed to positive LTP to attract the provision of Regulation 3 & Regulation 4 of PFUTP Regulations and deny that we have violated Regulations 3(a), (b), (c), (d); Regulation 4(1), 4(2)(a) and (e) of PFUTP Regulations.

- *We submit that neither any detailed investigation has been carried out nor the statement of buyers and sellers were recorded to unearth the full scheme, artifice, device etc. devised by any of the entities. We would like to state that this is in violation of justice, equity and good conscience.*

- *As per analysis of price volume, as taken out from the website of the Stock Exchange, it is observed that there was a gradual increase in price of the scrip and not a sudden spurt in price and volume to allege any kind of price manipulation to warrant any allegation of fraudulent and unfair trade practice.*
- *We further submit that we traded in the ordinary course of our investment and no adverse inference should be drawn against us for the same. We submit that at the time of dealing in the market through the faceless, electronic trading platform of the stock exchange, it is not possible to know the counter party and any kind of allegation of any connection is unfounded and baseless. As a small investor, we do not have the wherewithal to know the counter party and SEBI with all the wherewithal, sophisticated system at its disposal and having all the investigation powers can unearth the truth. With such background to connect a small investor to the counter party is totally uncalled for, baseless and appears to be far- fetched. We would further like to submit that it is totally flawed and misconceived. The investigation has been carried out with complete non-application of mind and the allegation levelled are self - contradictory and untenable.*
- *The above establishes that SCN is bad in law and SEBI has transgressed its powers in issuing the said SCN which is without any basis and is based on surmises and conjectures.*
- *The said SCN gives a totally skewed picture by clubbing our trading with trading of other entities which we have done in normal course of business on the anonymous trading platform of the stock exchanges without knowing name and details of other entities involved. We submit that transaction was entered into through our stock broker in the anonymous trading platform of the stock exchange and there is no repetitive pattern of the transactions to charge us with creation of artificial market volume as has been decided in one of the cases mentioned below.*

- *It is submitted that charge of fraudulent and unfair trade practices under the provisions of the Regulations is a serious charge and cogent proof should be available to charge any person with that. In this context, your attention is invited to Adjudication Order No. MRD/MK/1-512017-2018 in the matter of Nova Petrochemicals Limited wherein it has been observed that*

  "19. I find that it is not the case that orders were placed on daily basis which is normally the case when a person intends to create artificial volumes or intends to create misleading appearance of trading in market. Therefore, in the circumstances, it cannot be inferred that orders were placed with manipulative intent.

  20. The orders placed by the noticees are not on daily basis, sequential, directional to create an artificial volume so as to induce others to trade in the stock and had not caused significant impact on last traded price of the scrip. Also, the quantum of orders by the noticees is not of such magnitude vis-a-vis total volume in the scrip of NPL on daily basis that it could adversely affect equilibrium of the market as a whole in terms of price or liquidity in stock of NPL."

- *We submit and reiterate that our volume in the scrip of Shree Shaleen is 0.01% of the total volume (i.e nearly NIL), it cannot be alleged that we have indulged in fraudulent or unfair trade practice or have created false or misleading appearance of trading in securities market, and further we have traded on the trading platform provided by the stock exchange and regulated by SEBI itself.*

- *It is submitted that charge of fraudulent and unfair trade practices under the provisions of the Regulations is a serious charge. In this context your attention is invited to Order dated June 19, 2012 passed by Securities Appellate Tribunal in the matter of Networth Stock broking Ltd vs SEBI (SAT Appeal No 5 of 2012):*

"6. .... This Tribunal has been consistently holding that violation of FUTP regulations involves commission of fraud which is indeed a serious market offence and a high degree of probability is required to establish such a charge".

