

QJA/AA/IVD/ID15/30048/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with Sections 15HA of the Securities and Exchange Board of India Act, 1992 read with rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of

Name of Noticee	PAN
Tushar Gupta	AHBPG8621P

In the matter of Front Running Trading activities by Tushar Gupta

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) received surveillance alerts generated from its surveillance system in the months of August 2020, pertaining to suspected front running of the trades of Tata Absolute Return Fund, a scheme of Tata AIF, a SEBI registered Alternative Investment Fund (hereinafter referred to as the Big Client/BC) by Tushar Gupta (hereinafter referred to as front runner/FR/Noticee).
2. SEBI conducted a detailed investigation for the period December 01, 2019 to August 10, 2020. The investigation was conducted to ascertain as to whether any act of the Noticee relating to trading activity in the securities market, is, inter alia, in the nature of front running of BC and to determine whether there has been violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter, referred to as the SEBI Act) and the SEBI (Prohibition of Fraudulent and Unfair Trading Practices in Securities Market) Regulations, 2003 (hereinafter, referred to as the PFUTP Regulations).

3. I also note that there has been an interim order dated August 07, 2020 and final order dated January 30, 2023 by SEBI holding several entities guilty of front running the trades of BC Tata Absolute Return Fund during December 2019 to August 10, 2020.

B. SHOW CAUSE NOTICE

4. Consequent to the completion of investigation, a Show Cause Notice (SCN) dated June 20, 2022 was issued to the Noticee. The SCN has brought out, inter alia, the following key facts with respect to the Noticee and his trading:

4.1. Trades executed from the trading account of the Noticee have front run the impending orders of the Big client during March 26, 2020 to June 10, 2020 and the Noticee has allegedly made profit of Rs. 50,63,746 through such trades.

4.2. Pre-examination and post examination trading activity of the Noticee is as follows:

Table 1

Period	Derivative Segment
	Gross Traded Value (Rs. in Crore)
Pre-investigation period (June 01, 2019 to March 25, 2020)	0.00
Investigation period (March 26, 2020 to June 10, 2020)	656.05
Post investigation period (June 11, 2020 to December 31, 2020)	4.49

4.3. A large percentage of the scrip days of Noticee in the equity derivative segment of the market, are common with the BC. Further, there is a significant overlap in the number of scrip days for intra-day trades with the BC. Orders from the trading account of the Noticee are on a regular basis placed on the same day and in the same scrip as that of the BC.

- 4.4. The Noticee's consolidated income over two financial years (FY2019-20) was Rs. 30-35 lakh but his Gross Traded Value over a short period of 2.5 months was Rs. 656.05 crore.
- 4.5. There is no reasonable explanation as to how the Noticee was able to fund his trades. The Noticee and his dealer have submitted that the Noticee used to physically visit the house of the dealer to place the orders during the nationwide lockdown imposed in the wake of Covid-19 pandemic.
5. Based on the above, the Noticee is alleged to have violated the section 12A(a), (b) and (c) of the SEBI Act and regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(q) of the PFUTP Regulations.
6. In view of the allegations made, the Noticee was called upon to show cause as to why appropriate directions under Sections 11(4), 11(4A), 11B(1) and 11B(2) read with Section 11(1) of the SEBI Act, including directions to prohibit him from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and directions not to be associated with any registered intermediary/listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever, should not be issued against him and why monetary penalty under Section 15HA of the SEBI Act should not be imposed on him for the alleged violations.

C. SERVICE OF SCN, INSPECTION OF DOCUMENTS AND PERSONAL HEARING

7. The SCN dated June 20, 2022 was sent to the Noticee on the address available on record. Pursuant to the issuance of SCN, replies were received from the Noticee vide letters/emails dated July 19, 2022, August 26, 2022, October 14, 2022, October 22, 2022, December 12, 2022, February 09, 2023, April 27, 2023, July 28, 2023, September 02, 2023, September 07, 2023, October 17, 2023, February 02, 2024 and February 14, 2024.

