SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/2022-23/18056 - 18059

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 Surabhi Chemicals & Investments Limited (now known as Superspace Infrastructure Ltd.)

In respect of:

S. No.	Name of the Entity	PAN
1.	Kailash Kumar Lakhani	AEJPL9185Q
2.	Saroj Devi Lakhani	ABXPL5522C
3.	Abhisek Bhutra	AIYPB8751D
4.	Gita Devi Bhutra	AEFPB1709Q

*(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. 1- 4 and collectively as "***Noticees***", unless the context specifies otherwise)*

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1. An investigation was conducted by Securities and Exchange Board of India (hereinafter to be referred as "***SEBI***") into the trading activities in the scrip of Surabhi Chemicals & Investments Limited (now known as Superspace Infrastructure Ltd.) (hereinafter to be referred as "***Surabhi / Company***") for the period of August 01, 2013 to January 06, 2015 (hereinafter to be referred as **"Investigation Period"**) to ascertain possible violation, if any, of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter to be referred as "***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. 2.52/- on August 10, 2012, and reached a price of Rs. 59.35/- on April 09, 2013. After stock split in 10:1 ratio, price of the scrip opened at Rs. 6.00/- on April 10, 2013, reached a high of Rs. 123.00/- on December 02, 2014 and closed at Rs. 99.40/- on January 06, 2015. Based on price volume movements, 3 patches, patch-1 (August 10, 2012 to April 09, 2013), patch-2 (April 10, 2013 to September 04, 2013) and patch-3 (September 05, 2013 to January 06, 2015) were identified during the investigation period.

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

<u>Table-1: Price-Volume movement in scrip of Surabhi</u>

<table>
<tr><th colspan="2">Dates</th><th>Open (Rs)</th><th>Close (Rs.)</th><th>Low (Date) (Rs.)</th><th>High (Date) (Rs.)</th><th>Avg. no. of (shares) traded daily during the period.</th></tr>
<tr><td rowspan="2">10/08/12 - 09/04/2013 (Patch-1) Price rise- Pre Split</td><td>Price</td><td>2.52</td><td>59.35</td><td>2.52 (10 Aug 12)</td><td>59.35 (09 Apr 13)</td><td rowspan="2">287</td></tr>
<tr><td>Vol.</td><td>100</td><td>30</td><td>0 (13 Aug 12)</td><td>31,620 (26 Mar 13)</td></tr>
<tr><td rowspan="2">10/04/2013 - 04/09/2013 (Patch-2) Price rise – Post-split</td><td>Price</td><td>6.00</td><td>38.35</td><td>6.00 (10 Apr 13)</td><td>38.35 (04 Sep 13)</td><td rowspan="2">286</td></tr>
<tr><td>Vol.</td><td>150</td><td>225</td><td>1 (20 Aug 13)</td><td>5,730 (28 Aug 13)</td></tr>
<tr><td rowspan="2">05/09/2013 – 06/01/2015 (Patch-3) Price Rise – Post Split</td><td>Price</td><td>39.10</td><td>99.40</td><td>39.05 (05 Sep 13)</td><td>123.00 (02 Dec 14)</td><td rowspan="2">320,336</td></tr>
<tr><td>Vol.</td><td>27,400</td><td>473,063</td><td>873 (12 Sep 13)</td><td>1,124,725 (02 Dec 13)</td></tr>
</table>

(c) Price of the scrip closed at Rs.99.40 on January 06, 2015. Trading in the scrip was suspended with effect from January 07, 2015.

(d) It was observed that Noticees No. 1 to 4 have traded in the scrip of the Company as a seller during Patch 2 of the investigation period and their Last Traded Price ("**LTP**") contributions in the scrip as a seller during Patch 2 is as follows:

<u>Table-2: LTP contribution of the Noticees in scrip of Surabhi</u>

Seller Name	**Total No. of trades**	**Total No. of trades (LTP >0)**	**Total no. of orders**	**Sell order qty range**	**Trade Quantity**	**Positive LTP contribution (Rs.)**	**% of positive LTP to Total Market positive LTP**	**No. of shares held before these trades**	**Balance no. of shares held after LTP trades in Patch 1**
Kailash Kumar Lakhani	19	13	19	5 - 55	426	5.43	16.69%	1000	0
Saroj Devi Lakhani	22	10	22	2 - 50	335	4.52	13.89%	1000	660

Abhisek Bhutra	19	12	19	5 - 50	350	4.11	12.63%	1000	0
Gita Devi Bhutra	3	3	3	10 - 50	85	0.87	2.67%	1000	0
Total	**63**	**38**	**63**		**1196**	**14.93**	**45.88%**	**4000**	**660**

(e) During patch-2 price of scrip opened at Rs. 6.00/- on April 10, 2013 and reached a high of Rs. 38.35/- on September 04, 2013 and closed at price of Rs. 38.35/- on September 04, 2013 with a net LTP of Rs. 32.35/- and a market positive LTP of Rs. 32.54/- with a total traded volume of 29,130 shares.

(f) Kailash Kumar Lakhani (Noticee No. 1) and Saroj Devi Lakhani (Noticee No. 2) are found to be connected with each other through common UCC address and phone number. Similarly, Abhishek Bhutra (Noticee No. 3) and Gita Devi Bhutra (Noticee No. 4) were connected with each other through common UCC address and phone number. Details of their trade analysis is as follows:

i. **Kailash Kumar Lakhani (Noticee No. 1) and Saroj Devi Lakhani (Noticee No. 2):** It was observed from the trading of these two Noticees that, they were repeatedly placing sell orders for small order quantity across different days, when buy order at prices higher than last traded price and for large quantity was pending in the scrip. They have traded on 32 days with total 41 trades during Patch 2 and through their 23 trades out of 41 trades, they contributed positive LTP in the scrip. Further, each of these 23 positive LTP contributing trades were first trade of the day. It was observed that their total LTP contribution in the scrip during Patch 2 was Rs. 9.95/-, which was 30.58% of the total market positive LTP in the scrip of the Company. Details of Noticees No. 1 and 2, positive LTP trades during patch 2 is as follows:

Table-3: Positive LTP trades of Noticees No. 1 and 2 in scrip during Patch 2

TRADE DATE	Seller Name	Buy Order Time	Sell Order Time	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Buy Order QTY	Sell Order QTY	Trade QTY
10/06/2013	Kailash Kumar Lakhani	10:30:01	10:34:08	12.34	12.34	12.34	0.24	0.74%	300	25	25
11/06/2013	Kailash Kumar Lakhani	10:30:00	10:51:45	12.58	12.58	12.58	0.24	0.74%	500	40	40
19/06/2013	Kailash Kumar Lakhani	11:30:00	11:50:52	14.14	14.14	14.14	0.27	0.83%	3000	55	55
20/06/2013	Kailash Kumar Lakhani	10:30:00	10:33:20	14.42	14.42	14.42	0.28	0.86%	3000	35	35
21/06/2013	Saroj Devi Lakhani	10:30:00	10:58:24	14.7	14.7	14.7	0.28	0.86%	3000	25	25
24/06/2013	Saroj Devi Lakhani	10:30:00	10:57:51	14.99	14.99	14.99	0.29	0.89%	3000	35	35
01/07/2013	Saroj Devi Lakhani	09:30:00	09:36:43	16.5	16.5	16.5	0.30	0.92%	3000	8	8
02/07/2013	Kailash Kumar Lakhani	10:30:02	10:38:59	16.8	16.8	16.8	0.30	0.92%	18500	10	10