- *In view of the submissions made above, it is denied that we have contributed to positive LTP since our sale of only 70 shares out of total sale of around 10,000 shares have matched with buy orders.*

- *It is further respectfully submitted that, we have not committed any wrong and no charge has been established against us to warrant any action. There has been no violation of any of the provisions of PFUTP Regulations. The allegations in the Notice do not flow out of the factual position and are based on mere surmises and conjectures therefore cannot be legally sustained. It is, therefore, humbly prayed that the present proceedings under Show Cause Notice dated December 13, 2017 may be dropped; we may be discharged from the same, no penalty to be levied and an order may be passed accordingly.*

- *While considering our submissions it may be noted that we have not made any gains or gained any unfair advantage and further the SCN has also not quantified the alleged profit made by us and/or loss averted by us. It is further submitted that no harm or loss has been caused to any investor and that we have transacted in the scrip of Shree Shaleen in the ordinary course and based on our independent commercial wisdom.*

- *In view of the above submissions and contentions, it is vehemently denied that we have contravened the provisions of Regulations 3(a), (b), (c), (d); Regulation 4(1), 4(2)(a) and (e) of PFUTP Regulations.*

Legal Submissions

- *We would like to bring your kind attention to the following orders passed by various Hon'ble Courts/ Hon'ble SAT:*

  a. *In a similar case of "Prashant J Patel Vs SEBI", SAT vide its order dated 17.8.2010 has held that "if one were to assume.......... while executing the synchronized trades, we cannot lose sight of the fact that it were the clients who were actually trading in the scrip and that the appellant as a broker was only carrying out their directions. If that were so, we are surprised that none of the clients has even been questioned in regard to the impugned trades let alone being charged for executing synchronized trades. Since no action has been taken against any of the clients, it would be reasonable to assume that the Board treated them as innocent and found nothing wrong with their trades which were only executed by the appellant. It is quite paradoxical that persons who actually executed the trades with which fault has been found have not been proceeded against and the broker who only carried out the instructions of the clients and executed the trades on the trading system has been found guilty. We are, therefore, of the considered view that since the clients have not even been questioned, the appellant alone cannot be held guilty of executing synchronized trades."*

     In the same case Hon'ble SAT also held that "It must be remembered that violation of FUTP regulations involves commitment of fraud which is, indeed, a serious market offence and a high degree of probability is required to establish such a charge. It is by now well settled that the foundation of an enquiry under the enquiry regulations is a valid notice and the charge levelled therein has to be clear, precise and unambiguous....... so that the delinquent knows what exactly he is charged with and that the enquiry should not travel beyond the charge *as levelled. The charge of fraud must be substantially proved as laid and that when one kind of fraud is charged, another kind of fraud cannot, upon the failure of proof, be substituted for it". This has been so held by their Lordships of the Supreme Court in Brijendranath Srivastava vs. Mayank Srivastava and Others (1994) 6 SCC 117".*

b. *Varanasaya Sanskrit Vishwa Vidyalaya & others V. Dr Rajkishore Tripathi and Anr. (1977 AIR 615, 1977 SCR (2) 213, 1977sec (JJ 279). The Hon'ble Court held that:*
"General allegations are insufficient even to amount to an averment of fraud or which only court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion"

c. *Kapil Chatrabltuj Bizuptani vs. Securities and Exchange Board of India (Appeal 95 of 2013) The Hon'ble SAT held that:*
"It is stated that unless some connection between the counterparties is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium".

d. *HB Stockholdings Limited vs SEBI [2013 SCC Online SAT 56: [2013] SAT 44] "17. ... It may be noted that synchronization of trades is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants"*

e. *Order dated 15.02.2012 passed by Hon'ble Securities Appellate Tribunal in the matter of Shri Kamlesh R Shah Vs. SEBI (Appeal No. 192 of 2011)*