8. The Noticee also sought inspection of documents. Based on the request of the Noticee, an opportunity of inspection of the records/documents (which were relied upon by SEBI while issuing the SCN) was provided to the Noticee's authorized representative Mr. Meit Shah on November 03, 2022.
9. The Noticee availed opportunity of personal hearing provided on February 13, 2024. The submissions made by the Noticee/his Authorized Representative in his replies and during the personal hearing are detailed in the following paragraphs.

D. CONTENTIONS OF THE NOTICEE

10. In his replies, the Noticee has made the following submissions:

- 10.1. The Noticee has raised objection to SEBI not providing the following documents to him – copy of alert generated with respect to his trades, documentary evidence to show that he was in possession of information with respect to impending trades of BC, documentary evidence of his connection with dealers of Reliance Securities Ltd., complete market order log and trade log file for contracts executed on dates on which front running instances by Noticee are alleged and details of complaints received by SEBI and stock exchange with respect to his trading activities. The Noticee has, however, acknowledged the receipt of investigation report and annexures. Further, the Noticee has relied on the following case laws:

- 10.1.1. *SEBI vs. Price Waterhouse* to contend that all documents collected during the course of investigation shall be provided to the respondents.

- 10.1.2. *B. Ramalinga Raju vs. SEBI* to contend that there is obligation to furnish requisite documents on the basis of which charges are framed.

- 10.1.3. *Smitaben N. Shah vs. SEBI* to contend that if documents asked for are relevant and may help the delinquent to prepare his defence, they have to be furnished.

- 10.2. In view of the above, the Noticee has contended that grave prejudice has been caused to him by not providing the complete documents.

Noticee's submissions with respect to access to information regarding impending orders of BC

10.3. The Noticee was never in possession of or privy to the non-public information of the impending orders of BC.

10.4. The Noticee has no connection with BC or any person connected to BC.

10.5. The Noticee has no connection with dealers of Reliance Securities Ltd. or other connected entities.

10.6. The Noticee's buy and sale transaction had been executed "on market"; through SEBI registered Broker with whom he is/was maintaining share trading account for carrying out investment activity in capital market.

10.7. The Noticee's buy and sale transactions have been carried out in total compliance of all securities market laws as applicable to him in the capital market. Further, at the relevant time and till receipt of the communication from SEBI, Noticee had not received any query or inquiry from any entity/person connected to any transaction, such as broker through whom he sold the shares, purchaser of his shares, Exchange (NSE) on whose trading terminal the said transactions were executed. Hence, the Noticee failed to understand factors considered by SEBI for making allegations against him since Stock Exchanges are first level regulators who are duty bound to guide the Noticee and prevent him from getting associated in any wrong doing, if any, happening in the transactions carried out through them.

10.8. The Noticee's transactions as mentioned in the SCN are independent and totally in isolation to the transactions carried out by other entities/persons/BC.

Profile of Noticee as submitted by Noticee

10.9. The Noticee has a plastic manufacturing business in Kanpur which is run in the name of Baba Anandeshwar Plastics Pvt Ltd. He is also proprietor of

Amrish Plastic Industries, Baba Anandeshwar Textile Industries and Baba Anandeshwar Thermoplast Industries. His company is one of the top suppliers of plastic chairs, etc. Baba Anandeshwar Plastics Pvt. Ltd. is a very well-known name in the field of plastic chairs and commands respect for the quality of product and service which it renders.

Noticee's submission on connection with BC or dealers of Reliance Securities Ltd.

10.10. There is no iota of evidence provided or mentioned in the SCN with respect to the Noticee's connection or association with the BC or Reliance Securities Ltd. or the dealers or any persons connected to them.

10.11. In the statement recorded by SEBI during investigation in the subject matter, the Noticee had recorded that he has no connection directly or indirectly with any of the other suspected entities identified during investigation such as Tejas Tradefin LLP, Tejas Ved, Mickin Sheth, Paras Shah, Prarambh Securities Pvt. Ltd., Jayesh Kuwadia and Chetan Babulal. Further, during the said statement recording, he denied that he was associated/related/connected to any entity mentioned in SEBI order dated July 08, 2020 bearing reference number WTM/MPB/ISD/130/2020.