TRADE DATE	Seller Name	Buy Order Time	Sell Order Time	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Buy Order QTY	Sell Order QTY	Trade QTY
05/07/2013	Kailash Kumar Lakhani	10:30:00	10:57:00	17.7	17.7	17.7	0.30	0.92%	3000	15	15
09/07/2013	Kailash Kumar Lakhani	12:30:00	12:42:54	18.4	18.4	18.4	0.35	1.08%	3000	10	10
11/07/2013	Saroj Devi Lakhani	11:30:00	11:59:16	19.1	19.1	19.1	0.35	1.08%	3000	6	6
18/07/2013	Saroj Devi Lakhani	12:30:00	12:34:17	20.95	20.95	20.95	0.40	1.23%	3000	8	8
29/07/2013	Kailash Kumar Lakhani	10:30:00	10:33:08	23.9	23.9	23.9	0.45	1.38%	3000	15	15
02/08/2013	Kailash Kumar Lakhani	11:30:00	11:31:02	25.75	25.75	25.75	0.50	1.54%	1000	10	10
06/08/2013	Saroj Devi Lakhani	11:30:00	11:34:07	26.75	26.75	26.75	0.50	1.54%	1500	25	25
07/08/2013	Saroj Devi Lakhani	11:30:00	12:03:13	27.25	27.25	27.25	0.50	1.54%	440	16	16
08/08/2013	Kailash Kumar Lakhani	14:30:00	14:31:07	27.75	27.75	27.75	0.50	1.54%	1500	15	15
12/08/2013	Saroj Devi Lakhani	14:30:00	14:47:51	28.3	28.3	28.3	0.55	1.69%	1500	50	50
23/08/2013	Kailash Kumar Lakhani	09:30:00	09:45:57	32.9	32.9	32.9	0.60	1.84%	1336	50	50
26/08/2013	Saroj Devi Lakhani	09:30:00	09:59:24	33.55	33.55	33.55	0.65	2.00%	1116	5	5
29/08/2013	Kailash Kumar Lakhani	11:30:16	11:33:37	35.5	35.5	35.5	0.65	2.00%	5000	15	15
30/08/2013	Saroj Devi Lakhani	11:30:00	12:11:56	36.2	36.2	36.2	0.70	2.15%	500	40	40
04/09/2013	Kailash Kumar Lakhani	10:30:38	10:34:55	38.35	38.35	38.35	0.75	2.30%	5000	25	25

ii. **Abhishek Bhutra (Noticee No. 3) and Gita Devi Bhutra (Noticee No. 4)**: It was observed from the trading of these two Noticees that, they were repeatedly placing sell orders for small order quantity across different days, when buy order at prices higher than last traded price and for large quantity was pending in the scrip. They have traded on 19 days with total 22 trades during Patch 2 and through their 15 trades out of 22 trades, they contributed positive LTP in the scrip. Further, each of these 15 positive LTP trades were first trade of the day. It was observed that their total LTP contribution in the scrip during Patch 2 was Rs. 4.98/-, which was 15.30% of the total market positive LTP in the scrip of the Company. Details of Noticees No. 3 and 4, positive LTP trades during patch 2 is as follows:

Table-4: Positive LTP trades of Noticees No. 3 and 4 in scrip during Patch 2

TRADE DATE	Seller Name	Buy Order Time	Sell Order Time	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Buy Order QTY	Sell Order QTY	Trade QTY
12/06/2013	Abhisek Bhutra	10:30:01	10:42:35	12.83	12.83	12.83	0.25	0.77%	100	50	50
18/06/2013	Gita Devi Bhutra	10:30:00	11:04:28	13.87	13.87	13.87	0.27	0.83%	3000	25	25
25/06/2013	Gita Devi Bhutra	10:30:00	10:33:56	15.28	15.28	15.28	0.29	0.89%	3000	50	50
26/06/2013	Abhisek Bhutra	10:30:00	11:04:20	15.58	15.58	15.58	0.30	0.92%	3000	25	25
27/06/2013	Abhisek Bhutra	11:30:00	11:40:37	15.89	15.89	15.89	0.31	0.95%	3000	15	15
28/06/2013	Gita Devi Bhutra	10:30:00	11:12:19	16.2	16.2	16.2	0.31	0.95%	3000	10	10
03/07/2013	Abhisek Bhutra	10:30:00	10:31:05	17.1	17.1	17.1	0.30	0.92%	3000	10	10
04/07/2013	Abhisek Bhutra	09:30:00	09:51:34	17.4	17.4	17.4	0.30	0.92%	3000	15	15
08/07/2013	Abhisek Bhutra	10:30:00	11:04:36	18.05	18.05	18.05	0.35	1.08%	3000	15	15

TRADE DATE	Seller Name	Buy Order Time	Sell Order Time	Buy Order Rate	Sell Order Rate	Trade Rate	LTP Diff	%LTP	Buy Order QTY	Sell Order QTY	Trade QTY
10/07/2013	Abhisek Bhutra	12:30:00	12:30:27	18.75	18.75	18.75	0.35	1.08%	3000	10	10
12/07/2013	Abhisek Bhutra	11:30:01	12:03:19	19.45	19.45	19.45	0.35	1.08%	18500	25	25
16/07/2013	Abhisek Bhutra	11:30:00	12:02:26	20.15	20.15	20.15	0.35	1.08%	3000	10	10
17/07/2013	Abhisek Bhutra	10:30:00	10:45:49	20.55	20.55	20.55	0.40	1.23%	3000	15	15
19/07/2013	Abhisek Bhutra	10:30:00	10:49:52	21.35	21.35	21.35	0.40	1.23%	3000	30	30
30/07/2013	Abhisek Bhutra	10:30:00	11:13:14	24.35	24.35	24.35	0.45	1.38%	3000	25	25

(g) It was observed from the table no. 3 and 4 that, at time of each of the aforementioned trades, buy orders for large quantity of shares were available but the Noticees No. 1 to 4, respectively, were repeatedly placing sell orders for small quantity of shares and contributed to significant positive LTP in the scrip of the Company during relevant period of time.

3. In view of the above, it has been alleged that the Noticees have released limited number of shares of the Company and matched the buy orders, which were above the LTP and available in large numbers, with small quantities or single digit sell orders on several instances. Therefore, it has been alleged that there was no *bona fide* intention on the part of the Noticees to sell their holdings in the Company, instead they have traded to mark the price of the scrip higher than LTP and manipulate the price of the scrip of the Company during Patch 2 of the investigation period. Thus, by indulging in such fraudulent and manipulative act, it has been alleged that the Noticees have created misleading appearance of trading and price rise in the scrip and subsequently, have violated the provisions of 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 PFUTP Regulations, 2003 are as follows:

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

4. 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 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 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*'.