"6. The next argument of the learned counsel for the appellant is with regard to the quantum of punishment. It was submitted by the counsel that under similar circumstances, the Board had let off the delinquent with warning I censure whereas in the case of the appellant, penalty of prohibition from taking new clients for a period of one month has been imposed. According to the learned counsel for the appellant the penalty is disproportionate to the gravity of violation and is not consistent with treatment given by the Board to other intermediaries who were found to have committed similar violations. In support, he has relied on the order passed by the Board on January 18, 2006 in the case of M/s. Prabhudas Lilladher Private Limited, order dated October 19, 2011 in the case of Jyotish Bhogilal Stock Brokers Private Limited and this Tribunal's order dated January 29, 2004 in Appeal no. 102 of 2003 in the case of Prakash K. Shah Shares & Securities Pvt. Ltd. vs. Securities and Exchange Board of India. He has also placed on record copies of certain press releases of the Board where, for similar violation the delinquents have been let off with warning. We have perused a few orders of warning passed by the respondent and these are not disputed by the learned counsel for the Board. Two orders viz. order pertaining to M/s. Prabhudas Lilladher Private Limited and Jyotish Bhogilal Stock Brokers Private Limited pertain to the same scrip and same period of investigation. The nature of violation alleged is also identical. It is expected that the regulator will give similar treatment to the persons I market intermediaries who are found to have committed similar violations. Nothing has been brought on record to show as to why appellant deserves a harsh punishment. The consequence of the

punishment imposed on the appellant is far-reaching as compared to punishment meted out to other similarly placed persons.

7. Taking into account the punishment imposed by the Board in more or less similar cases, we feel it appropriate to modify the penalty to that of warning. The impugned order is modified accordingly with no order as to costs.

f. *In the matter of M/s Sumedha Fiscal services Limited versus SEBI decided on 20th October, 2004 (Appeal Number 53/2003), the Hon'ble SAT has held as under:*

"8 ....0ne of the minor penalties as per 13(l)(a)(i) is warning or censure. We feel that as in more or less similar cases, the respondent was issued a strict warning.
9. ....

10. In the facts and circumstances of the case, we modify the impugned order and substitute it by imposing a minor penalty under 13(l)(a)(i) and hereby give a strong warning to the appellant. The impugned order is modified accordingly. The appeal is disposed of No order as to costs."

Prayer:

- *In light of the aforesaid submission, your Honor is kindly requested that since we have not violated any provisions of PFUTP Regulations, the present proceedings under Show Cause Notice dated December 13, 2017 be dropped, no penalty be charged against us, we be discharged from the present proceedings and an order be passed accordingly.*

- *We crave to leave, add or modify our submissions and to refer to and rely upon case laws as and when required. We also request that an opportunity to appear in person through an authorized representative may also be granted to us and make submissions, before any order is passed in the matter.*

7. In view of the aforesaid request of the Noticee and in the interest of natural justice, the Noticee was granted one more opportunity of personal hearing on June 24, 2019, vide hearing Notice dated June 13, 2019. The said Noticee of Hearing was also forwarded to the Noticee on email ID of the Noticee i.e. shyamrathi1@gmail.com. However, the Noticee again failed to attend the said Hearing.

8. I note that despite the Noticee has been provided ample opportunities (four times) of personal hearing it has not come forward to avail any of the opportunity. Therefore, I am inclined to proceed with the matter on the basis of the material available on record and the reply submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS

9. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:

   1) Whether the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of PFUTP Regulations?

   2) Whether the Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act?

   3) If yes, then what should be the quantum of monetary penalty?

10. It is pertinent to mention here the relevant provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of PFUTP Regulations, allegedly violated by the Noticee:-

Regulation 3. Prohibition of certain dealings in securities.

"No person shall directly or indirectly—

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

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

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

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

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

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

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

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

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

11. It is preliminary contention of the Noticee that along with the present SCN, it has also been issued another SCN dated July 26, 2017 under Section 11 (1), 11 (4) and 11B of the SEBI Act in the scrip of SSTL. It is submitted that issuing two SCNs for the same offence amounts to double jeopardy, and is in gross violation of Article 20 (2) of the Constitution of India.

12. I note that it is settled position that in order to claim the protection of Article 20(2) it is necessary to show that - (a) there was a previous prosecution, (b) as a result of which the accused was punished, and (c) the punishment was for the same offence. Unless all the three conditions are fulfilled, Article 20 (2) of the Constitution of India is not attracted.