10.12. Noticee was not in possession of or privy to the non-public information of the impending orders of the Big Client as alleged.

10.13. There is no documentary evidence such as phone call records, text messages, WhatsApp messages, emails etc. in the SCN to show that the Noticee was in possession of or privy to the non-public information of the impending orders of the BC.

10.14. The SCN mentions that *"The cumulative effect of the additional factors, as enumerated above, when seen along with the pattern of the trades executed from the trading account of Noticee, leads to an inference that the orders/trades executed from the trading account of Noticee in the equity derivative segment of the market, would not have been entered into, had*

Noticee, not been in possession of or privy to the non-public information of the impending orders of the Big Client.” Thus, the Noticee has stated that SCN has drawn inferences and the basis of allegation is not backed by documents. Hence, no adverse inference can be drawn against him.

10.15. Many entities have entered into transactions during the Investigation period but proceedings have only been initiated against the Noticee. The allegation that trades executed from the Noticee’s trading account wherein buy/sell trades were executed depending on the impending buy/sell orders of the Big Client, was only coincidental and unintentional and not otherwise.

10.16. The charge of Front running is akin to and similar to Insider Trading, i.e. passing on of non-public information to get a trading advantage. However, in the absence of proof of communication of the non-public information, it is impossible to make out any such charge against a party. Mere preponderance of probability is not enough to sustain serious charges such as Insider Trading or Front Running. To support this contention, the Noticee has placed reliance on Order dated August 25, 2023 by Whole Time member (WTM) of SEBI in the matter of Insider Trading activity of certain entities in the scrip of United Spirits Limited and Order dated October 31, 2023 passed by Adjudicating Officer, SEBI in the matter of Suumaya Industries.

Noticee’s submission regarding rationale for trading

10.17. From March 26, 2020 to June 10, 2020, India was under lockdown due to Covid-19 pandemic. The Noticee’s factories which majorly manufactures plastic chairs were shut. The Noticee was left with almost no work as all his factories were shut.

10.18. As the Noticee had less experience of how the capital markets function, he took help of his friend’s father Mr. Jain, one of the leading and successful businessman of Kanpur. Mr. Jain was Noticee’s friend’s father and the Noticee had always sought Mr. Jain’s advice for his business and other

investment opportunities.

10.19. During lockdown, the Noticee had gone to Mr. Jain to seek his help for generating second source of income till his factories could start functioning again.

10.20. During that time, Mr. Jain had advised the Noticee to trade in capital market as that was only one of the few sectors which was actively running. As the Noticee had little experience of trading in capital markets and as Mr. Jain was quite experienced, the Noticee requested Mr. Jain to accompany him and help him trade in capital markets. As Mr. Jain was his friend's father and a father figure for him, he obliged to the Noticee's request and accompanied him.

10.21. After few months, when things started to open up bit by bit, i.e., nation started to unlock in phases, his factories started to get operational and his time thereafter was totally devoted to revive his business and get the same back to pre-covid levels. Hence, his activity in capital markets was reduced as things started to normalize again. Therefore, no adverse inference be drawn against him.

Noticee's submissions on mode of placement of order

10.22. As during lockdown, everything was shut and certain sections of people were facing grave difficulty in making their ends meet. Hence, the Noticee along with his friends, relatives and business associates decided to help them by providing basic ration to the needy.

10.23. The Noticee and his friends, relatives and associates were allowed to venture out to help others who were in desperate need. The Noticee did not go far away but went nearby to help people in need.

10.24. The Noticee got to know that one of the dealers of Achintya Securities Pvt. Ltd. with whom he had a trading account, Mr. Dinesh Kumar lived near his

house. Hence, during the Noticee's social service activity, the Noticee used to visit Mr. Dinesh's house along with Mr. Jain to place orders.