5. 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 21, 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.

6. On receipt of records, it was observed that the SCN was forwarded *via* Speed Post Acknowledgement Due ("***SPAD***") to the Noticees and duly served upon them. Details of service of SCN and filing of written replies to the SCN is tabulated as follows:

Table-5

Notice	SCN Delivery Date	Written Reply/ Additional Written Submissions
Kailash Kumar Lakhani	24/07/2018	30/07/2018, 05/07/2021 and 21/07/2022.
Saroj Devi Lakhani	24/07/2018	30/07/2018, 05/07/2021 and 21/07/2022.
Abhisek Bhutra	28/05/2018	08/06/2018, 19/11/2018, 05/07/2021 and 21/07/2022.
Gita Devi Bhutra	28/05/2018	07/06/2018, 19/11/2018, 05/07/2021 and 21/07/2022.

7. After considering the replies of the Noticees and in terms of Rule 4(3) of the Adjudication Rules, the Noticees have been granted opportunity of personal hearing on April 16, 2021. After seeking adjournment, authorised representative for all 4 Noticees i.e. Mr. Vikas Bengani, Advocate appeared for hearing before me on July 08, 2021 and advanced the arguments on the basis of respective written reply of the Noticees and made oral submissions as well. Hearing was conducted online *via* WEBEX platform and hearing concluded on July 08, 2021 w.r.t. the Noticees in this case.

8. Since, substantial time elapsed from the last date of hearing, vide e-mail dated June 22, 2022, an opportunity has been extended to the Noticees to make additional written submissions, if any, in the matter. Accordingly, vide e-mail dated July 01, 2022, Mr. Bengani requested for the copy of the investigation report along with other material collected during the course of investigation. Accordingly, in terms of principle pronounced by Hon'ble Supreme Court vide judgement in the matter of *T Takano vs SEBI* (order dated 18/02/2018), vide e-mail dated July 08, 2022, relevant portion of the Investigation Report (hereinafter referred to as "**IR**") after redacting non-relevant part has been provided to authorised representative Mr. Bengani. Subsequently, vide e-mail dated July 21, 2022, Mr. Bengani filed additional written submissions on behalf of the Noticees.

9. The submissions made by the Noticees No. 1 to 4, vide their written replies and additional written submissions to the SCN and oral submissions during the instant proceedings *inter alia* are as follows:

   A. **<u>Common Contentions of the Noticees</u>**

      a. The Noticees have requested for providing requisite documents and data collected during the course of investigation and further requested to provide copy of the complete IR. However, the requests of the Noticees were not acceded. Later on vide e-mail dated July 08, 2022, the Noticees were provided with the copy of the IR. However, most of the part of the IR have been hidden. For example, SEBI has received references/letters from Economic Policy and Action, SEBI, Director of Income Tax (Investigation), Financial Intelligence Unit etc. However, none of these documents have been shared with the Noticees. Therefore, by not providing the crucial and vital documents referred to and relied upon in the IR, the principles of natural justice have been breached which vitiates the whole purpose of fair and transparent proceedings initiated by SEBI against the Noticees.

      b. Para 18 of the IR states that, findings *qua* the Noticees are provided on page numbers 12 to 19 of the IR, however, most of the part was redacted and therefore, same is against the principle of fair and transparent proceedings. In this regard, Noticee has placed reliance upon the judgement of Hon'ble Supreme Court in the matter of *T. Takano (Supra).*

c. SEBI has not received any reference against the Noticees from any agency.

d. SEBI is not comparing the Noticees +ve LTP contribution with total market +ve LTP contribution during entire period of investigation. Instead, SEBI is comparing the Noticees' +ve LTP with total market +ve LTP contribution during one Patch only. This vitiate entire calculation. The Noticees' +ve LTP contribution was too insignificant, if it is compared with total market +ve LTP contribution during entire period of the investigation.

e. SEBI failed to establish any connection in between the Noticees and the Company / its Promoters / its Directors / its Key Managerial Persons / counterparties to the trades of the Noticees. Noticees are not counterparty to their trades, hence the allegation of connection is baseless and no relevance at all. Reliance has been placed upon the judgement of Hon'ble SAT in the matters of *Premchand Shah & Ors. vs. SEBI* (Date of decision 21/02/2011), *Narendra Ganatra vs. SEBI* (Date of decision 29/07/2011) and *Smitaben N. Shah vs. SEBI* (Date of decision 30/07/2010).

f. SCN is bad in law as the same has been issued after a period of more than 5 years after execution of trades by the Noticees. This highly prejudices the case of the Noticees as justice delayed is justice denied. The Noticee has placed reliance upon the judgements of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Mr. Ashok Shivpal Rupani & Ors* (Appeal Nos. 417 and 440 of 2018), *Anilkumar Nandkumar Harchandani & Ors. vs. SEBI* (Appeal No. 75 of 2019), *Mr. Rajiv Bhanot & Ors. vs SEBI* (Appeal No. 396 of 2018, Order dated 09-07-2021), *Shriram Insight Share Brokers Ltd* (Appeal No. 559/2020, Order dated 04-01-2022) and *Yatin Pandey HUF v/s SEBI* (Appeal No. 719 of 2021). In 3 of these cases, Hon'ble Supreme Court has dismissed the appeal of SEBI filed against the order of Hon'ble SAT.

g. Kanudia Capital and Management Services Private Limited had contributed Rs. 2532.15 to +ve LTP (16.88% of market positive LTP) in the scrip of Nikki Global Finance Limited. Still the Kanudia Capital was given clean chit by SEBI as the Kanudia Capital was not found connected with any entities / Promoter / Director and / or the Company. In present case also, the Noticees are not facing any allegation of connection with Company or its Promoters and Director or counterparties to their trades. Thus, the ratio laid down by the Ld. WTM, SEBI vide his Order dated 26-02-2021 in the matter of Nikki Global squarely applies to the case of Noticees also.

h. All the trades executed by them were in normal course of business based on commercial wisdom and no fraudulent or manipulative practice can be alleged against them for such trades. There is no evidence or finding in the SCN that, they were colluding with the other alleged group entities or there was a prior meeting of minds to manipulate the price of the scrip of the Company. The SCN has been issued based on mere surmises and conjectures without any iota of evidence against them, based on which they have been alleged to have violated the said PFUTP Regulation.

i. Admittedly, they have no connection or relation with the counterparty's buyer and no such allegation of connection / relation / connivance have been made in the entire SCN. Reliance has been placed upon the judgement of Hon'ble SAT in the matters of *Vikas Ganshmal Bengani vs. SEBI* and *Jagruti Securities Limited vs. SEBI* (Appeal no. 102 of 2006 decided on October 27, 2008).