13. The words 'offence', 'prosecution' and 'punishment' in the context of Article 20(2) of the Constitution of India contemplate proceedings of criminal nature before a court of law. The Hon'ble High Court of Bombay in the matter of ***SEBI Vs. Cabot International Capital Corporation (2004)*** to Comp L J held that *"the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi - criminal proceeding. The penalty leviable under this Chapter or under these sections is penalty in cases of default or failure of statutory obligation or in other words, breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the regulations, there is not element of criminal offence or punishment as contemplated under criminal proceedings."*

14. The Hon'ble Supreme Court in ***Shriram Mutual Fund & Anr. {Appeal (civil) 9523-9524 of 2003}***, has also held that adjudication proceedings under SEBI Act are civil proceedings.

15. Further, the provisions of the SEBI Act permit parallel proceedings for adjudication and directions under Section 11 of the SEBI Act. In this regard, it is pertinent to mention here the observations of the Hon'ble SAT's in the matter of ***Sunita Gupta Vs. SEBI in the Appeal No. 193 of 2016 decided on April 21, 2017*** in which the Hon'ble SAT in its judgement had observed that:

"Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."

16. Therefore, I am of the view that the principle of double jeopardy do not apply to the instant proceedings and I do not find merit in the said contention of the Noticee.

17. The Investigations have observed from the notice of SSTL available on the BSE website, that SSTL issued 4,75,000 shares at Rs.205.00 to 36 entities other than Promoters on conversion of warrants on November 15, 2011. These shares were under lock-in till November 14, 2012. On September 10, 2012, SSTL made preferential allotment of 31,35,000 shares at Rs.11.50 to 45 entities other than Promoters (lock-in up to September 10, 2013).

18. On the basis of analysis of price rise / fall and corporate actions in the scrip of SSTL, for the period March 30, 2012 to March 05, 2013 the investigations have observed that price of the scrip of SSTL increased from Rs.4 (Opening Price) as on March 30, 2012 to Rs.111.85 (High Price and Close Price) as on March 05, 2013. Further, with ex-date of March 06, 2013, SSTL sub-divided face value of shares from Rs.10/- to Rs.2/. It is further observed that as on March 31, 2012, 85.34% of the share capital of SSTL (5,76,050 shares out of 6,75,000 shares) were held in physical form or with entities which had converted warrants (shares issued on conversion of warrants were under lock-in till November 14, 2012). The following was observed with regard to top 10 sellers LTP (Last Traded Price) analysis in the scrip of SSTL.

		Net LTP			Pos. LTP			Negative LTP			Zero LTP		% of +ve LTP to Mkt +ve LTP
PAN	Name	Net LTP	Trade Qty	No.of Trades	Pos. LTP	Trade Qty	No.of Trades	Neg. LTP	Trade Qty	No.of Trades	Trade Qty	No.of Trades	
AHQPK9496D	Anjana Arun Karwa	14.03	322	11	14.03	322	11	0.00	0	0	0	0	15.52
AAQHS7786D	Shyam Rathi Huf	12.98	70	7	12.98	60	6	0.00	0	0	10	1	14.36
AABPG5669E	Jayeshkumar Narottamdas Gandhi	12.45	95	4	12.45	95	4	0.00	0	0	0	0	13.77
AAEHN5511R	Nishith M Shah Huf	11.00	75	3	11.00	75	3	0.00	0	0	0	0	12.17
AAFPG5855L	Bharati Jayesh Gandhi	8.58	110	6	8.58	110	6	0.00	0	0	0	0	9.49
AISPG4164H	Deval Jayesh Gandhi	6.33	60	4	6.33	60	4	0.00	0	0	0	0	7.00
AEJPK2394G	Maheshkumar Ghewarchand Vanigota	4.80	10	1	4.80	10	1	0.00	0	0	0	0	5.31
ABXPH7639E	Vishnu Daji Hode	4.15	30	1	4.15	30	1	0.00	0	0	0	0	4.59
AFDPG6008E	Kajal Sunil Gowadia	3.95	10	1	3.95	10	1	0.00	0	0	0	0	4.37
AEXPG4216P	Shivani Amit Gowada	3.60	10	1	3.60	10	1	0.00	0	0	0	0	3.98
Total		**81.87**	**792**	**39**	**81.87**	**782**	**38**	**0.00**	**0**	**0**	**10**	**1**	**90.57**
Market		**107.85**	**9947**	**137**	**107.85**	**1617**	**69**	**0.00**	**0**	**0**	**8330**	**68**	**100.00**