10.25. As Mr. Dinesh was working from home and his house was nearby, the Noticee decided to physically go to his house along with Mr. Jain to place orders. As Mr. Jain used to guide the Noticee in placing orders, it was convenient and logical for the Noticee and Mr. Jain to be physically present at the same time and at the same place for executing transactions in capital market. Hence, it is only on receiving permission from Mr. Dinesh that the Noticee and Mr. Jain visited his place physically. Further, Mr. Dinesh in his statement recording before SEBI stated that the Noticee visited his house to place orders.

10.26. Mr. Jain and his wife have expired during the second wave of Covid-19 pandemic in 2021.

10.27. Apart from client-dealer relationship, the Noticee does not have any relationship with Mr. Dinesh.

10.28. Hence, no adverse inference may be drawn against the Noticee in the matter.

Noticee's submissions with respect to alleged profit made by him

10.29. Average buy price and Average sell price during the day is only given in respect of Trades that form part of either FR Buy before BC Buy order end time or FR Sell before BC Sell order end time (Revised Square Off Difference). However, average buy price and average sell price during the day is not provided. The Noticee has submitted that the said details are vital for the matter in order to calculate the alleged profit as earned by him. Hence, the Noticee has requested for average buy price and average sell price of his alleged FR trades.

10.30. In Buy-Buy-Sell (BBS) pattern there are 23 instances wherein Noticee's buy

and sell order end time is prior to the BC's buy order start time. Hence, the Noticee sold off the said security before the BC bought his first security. Hence, it cannot be alleged that the Noticee gained any unfair profit as a result of BC's buy in the said security. The list of the instances was provided by the Noticee. The total profit from these 23 instances is Rs. 6,07,530.

10.31. In Sell-Sell-Buy (SSB), there are 41 instances wherein the Noticee's sell and buy order end time is prior to the BC's sell order start time. Hence, the Noticee sold off and bought back the security before the BC sold his first Security. Hence, it cannot be alleged that the Noticee gained any unfair profit as a result of BC's sell in the said security. The profit from these 41 instances is Rs. 11,26,522.

10.32. In BBS pattern, there are 6 instances wherein the Noticee's buy and sell order end time is between the BC buy order start and end time. Hence, the Noticee sold off the said security while the BC was still buying the same. In case, the Noticee would have been aware about the front Running, he would have never sold off the securities while the BC was still buying the same. Hence, no adverse inference may be drawn against the Noticee in the matter. The profit from these 6 instances is Rs. 4,01,385.

10.33. In SSB, there are 6 instances wherein the Noticee's sell and buy order end time is between the BC sell order start and end time. Hence, the Noticee sold off and bought back the securities while the BC was still selling the same. The Noticee has stated that in case he would have been aware about the front Running, he would have never bought back the securities while the BC was still selling the same. The total profit from these 6 instances is Rs. 1,30,670.

10.34. There are 3 instances in the BBS pattern, the buy order start time of the BC is prior to the Noticee's buy order start time. Hence, there cannot be any BBS pattern involved. The total profit from these 3 instances is Rs. 1,43,127.

10.35. In SSB, there are 3 instances wherein the sell order start time of the BC is prior to the Noticee's sell order start time. Hence, there cannot be any SSB pattern involved. The total profit from these 3 instances is Rs. 1,71,982.

10.36. In respect of one trade of RELIANCEFUTSTKFF043979 on May 04, 2023, the Noticee has submitted that his buy order start and end time is 09:19:25 to 09:19:29 and the Noticee's sell order start and end time is 09:20:23 to 09:20:32, whereas the BC has sold on 09:42:43. Hence, The Noticee has stated that there is no BBS or SSB pattern. The alleged unlawful profit derived from this trade is Rs. 5,200.

10.37. There is one trade where the Noticee has made a loss of Rs. 10,185 which has not been considered by SEBI while calculating the amount of alleged unlawful gains.