j. Hon'ble SAT vide order dated June 14, 2021 set aside the Ld. WTM order dated 27-01-2021 passed against Noticees No. 3 and 4 in parallel 11B proceedings based on same facts and circumstances. Admittedly, allegation in both the proceedings are common. Please note that Hon'ble Supreme Court has not granted any stay to SEBI against the aforesaid order passed by Hon'ble SAT. Since the Order of the Ld. WTM has been set aside by the Hon'ble SAT there is no scope for passing adverse Order against the Noticees as your goodself is bound to obey the Order of the Hon'ble Tribunal.

k. It is submitted that the lot size of the scrip of Company is 1 and therefore, it is upon the buyer or seller to place the order quantity at their own wish and not depending on the counter party's order quantity. In any event the charge of manipulation cannot be based on the order quantity of any entity, it has to be based on the trades or the trading pattern of such entity.

l. They were seller and were placing their sell order based on the best available price pending in the system. Their sell orders were based on the buy order which were already pending in the system. As a seller, they would sell the shares at the highest buy order rate pending in the system. Same is a common market practice and based on their legitimate transaction no adverse inference can be drawn against them.

m. Allegation of contribution to positive LTP can be alleged only against a buyer who has placed order at a price higher than LTP. Strangely, no allegation has been made against the buyers/ counter parties to their sale in the SCN. In fact, it appears that no proceeding has been initiated against any of the buyers / counterparties.

n. The allegation against sellers for contribution to positive LTP collapses, when it is evident that (i) no connection/ relationship is established between the counter parties; (ii) no action has been taken against the buyers who placed the buy order above LTP and contributed to positive LTP.

o. SEBI has ignored and overlooked the various corporate announcements during the Investigation Period as set out in Para-5 which inter alia includes (a) payment of interim dividend, purchase of land, taking up infrastructure project and awarding of infrastructure project to contractor etc. Definitely, the said announcement would have impacted the price and volume in the shares.

p. 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.

q. For proving charge of violation of the PFUTP violation, higher degree of proof or evidence is required. Reliance has been placed upon the judgements of Hon'ble Supreme Court in the matter of *Varanasaya Sanskrit Vishwa Vidyalaya &Anr. Vs. Dr.Rajkishore Tripathi, M.S.Bindra V* vol (1998) 7 SCC 310, *Nandakishore Prasad v. State of Bihar* (1978) 3 SCC 366 *and Anr, Union of India v. H. C. Goel* (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), *Ambalal v. Union of India* AIR 1961 SC 264, *Gulab D chand V Kudilal* (AIR 1966 SC 1734) and *Bank of India v. Degala Surya Narayana* (AIR 1999 SC 2407); judgements of

Hon'ble SAT in the matters of *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003), *Kapil Chaturbhuj Bhuptani vs. SEBI* (Appeal No. 95 of 2013), *HB Stock Holdings Ltd. vs. SEBI* (Appeal No. 114 of 2012), *Jagruti (Supra)*, *Moneygrowth Investment and Consultants Pvt. Ltd. vs. SEBI* (Order dated 27th August, 2008) and *M/s Nishith M Shah (HUF) SEBI* (Appeal No. 97 of 2019); judgement of Ld. Whole Time Member ("**WTM**") of SEBI in the matter of *Essar (India) Ltd.* (order dated 31/05/2019); and several orders of Adjudicating Officers of SEBI.

r. It is not alleged that they have been benefitted in any manner from such alleged manipulation. They have not made any gains or gained any unfair advantage and have not caused loss to investors or anybody.

B. **Common Reply of Noticees No. 1 and 2:**

a. Both Noticees share relationship of son and mother and both were trading in the scrip of the Company in ordinary course.

b. It is an admitted fact that the price of the scrip was increasing continuously. It was increasing on those days also when the alleged Noticees including us were not participated in trading. Contribution of the Noticees of Rs 9.95/- to +ve LTP is negligible in compare to gross +ve LTP of Rs 2,229.66/- during the investigation period.

c. Out of 57 trades during patch 2, only 23 have been alleged to manipulative trades placed during 10/06/2013 to 04/09/2013 and no allegation have been made for the trades executed on or after 05/09/2013. From the analysis of trade and order log data, it is revealed that they have placed sell order in the range of 2 to 200 shares and their 59% trades were at par to the LTP. They have sold total 2000 shares during the entire investigation period.

C. **Common Reply of Noticees No. 3 and 4:**

a. Both Noticees share relationship of son and mother and both were trading in the scrip of the Company in ordinary course.

b. It is an admitted fact that the price of the scrip was increasing continuously. It was increasing on those days also when the alleged Noticees including us were not participated in trading. Contribution of the Noticees of Rs 4.98/- to +ve LTP is negligible in compare to gross +ve LTP of Rs 2,229.66/- during the investigation period.

c. Noticees have executed 22 sell trades in the scrip during Patch 2, which have been alleged to manipulative trades placed during 12/06/2013 to 30/07/2013 and no allegation have been made for the trades executed after 30/07/2013.

CONSIDERATION OF ISSUES AND FINIDNGS:

10. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees No. 1 to 4 made during the instant proceedings before me and I find that in this case, the following issues require consideration: *Whether the acts of trading in the scrip of the Company by the Noticees No 1 to 4 during Patch-2 of the Investigation Period have resulted in violations of the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4 (1) and 4 (2) (a) and (e) of PFUTP Regulations, 2003?*

11. I further note that, the Noticees 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 Noticees as follows:

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

a. The Noticees have stated that the SCN in this matter has been issued after a period of more than 5 years after execution of trades by the Noticees and same has caused highly prejudices to the Noticees. In this regard, I note that, on September 04, 2014, Department of Economic Policy and Action ("**DEPA**") carried out the study of the "*Anomalies in the price discovery of selected small stocks*" and Surabhi was one of the Company among others against whom the investigation was recommended on November 17, 2014. SEBI had also received references from Department of Income Tax alleging sharp price rise in the scrip of the Company and use of Stock Exchange mechanism for generating bogus Long Term Capital Gain ("**LTCG**"). Thereafter, on preliminary analysis of the data pertaining to the Company, a formal investigation for investigation period i.e. from January 01, 2013 to December 30, 2014 was initiated against the Company. Thereafter, an extensive investigation was carried out by SEBI. The said investigation included various entities and detailed analysis carried out of fund flows, bank account statements, fund trails, preferential allotments and fund movements related to the same, Unique Client Code ("UCC") details; information sought from banks, exchange, depositories and various entities and thereafter analyzing the documents and records supplied by them, trade log and order log, etc. Subsequently, the final investigation report was presented and the action was approved on September 28, 2017. Thereafter, Shri Jeevan Sonparote (erstwhile Adjudicating Officer) was appointed as Adjudicating Officer, vide communication order dated April 04, 2018. Subsequently, on receipt of records, the SCN to the Noticees have been issued on May 21, 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 21, 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 Supreme Court and 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 *Mr. Ashok Shivpal Rupani (Supra)*, *Anilkumar Nandkumar Harchandani (Supra)*, *Mr. Rajiv Bhanot & Ors. (Supra)*, *Shriram Insight Share Brokers Ltd (Supra)* and *Yatin Pandey HUF (Supra)*. In this regard, I note that, in the judgement in the matter of *Ashlesh Gunvantbhai Shah* (*(Order dated 31.1.2020)*), 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 question would depend on the facts of each case.</u> 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 this regard, 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. 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. **Requisite/ Incomplete Documents has been provided during the proceedings:**