19. The Investigations further observed that with the low volume, price of the scrip was increased and substantial positive LTP contribution (90.57% of market positive LTP) was contributed by top 10 net LTP contributors as sellers. In this regard, sell orders of the top 10 net sell LTP contributors contributing more than 5% of the positive LTP in more than one trade were analysed. Following is observed in respect of dealings of the Noticee in the scrip of SSTL during the period from October 19, 2012 to February 22, 2013.

Order date	Order time	Order No.	Sell Client name	Sell order rate	sell order qty	pending buy order at this price	LTP variation	Shareholding before sell order as per Demat Account	No. of trades in a day
19.10.2012	14:28:01.6451320	12000137306719	Shyam Rathi HUF	20.70	10	12400	0.98	2000	1
08.11.2012	12:59:51.9531050	14000166185657	Shyam Rathi HUF	23.90	10	10450	1.10	2000	1
21.11.2012	10:48:37.5987580	20000155097056	Shyam Rathi HUF	27.60	10	11400	1.30	1990	1
07.01.2013	14:11:32.5943260	21000115156755	Shyam Rathi HUF	42.50	10	7950	2.00	1980	1
17.01.2013	14:38:00.6779280	18000151141983	Shyam Rathi HUF	51.55	10	15170	0.00	1970	2
01.02.2013	15:05:19.4532060	13000101138449	Shyam Rathi HUF	68.90	10	11200	3.25	1970	1
22.02.2013	10:52:53.2637550	20000128100987	Shyam Rathi HUF	92.10	10	63160	4.35	1960	1
Period: 19.10.2012 to 22.02.2013; No. of Trades: 7; LTP contribution: 12.98 (14.36% of Pos. LTP Cont.)									

20. From the table above, it was observed that Noticee has sold miniscule quantity of shares (10 shares) in-spite of holding more shares and having more buy demand at the price that Noticee placed the sell orders. It can also be observed that Noticee has not executed more than one trade in a day as a seller. Further, aforesaid trades were the only trades executed during the day, except on one occasion. By these trades, Noticee has matched the prevailing buy orders which were placed at the prices higher than the LTP and contributed to increase in the price of the scrip with each of its trades.

21. It is the main contention of the Noticee that its miniscule quantity of trades over the LTP in the scrip did not attributed to price manipulation. Further, in support of

the aforesaid contention, the Noticee has also made reference of several case laws as mentioned in its reply dated April 05, 2019.

22. I note from the material made available on record that the Noticee has executed 6 sell trades out of 7 sell trades in the scrip during the period from October 19, 2012 to February 22, 2013 which were over the LTP. Noticee's LTP contribution in the scrip is Rs.12.98/- which is 14.36% of positive LTP contribution in the scrip. The Noticee is the second highest individual LTP contributor during the said period as a seller. I further note that though the Noticee was holding substantial number of shares in the range of 1960 – 2000 shares during the said period, it was releasing miniscule quantity of shares (10 shares) even though there were large pending buy orders over the LTP. The days when the Noticees had executed the said 6 trades, pending buy orders were in the range of 7,950 shares to 63,160 shares. It is observed that when the Noticee was trading, which is almost 4 months, the scrip was traded only on 32 days i.e., there were many days when the scrip was not traded. Out of the said 32 trading days on 26 trading days only 1 trade was executed in the scrip and out of the remaining 6 trading days, on 2 trading days 2 trades were executed. This coupled with the fact that the average volume in the scrip during the period from March 30, 2012 to March 05, 2013 of the investigation period which spanned almost a year, was 142 shares, would make a prudent investor to sell the shares at the very first opportunity that he/she is coming across. In the given situation, there were considerable buy order quantity pending in the system and that too over the LTP. It is not the case of the Noticee that on multiple occasions it had placed sell orders for more than 10 shares and the order was not executed. Rather in the instant case, the Noticee's sell orders were placed after buy orders, so it could very well see that there were pending buy orders in the system for more than 10 shares on all the occasions but still the Noticee chose to execute its sell trades in miniscule quantity. The