a. The Noticees have contended that they have not been provided complete copy of the Investigation Report and most part of the IR have been hidden. Therefore, by not providing the crucial and vital documents referred to and relied upon in the IR, the principles of natural justice have been breached. In this regard, I note that, during the proceedings, the Noticees have been provided with all the relied upon and relevant documents such as – details of their trades, extracts of trades, UCC details and relevant portion of IR (after redacting the non-relevant part), etc., during the proceedings. Further, the references/letters from Economic Policy and Action, SEBI, Director of Income Tax (Investigation), Financial Intelligence Unit etc., were not with respect to the Noticees, instead they were pertaining to bogus trading ongoing in scrip and were related to other entities, and therefore, those documents were not found to be relevant for the purpose of instant proceedings. I further note that page numbers 12 to 19 of the IR, contains the details of other entities (against whom order has already been passed or they are not Noticee before me), therefore the details of those entities (third party) was found to be non-relevant, and accordingly same has been redacted from the investigation report. In this regard, I note from the judgement of Hon'ble Supreme Court in the matter of *T. Takano (Supra)* relied upon by the Noticees, wherein, Hon'ble Apex Court has *inter alia* held that – "*The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market….. Where some portions of the enquiry report involve information on thirdparties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market…. The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause. However, this does not entitle the appellant to receive sensitive information regarding third parties and unrelated transactions that may form part of the investigation report.*"

b. Considering the principle pronounced vide the aforesaid judgement of the Hon'ble Supreme Court, I note that, the relevant and relied upon material w.r.t. to the charges framed against the Noticees in this case has been provided to them during the instant proceedings and therefore, principle of natural justice has been duly complied with and thus, I reject such contentions of the Noticees.

C. **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 or evidence 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 3 patches of the investigation period; ii) para 5 provide details of the connections between the Noticees No. 1 & 2, and & 4; and discuss in detail about the price rise during the investigation period, LTP contributions of the Noticees, Noticees role in price rise of the scrip being a seller and in creation of misleading appearance of trading in the scrip through their trading patterns and thus, the violations of relevant provisions of the PFUTP Regulations; and iv) para 6 provides details of the charging provisions. I further note that, the SCN has been accompanied with the copies of UCC data received from BSE, copies of CDSL statements, details of off-market transactions, details and relevant extract of trades, 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 PFUTP Regulations and same has been clearly spelt out in the SCN. The connection between the Noticees and the analysis of their trades during relevant period of time has been brought out in detail in the SCN. The charging provisions for aforementioned violations of the PFUTP Regulations has been mentioned in SCN and I note that there is no ambiguity regarding the same. Therefore, in my view charges brought out in the SCN are based on proper and identifiable evidence, which are the information and details pertaining to the respective Noticees. Further, none of the Noticees have disputed the aforesaid evidence before me during the instant proceedings. The Noticees have placed reliance on the rulings of several judgements of Hon'ble Supreme Court in the cases of *Varanasaya Sanskrit Vishwa Vidyalaya &Anr. Vs. Dr. Rajkishore Tripathi, M.S. Bindra V* vol (1998) 7 SCC 310, *Nandakishore Prasad v. State of Bihar* (1978) 3 SCC 366 *and Anr, Union of India v. H. C. Goel* (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), *Ambalal v. Union of India* AIR 1961 SC 264, *Gulab D chand V Kudilal* (AIR 1966 SC 1734) and *Bank of India v. Degala Surya Narayana* (AIR 1999 SC 2407); judgements of Hon'ble SAT in the matters of *KSL & Industries Ltd. vs. SEBI* (Appeal No. 9 of 2003), *Kapil Chaturbhuj Bhuptani vs. SEBI* (Appeal No. 95 of

2013), *HB Stock Holdings Ltd. vs. SEBI* (Appeal No. 114 of 2012), *Jagruti (Supra)*, *Moneygrowth Investment and Consultants Pvt. Ltd. vs. SEBI* (Order dated 27th August, 2008) and *M/s Nishith M Shah (HUF) SEBI* (Appeal No. 97 of 2019); judgement of Ld. Whole Time Member ("**WTM**") of SEBI in the matter of *Essar (India) Ltd.* (order dated 31/05/2019); and several orders of Adjudicating Officers of SEBI. I have perused the aforesaid judgements relied upon by the Noticees and I found that the 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 Noticees that the charge in the SCN is vague or not clear or the SCN is not supported with proper evidence and based on surmises and conjectures.

D. **Hon'ble SAT order dated June 14, 2021 w.r.t. Noticees No. 3 and 4 in parallel 11B proceedings is binding upon Adjudicating Officer**

a. The Noticees have contended that, Hon'ble SAT vide order dated June 14, 2021 has set aside the Ld. WTM order dated January 27, 2021 w.r.t. Noticees No. 3 and 4. The aforesaid order of the Ld. WTM was passed in parallel 11B proceedings based on same facts and circumstances and admittedly, allegation in both the proceedings are common. Since the said order of the Ld. WTM has been set aside by the Hon'ble SAT, there is no scope for passing adverse order against the Noticees as adjudicating officer is bound to obey the order of the Hon'ble SAT. In this regard, I note that, proceedings for issuing directions under Sections 11(4) and 11B read with 11(1) of the SEBI Act, 1992 and adjudication proceeding under sections 15A to 15HB of the SEBI Act and under section 23 of the Securities Contracts (Regulation) Act, 1956 are entirely different set of proceedings. Further, under SEBI Act, 1992 there is no bar on initiation of multiple proceedings against same set of Noticees for the violations arising out of the same facts and violations in a particular case. In this regard, I observe that Hon'ble SAT in the matter of *Ms. Sunita Gupta vs SEBI* (Appeal No. 269 of 2018; order dated 19.09.2019) has *inter alia* held that – *"it is well established now that SEBI is empowered to initiate multiple proceedings in the same matter"*. Further, Hon'ble SAT in the matter of *Gurmeet Singh vs SEBI* Hon'ble SAT had held that – *"Powers conferred on the WTM of SEBI under Section 11 & 11B of SEBI Act are different from the powers conferred on the Adjudicating Officer* *of SEBI to impose penalty for the violations enumerated in Chapter VIA of the SEBI Act. Therefore, fact that the appeals filed by the appellants against the order passed by the WTM of SEBI were pending before this Tribunal, did not preclude SEBI from initiating penalty proceedings against the appellants."*

b. I further note that, there is no specific stay on the instant proceedings from Hon'ble SAT or any other court. Accordingly, considering the aforesaid principle, in my view, an adjudicating officer being an independent authority can proceed with the matters based on merit of the case, until and unless there is specific stay on the proceedings. I also note that an appeal has been filed by SEBI before the Hon'ble Supreme Court against the aforesaid order of Hon'ble SAT vide civil appeal no. 5950 of 2021. Therefore, in view of the aforesaid facts and circumstances and on considering the said order of Hon'ble SAT, **I note that the outcome of my instant order will achieve finality on conclusive determination of the aforesaid appeal** (*filed by SEBI against Hon'ble SAT order dated June 14, 2021*) **by the Hon'ble Supreme Court**. ***(emphasis implied)***

12. Coming to the merit of the case, I note that, it has been alleged that Noticees No. 1 and 2 and Noticees No. 3 and 4 are connected entities on the basis of common address and phone number; and through their fraudulent and manipulative trades in the scrip of the Company during Patch 2 of the investigation period, they have violated the respective provisions of the PFUTP Regulations. In this regard, I note that, admittedly Noticees No. 1 and 2 and Noticees No. 3 and 4 share close blood relationship of son and mother between them. Further, these Noticees have not disputed their trades in the scrip of the Company during Patch 2 of the investigation period. During Patch 2, net LTP contribution in the scrip is Rs. 32.35/- and market +ve LTP contribution is Rs. 32.54/- with a traded volume of 29,130 shares. From Table 2, I note that Noticees No. 1, 2, 3 and 4 contributions in positive LTP to total market positive LTP in scrip during patch 2 is 16.69%, 13.89%, 12.63% and 2.67%, respectively. Together, these Noticees have contributed 45.88% to total market positive LTP in the scrip through 38 trades for 1,196 shares, wherein, their trades were in range of 2 – 55 shares, respectively. Further, when taken together, Noticees No. 1 and 2 through their 23 positive LTP trades contributed Rs. 9.95/- in the scrip during Patch 2, which was 30.58% of the total market positive LTP in the scrip of the Company; and Noticees No. 3 and 4 through their 15 positive LTP trades contributed Rs. 4.98/- in

the scrip during Patch 2, which was 15.30% of the total market positive LTP in the scrip of the Company.

13. I note from further analysis of 23 trades of Noticees No. 1 and 2 (*refer table 3*), that they were repeatedly placing sell orders for small order quantity across different days, when buy order at prices higher than last traded price and for large quantity was pending in the scrip. Similar trading pattern was also adopted by Noticees No. 3 and 4 (*refer table 4*), while trading in the scrip of the Company during Patch 2. For illustration, on July 02, 2013, Noticee No. 1 has placed sell order of 10 shares at 10:38:59, matching already pending buy order of 18,500 shares placed at 10:30:02 at LTP difference of Rs 0.30 i.e. 0.92% of total market LTP in the scrip. Similarly, on August 26, 2013, Noticee No. 2 has placed sell order of 5 shares at 09:59:24, matching already pending buy order of 1,116 shares placed at 09:30:00 at LTP difference of Rs 0.65 i.e. 2% of total market LTP in the scrip. In similar manner, on July 03, 2013, Noticee No. 3 has placed sell order of 10 shares at 10:31:05, matching already pending buy order of 3,000 shares placed at 10:30:00 at LTP difference of Rs 0.30 i.e. 0.92% of total market LTP in the scrip and on June 28, 2013, Noticee No. 4 has placed sell order of 10 shares at 11:12:19, matching already pending buy order of 3,000 shares placed at 10:30:00 at LTP difference of Rs 0.31 i.e. 0.95% of total market LTP in the scrip.

14. I further note that Noticees No. 1 and 2 have contributed to 30.58% of the total market positive LTP in the scrip through their 23 trades, which have resulted in sale of 538 shares (against the corresponding total demand of 68,192 shares), which were just 1.84% of the total market volume in the scrip during Patch 2. Similarly, Noticees No. 3 and 4 have contributed to 15.30% of the total market positive LTP in the scrip through their 15 trades, which have resulted in sale of 330 shares (against the corresponding total demand of 57,600 shares), which were just 1.13% of the total market volume in the scrip during Patch 2.

15. In all of the above cases, it has been observed that these Noticees have matched already pending buy orders in large quantity and above LTP with their sell orders in small quantity. Interestingly, all 38 buy orders were placed on 38 different days around a fixed time i.e. either at 09:30 AM or 10:30 AM or 11:30 AM or 12:30 PM or 02:30 PM. Not only that, all these matched orders of the Noticees in the scrip were first matched orders of respective trading day. It is also observed that these Noticees have taken turns amongst them while executing trades and have executed one transaction at a time on different trading days which resulted in continuous increase in the price of the share of the Company. It is

observed that out of those alleged 38 trades, the Noticees have not placed any orders or executed any trades together on the same day. On the contrary, the trading pattern shows that they have acted apparently under a pre-conceived scheme and have placed order turn by turn on different days. It shows that there was concerted effort and understanding among the Noticees, wherein, each of the Noticees was matching the pending buy order on different dates at higher LTP than the previous day and thus, they were instrumental in artificially raising the price of the scrip upward.

16. The Noticees have raised a point before me that as a seller they were placing their sell order based on the best available price pending in the system and same is a common market practice. In this regard, I buy their arguments with regard to seller psychology of matching order with the higher available price, however, while noting so, when I look into the trading pattern followed by these Noticees, while trading in the scrip of the Company during Patch 2, there are enough doubt raised regarding non-genuine and abnormal pattern of trading followed in this case and discussed in detailed above. Such as 38 orders on 38 trading days resulting into first matching order of the day and all 38 orders resulting into upward movement in the price of the scrip. Not only that, on none of the 38 days, these Noticees have placed trades simultaneously. It also shows that the these Noticees have placed their orders with a view to distort the market mechanism and not as prudent investors, who would have otherwise tried to deal in the scrip with a motive to either consolidate their holding or to make profit through their *bona fide* trades executed in normal course of trading in the market. However, the strange way of placing sell orders over a period thereby offering miniscule quantities of shares in each trade and causing artificial rise in the price of the scrip cannot be viewed as normal and fair way of dealing in securities, more particularly, in the absence of explanations from the Noticees, who have not even furnished any explanation to justify the rationale behind dealing in the scrip of a Company having no fundamentals at all. It is also observed from the trading details that though the price of the scrip was rising, the Noticees have not placed any sell order first, to exhibit their intent to sell the scrip as genuine investors. They have rather entered into the market with their sell orders of miniscule quantities only to match the price of already existing buy orders in the system. Therefore, in the absence of any plausible explanation justifying their action of selling the stock in such miniscule quantities and always executing the first trade of the day, the trades executed by these Noticees in such an unusual manner cannot be held as trades executed in a fair manner by any genuine investors of securities market in

the normal course of trading in securities. Instead, I found such trading pattern to be abnormal one and executed with *mala fide* intention by the Noticees in the scrip of the Company during Patch 2.

17. With regard to Noticees contention that, it is natural to seek a better price of the shares and that their act of selling the shares at higher price should not be treated as manipulative and unfair, I would like to refer to the judgement of the Hon'ble SAT in the matter of *Kalpana Dharmesh Chheda and Ors. Vs. SEBI and Ors.* (DoD: February 25, 2020), wherein, Hon'ble SAT held that "*though generally it can be stated that selling at a price higher than the LTP particularly when buy orders are available in the system cannot be considered as manipulative in itself. However, looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations………. This behavior cannot be justified in terms of normal rational expectations of a seller.*" Considering the foregoing observations which are aptly applicable in the present case, I reject the aforesaid contention of the Noticees as it does not deserve further consideration.