aforesaid facts and circumstances indicate that the Noticee's behavior was not that of a reasonable seller and defies economic rationality.

23. Further, the Noticee has submitted that it has sold around 9,870 shares during the period of investigation and our sale of only 70 shares have matched with buy order of some entity which has contributed to high LTP. This matching of 70 shares is only 0.71 % of our total sale to warrant serious allegation of fraudulent and unfair trade practice. Further, our volume in the scrip of SSTL is 0.01% of the total volume (i.e. nearly NIL). In this regard, I note that the extant matter is about manipulation of the price of the scrip by trading in miniscule quantity over the LTP. Therefore, the trading pattern of the Noticee (during the period of investigation from March 30, 2012 to March 05, 2013) which had an impact on the LTP has been taken into consideration rather than its overall trading in the scrip. As stated in preceding paragraphs, Noticee is the second highest contributor to the net LTP as a seller and has contributed 14.36% of positive LTP to market positive LTP. Further, as it is a price manipulation matter, volume of the trade executed compared to overall volume in the scrip, is not the only criteria / consideration that has to be taken into account before arriving at the finding of price manipulation.

24. The Noticee further submitted that trades which have contributed to positive LTP are not on daily basis and there is a lot of gap between the two trades. As noted above, the scrip had traded only on 32 days during the period October 19, 2012 to February 22, 2013. Out of the said 32 trading days, Noticee has executed trades over the LTP on 6 days, i.e., on every 5th day when the scrip was traded. The same indicates that the Noticee was executing trades in the scrip at frequent interval.

25. The Noticee has further contented that no action has been taken by SEBI against the buyers with whom our impugned trades matched. Further contended that

neither any detailed investigation has been carried out nor the statement of buyers and sellers were recorded to unearth the full scheme, artifice, device etc. devised by any of the entities. We would like to state that this is in violation of justice, equity and good conscience.

26. The said contentions of the Noticee are not tenable as, I note that there is no ambiguity in the Investigations in fact it is a clear case of manipulative selling pattern adopted by the Noticee which has resulted in higher LTP in the scrip of SSTL and thereby the Noticee manipulated the price of the scrip and created misleading appearance of trading in the scrip. It is noted that price discovery happens in the scrip with each trade of the Noticee. The Noticee has contributed Rs.12.98 to the price of the scrip which is 14.36% of positive LTP contribution. In the present case, the Noticee has indulged in manipulation of price in the scrip of SSTL which is prohibited under the securities laws. The claim of the Noticee that the buyers were not charged who had also participated in influencing the price of the scrip, itself should not be a ground for escaping the Noticee from the aforesaid contraventions.

27. Needless, to say that trades at higher than LTP, have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on miniscule quantities traded. Further, every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures.

28. At this juncture, it is pertinent to note that in the matter of ***SEBI Vs. Kishore R Ajmera*** decided on February 23, 2016, wherein the Hon'ble Supreme Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as under:

"In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

29. Noticee has contended that it was not aware about the counter parties to its trades in the scrip. In this regard, I note that the extant matter is not based on the connection between the Noticee and the counter parties, rather on the manipulative transactions carried out in the scrip. As observed by Hon'ble Apex Court in the matter of ***SEBI vs. Kishore R Ajmera*** *(supra)*, totality of the attending facts and circumstances surrounding the allegations has to be seen to arrive at a conclusion. In the instant matter Noticee was repeatedly entering sell orders for miniscule quantity inspite of having substantial holding and large pending buy orders in the system. All the aforesaid facts, indicates that the Noticee is not a genuine trader in the scrip and its trades in the scrip cannot be held to be in the normal course of trading.