18. The Noticees have further contended that their alleged sell trades are very miniscule as compared to the total number of shares traded in the scrip of Company. Further, instead of comparing Noticees positive LTP contribution with total market positive LTP contribution during entire period of investigation, the Noticees positive LTP contribution has been compared with total market positive LTP contribution during respective patch only and this has vitiated entire calculation. In this regard, I note that, the patches of the investigation period have been selected on the basis of price rise in the scrip during pre-split and post-split period of the share of the Company. Patch 2 of the investigation period was a phase of price rise after the split of the shares, wherein, trading volume was low and average number of shares of the Company traded were 286 shares. Post Patch 2 phase (i.e. Patch 3), there was sudden spurt in price as well as volume in the scrip of the Company, wherein, average number of shares of the Company traded in a day rose to 3,20,336 shares. Therefore, I found no infirmity in the process of comparing LTP of a particular patch of respective Noticees, instead, there would have been aberrations, if same would have been compared across different phases of the investigation period. I further note that, positive LTP contributions in the scrip of the total market positive LTP by Noticees No. 1 and 2

of 30.58% and by Noticees No. 3 and 4 of 15.30%, respectively, by any parameters can be considered as miniscule. I found that, even individual positive LTP contributions in the scrip of the total market positive LTP by the Noticee No. 1 - 16.69%, Noticee No. 2 – 13.89%, Noticee No. 3 – 12.63% and Noticee No. 4 – 2.67% during Patch 2 of the investigation period is substantial and in my considerate opinion, their aforementioned positive LTP contribution in the scrip was instrumental in creation of artificial price rise in the scrip during relevant patch. In this regard, I would like to refer the judgement of the Hon'ble SAT in the matter of *Giriraj Kumar Gupta HUF Vs. SEBI* (DoD: February 25, 2020), wherein, Hon'ble SAT has held that - "*Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. <u>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</u>.*" The observations of the Hon'ble SAT are squarely applicable in the instant proceedings wherein, each of the *Noticees* has contributed to the positive LTP of the scrip but has not been able to provide any strong rationale for such unconventional trades of miniscule quantities. Therefore, I reject such contentions of the Noticees.

19. The Noticees have contended that the lot size of the scrip of Company is 1 and therefore, it is upon the buyer or seller to place the order quantity at their own wish and not depending on the counter party's order quantity. In this regard, I note that, there is no bar upon investor on placing of order for 1 share or less number of share in the securities market. However, the charge in this case is not based only on one facet i.e. placing of the order for less number of shares of the Company, instead there are several other factors or facets such as – relationship between the Noticees, their uncommon trading pattern, substantial LTP contribution, etc. As discussed in details in above paras, the trading pattern of the Noticees in the scrip during Patch 2 was fraudulent and manipulative, wherein, through concerted efforts, they were instrumental in sprucing the price of the scrip artificially, and thus, their contention in this regard is devoid of any merit.

20. The Noticees have contended that SEBI has ignored and overlooked the various corporate announcements during the investigation period, which *inter alia* includes - payment of interim dividend, purchase of land, taking up infrastructure project and awarding of infrastructure project to contractor etc. As per the Noticees, the aforesaid announcement would have impacted the price and volume in the shares. In this regard, I note that

following major corporate announcements have been made by the Company during the investigation period:

Table 6: Major Corporate Announcements

S. No.	Date	Announcement/ News
1	14/02/2013	Surabhi bags its first infrastructure project worth Rs. 1042 Lacs venturing in to infrastructure sector.
2	26/02/2013	Board approves Sub-Division of Equity Shares.
3	25/03/2013	Board declares Interim Dividend, Rs. 0.10 for each share of face value Rs. 10 per share.
4	30/04/2013	Surabhi awarded work order to M S Engineers for Construction of Commercial Units in Malad, Mumbai. The duration of work order is 15 months and consideration is Rs. 200 lacs.
5	06/05/2013	Surabhi enters in to agreement to acquire 1223.61 Sq. Mtrs. Land at Nagpur. The total consideration for said land is Rs. 527.20 lacs and Company proposed to construct residential and commercial units on the same.

21. I note that the price of the scrip of the Company rise from Rs 2.52/- to Rs 1,230/- during the period from August 2012 to December 2014. Further, even after the increase in the price of the scrip after each of the corporate announcements, the trading volume in the scrip remained low. It is also to be noted that the financials of the Company were weak and were not in tandem with the abnormal price rise in the scrip of the Company during the investigation period. Details of the key financial parameters of the Company are as follows:

Table 7: Financials of the Company in crores (Rs)

Particulars	Year Ended		
	2012-13	2013-14	2014-15
Sales	3.88	1.76	3.25
Other Income	0.00	0.00	0.00
Total Sales	3.88	1.76	3.25
Profit /Loss after Tax	0.83	0.80	0.57

22. I note from above table that, the cumulative profit of the Company after Tax for mentioned 3 financial years was Rs 2.20 crores (approximately) and their profit after tax was declining. Further, the sales of the Company in subsequent financial years was also lower than financial year 2012-13, despite corporate announcements. Considering such dismal and weak fundamentals of the Company, it can be fairly assumed that the abnormal rise in trading price of the scrip was not realistic and in no way same can be justified by

aforementioned corporate announcements. Therefore, I reject such contentions of the Noticees.

23. The Noticees have argued before me that the contribution to positive LTP can be alleged only against a buyer who has placed order at a price higher than LTP and no allegation has been made against the buyers/ counter parties to their sale in this case. In this regard, I note that, as per communication order dated August 13, 2019, SEBI has appointed me as Adjudicating Officer to inquire and adjudge the instant matter w.r.t. the Noticees No. 1 to 4 on the basis of facts and other materials available on record. Further, after examining the role of the counterparty buyers, if SEBI has found it not necessary to proceed against them, the same logic cannot *ipso facto*, be extended to the Noticees, who were primarily sellers. As regards the plea of discrimination contended by Noticees, it is noted that in the matter of *Systematix Shares & Stocks India Limited vs. SEBI* (DoD: 23/04/2012, Appeal no. 21 of 2012), the Hon'ble SAT had held that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases or action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."* I found that instead of offering explanations for executing impugned trades, the Noticees deliberately trying to divert attention to other entities, which are not the Noticees before me, hence, in my considerate view, the same do not deserve to be deliberated now during instant proceedings. Considering the foregoing, I reject such contention of the Noticees.

24. Some of the Noticees have contended that by trading in the scrip of the Company, they have not benefitted 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 matching 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 seller Noticees. 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. The claim of the Noticees of incurring no benefit 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.