30. The Noticee denied the alleged violations of the provisions of Regulations 3(a), (b), (c), (d) and 4(1), 4 (2) (a) and (e) of the PFUTP Regulations. I note that the scheme, plan, device and artifice employed by the Noticee in this case of executing minuscule trades above the LTP in the scrip at irrational prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market mechanism. The non-genuine and deceptive transactions of the Noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2 (1) (c) of PFUTP Regulation and prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) PFUTP Regulations, thereof.

31. It is pertinent to mention here the order of Hon'ble SAT dated March 21, 2014 in the matter of ***Saumil Bhavanagari v/s SEBI*** stating that *"It is amply clear that although the scrip was available at a lower price, the Noticees bought them at a higher price only with a view to give false representation to the general public about the rise in price of the scrip. This was done repeatedly done by the Noticees. Such trades undoubtedly have a potential of raising the price of the scrip by sending a wrong signal to the gullible investors about the activity of price hike in the scrip. ---------------------------. This was done evidently with ulterior motives, because if shares were available for a lesser price, there was no reason to place orders at a price higher than the LTP and if orders at price higher than LTP were placed on account of the financial status of the company then there was no reason to place some orders below LTP."*

32. In light of the above and based on the trading pattern of the Noticee in the scrip, it is found that the same is not genuine but is manipulative in nature. The findings that have been gathered from various circumstances for instance overall trades executed in the scrip (number of trading days and number of trades), volume of

the trade effected by the Noticee *vis-à-vis* its holding, the period of trading in the scrip, the particulars of the buy order in the market and Noticee's sell orders, the totality of the picture that emerges leads to the conclusion that Noticee by executing the aforesaid sell trades has manipulated the price of the scrip and has created a misleading appearance of trading in the scrip. Therefore, I find that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations. The aforesaid violation of PFUTP Regulations by the Noticee attract monetary penalty under Section 15HA of the SEBI Act, which at the time of the violation committed by the Noticee, *inter-alia* reads as follows:

"Penalty for fraudulent and unfair trade practices.

***15HA**. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."*

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

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
(b) the amount of loss caused to an investor or group of investors as a result of the default
(c) the repetitive nature of the default

[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.]"*

34. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant….."*

35. It is difficult, in case of such nature, to quantify with mathematical precision the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. However, I note the Noticee has executed 6 sell trades out of 7 sell trades in the scrip during the period from October 19, 2012 to February 22, 2013 which were over the LTP. Noticee's LTP contribution in the scrip was Rs.12.98/- which is 14.36% of positive LTP contribution in the scrip. I note that though the Noticee was holding substantial number of shares (in the range of 1960 – 2000 shares) but it was releasing miniscule quantity of shares (10 shares) even though there were large pending buy orders over the LTP. I note that such trades for miniscule quantity executed by the Noticee over the LTP in the scrip are manipulative and misleading in nature, it is also held that such trades are fraudulent in nature and would operate as deceit upon any person trading in the scrip. Considering, the aforesaid, I am of view that it was deliberately increasing the price of the scrip of SSTL and created misleading appearance of trading in the scrip.

36. Such trading pattern of the Noticee, which was fraudulent and deceptive, affects the normal price discovery mechanism in the securities market. People who

indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for such acts of omissions and commissions.

ORDER

37. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs.4,00,000/- (Rupees Four Lakh Only) on the Noticee viz. Shyam Rathi HUF in terms of Section 15HA of the SEBI Act, for the violation of the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) and (e) of PFUTP Regulations for indulging in the manipulation of the scrip price and created misleading appearance of trading in the scrip of SSTL.

38. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this Order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-IV), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
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)	

39. 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.

40. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : June 25, 2019
Place : Mumbai

Sahil Malik
Adjudicating Officer