25. The Noticees have also contended that they have they have no connection or relation with the counterparty's buyer and no such allegation of connection / relation / connivance have been made in the entire SCN. Further, SEBI failed to establish any connection in between the Noticees and the Company / its Promoters / its Directors / its Key Managerial Persons / counterparties to the trades of the Noticees. Noticees are not counterparty to their trades, hence the allegation of connection is baseless and no relevance at all. Further, the allegations made against them in the SCN require stricter proof of evidence and their nexus with the Company or the counterparty to their trades has to be established, which is absent in the present case. In this regard, I note that 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 provisions of the Regulations framed under the SEBI Act, 1992 is concerned.

26. 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 already pending buy orders above LTP for large number of shares with small quantities of sell orders on

continuous basis on different trading days and those orders being the first order of the respective trading day by the Noticees cannot be considered as co-incidence. On considering the frequency of matching the buy order through their sell orders in a phased manner by the Noticees, wherein, none of the Noticees have been found trading on same day, it can be reasonably held that the impugned trades were executed with an ulterior motive. I further note that, the pattern of placing the sell orders by the seller Noticees was questionable and the seller Noticees have failed to plausibly explain such abnormal trading pattern in the scrip. Considering the fact of *inter se* connections between the Noticees and their identical trading pattern, I reject their contentions in this regard.

27. 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 buy 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 between themselves, their acts of placing orders above the LTP only with a view to chase and match the pending buy orders coupled with the fact of their trades being the first trade of the respective trading day on all 38 trading days, 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.

28. 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 provisions of the Regulations framed under the SEBI Act, 1992, 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. ....."

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

"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."

29. 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 2 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 behaviour.

30. The Noticees have contended that they have not executed any trades, wherein they were counter party to each other's trade. In this regard, the Noticees have placed reliance upon the judgement of Hon'ble SAT in the matters of *Premchand Shah & Ors. vs. SEBI* (*supra*), *Narendra Ganatra vs. SEBI* (*supra*) and *Smitaben N. Shah vs. SEBI (supra)* wherein observations have made pertaining to the fraudulent and manipulative trades. I have perused the aforesaid judgements and I am of the view that the facts & circumstances and the respective observations made in the above referred decisions are factually distinguishable, hence the proposition of law made therein is not applicable in the instant case. For instance, in *Smitaben N. Shah*, the allegation made was against cornering of shares in collusions with the counter party by way of a structured and synchronized trading, which in turn requires higher degree of connection. Similarly, in the matter of *Narendra Ganatra,* the Hon'ble SAT has given its observations on reversal trades executed by the appellant through different brokers using different client codes thereby artificially raising the price of the scrip, which is completely different from the instant proceedings, wherein the Noticees by taking turns on different trading days have sold miniscule quantities of shares from their own trading accounts to mark up the price of the scrip of Surabhi. The materials available on record including the peculiar trading pattern of the Noticee i.e. by taking turns on different trading days and executing first trade of the day etc. is sufficient enough to prove the *mala fide* intention of these Noticees. Further, as admitted the Noticees are connected by blood relationship with each other, which is a strong enough connection

between themselves. Therefore, I do not find any substance in their contention and reject the same.

31. The Noticees have raised further contention that no reference was received against them from any of the government agency in this case. I agree that the reference received from the Department of Income Tax and Serious Fraud Investigation Officer, were not pertaining to the Noticees, however, on the basis of material available on record, the trading pattern and the circumstantial evidence found in this case, it is found that the Noticees were part of the manipulative scheme of artificially raising the price of the scrip during patch 2 through their fraudulent trades. Therefore, I found these arguments to be devoid of merit and thus, reject the same.

32. I note that the Noticees have relied upon several judgements of Hon'ble SAT and tried to demonstrate that the issues of the instant cases are squarely covered under the referred judgements. In this regard, I note that, the cases relied upon by the Noticees can be distinguished on facts and circumstances. Such as, in the matter of *Vikas Ganshmal Bengani (Supra)*, the company financials and trading pattern is distinguishable in terms that the Company financial in relied upon case were moving upwards and there were only few buy orders in question. In the matter of *KSL & Industries Ltd (Supra),* the question pertains to supported evidence to prove charge of fraudulent and I note that sufficient material and circumstantial evidence are available to prove the charge of fraudulent trades and manipulative active w.r.t. Noticees and same ha been discussed in detail in this order. In the matter of *Kapil Chatrabhuj Bhuptani (Supra)*, the charge was related to synchronised trading and contribution was 0.89%, wherein, in this case contribution in positive LTP of the scrip has been found substantial i.e. 30.58% (Noticees No. 1 and 2) and 15.30% (Noticees No. 3 and 4). In the matter of *Nishith Shah (HUF) (Supra)*, the question pertains to absence of any collusion with the counter party, or connection with promoter/director of the company to prove the charge of manipulation, wherein, in this case, no such charge of collusion with counter party or connection with promoter/director of the company has been alleged in the SCN. Further, the charge in the SCN proceeds on the basis of closed connection between the Noticees and their unusual trading pattern on continuous basis, thereby causing artificial price rise in the scrip, which has been conclusively established in the preceding paragraphs of this order. Considering the above discussion, I am of the opinion that the aforesaid judgements relied upon by the Noticees is not squarely

applicable under the peculiar and distinguishable facts and circumstances of this case. It is also relevant to note that Hon'ble SAT in the matter of *Ketan Parekh v. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006), while dealing with non-genuine trades has held that:

"...........Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.

33. In view of the above discussion and in terms of peculiar facts and circumstances of this case, I found that Noticees No. 1 – 4 were instrumental in artificially sprucing the price of the scrip of the Company during respective Patch 2 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 – 4 in the scrip during Patch 2 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 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 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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

34. 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;*

35. 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 4 Noticees have contributed positive LTP of Rs. 14.93/- amounting to 45.88% of total market positive LTP through 38 impugned trades during Patch 2 of the investigation period. Considering the aforesaid facts and circumstances of this case, I am of a view that, through such fraudulent and manipulative trades, these Noticees were instrumental in artificially inflating the price of the scrip during Patch 2 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.

36. 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 R*akhi 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."*

37. 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 2013, and in my view same can be a mitigating factor in this case.

Order

38. 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 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:

Noticee No.	Name of the Entity	Penalty*
1.	Kailash Kumar Lakhani	Rs 4,00,000/- (Rupees Four Lakh Only) to be paid jointly and severally.
2.	Saroj Devi Lakhani	
3.	Abhisek Bhutra	Rs 2,00,000/- (Rupees Two Lakh Only) to be paid jointly and severally.
4.	Gita Devi Bhutra	

NOTE: * ***As noted above, in light of the fact that an appeal has been pending before the Hon'ble Supreme Court in the matter, the monetary penalty imposed on the Noticees under section 15HA of the SEBI Act shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court. (Refer sub-para (b) of para 11(D) of this order)***

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

39. 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.

40. 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-II, 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)	

41. In the event of failure to pay the said amount of penalty within 45 days from the date of **achieving finality on conclusive determination of the appeal filed by SEBI against Hon'ble SAT order dated June 14, 2021 by the Hon'ble Supreme Court**, 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.

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

Date: July 28, 2022 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**