10.38. The Noticee has submitted that in the SCN, there were 144 instances of alleged front run trades wherein SEBI had provided him with the percentage of buy and sell trades that matched with the BC. Out of these 144 instances, in case of 11 instances neither the buy trades have matched with the Front Running Entity nor the sell trades have match with front running entity. Hence, the Noticee has submitted that the 11 trades cannot be alleged to be in respect of front running activities. Details of such trades have been provided by the Noticee.

10.39. Further, the Noticee has stated that the percentage of matching of FR's buy trades with that of BC was 0.1% to 2.5% in 3 instances, 25-50% in 5 instances and 50-100% in 68 instances. With respect to the matching of FR's sell trades with that of BC was 0.1% to 25% in 5 instances, 25-50% in 3 instances and 50-100% in 52 instances. This data has been provided to indicate that only some of his trades were in line with and corresponding to the impending order of the BC.

10.40. Additionally, the Noticee has submitted that in several instances of alleged

front run trades, the Noticee has earned a miniscule profit. The Noticee has provided instance wise range of analysis of profit earned in his submission in support of his contention.

Other case laws cited by the Noticee

10.41. The Noticee has relied on following case laws:

- 10.41.1. *R.K. Global vs. SEBI* to contend that fraud is a serious charge and should have firmer ground to stand upon.
- 10.41.2. *Narendra Ganatra vs. SEBI* to contend that for a serious charge, higher degree of probability is required and such charge cannot stand on surmises and conjectures.
- 10.41.3. *Sterlite Industries vs. SEBI* to contend that mere conjectures and surmises are not adequate to hold a person guilty of such a serious offence.
- 10.41.4. *Parsoli Corporation vs. SEBI* to contend that since charge of fraud is serious, higher has to be degree of probability to establish the same.
- 10.41.5. *Ram Sharan Yadav vs. Thakur Muneshwar Nath Singh* to contend that charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities.

E. CONSIDERATION OF ISSUES AND FINDINGS

11. Having carefully examined the information available on record, viz., the SCN, written and oral submissions put forth by the Noticee during the course of personal hearing, the issues under consideration before me are as under:

- 11.1. Issue 1: Whether or not the Noticee has violated provisions of 12A(a), (b) and (c) of the SEBI Act and regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(q) of the PFUTP Regulations?
- 11.2. Issue 2: Do the violations, if any, attract action under the Sections 11(4), 11(4A), 11B(1) and 11B(2) read with Section 11(1) of the SEBI Act?
- 11.3. Issue 3: Do the violations, if any, attract monetary penalty under Section 15HA of the SEBI Act?
- 11.4. Issue 4: If the answer to the Issues 1 to 3 above is in affirmative, then what should be the punitive action and the quantum of monetary penalty?

12. Before proceeding further, I would like to refer to the definition of 'front running'.

13. Hon'ble Supreme Court of India while adjudicating the appeal in the matter of *SEBI vs. Shri Kanaiyalal Baldevbhai Patel and Ors.* dated September 20, 2017, referred to the same and observed as follows:

"As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:

Front running - Buying or selling securities ahead of a large order so as to benefit from the subsequent price move.

This denotes persons dealing in the market, knowing that a large transaction will take place in the near future and that parties are likely to move in their favour.

The illegal private trading by a broker or market-maker who has prior knowledge of a forthcoming large movement in prices. (Investment)

The Black's Law Dictionary (Ninth Edition) defines the term 'front running' as under:

Front running, n. Securities. A broker's or analyst's use of nonpublic information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in many ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares.

Nancy Folbre – In the world of financial trading, a front-runner is someone who gains an unfair advantage with inside information.

SEBI has defined front-running in one of its circular (CIR/EFD/1/2012 dated May 25, 2012) in the following manner-

Front-running; for the purpose of this circular, front running means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change."

14. With respect to the forms of front running, the Hon'ble Supreme Court of India, further observed as follows:

"...It comprises of at least three forms of conduct. They are: (1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running"); and (3) transactions where a intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead")..."

15. From the above, it is observed that the following factors are used to classify trading activity as front running:

15.1. The information regarding a substantial order (Big Client's order) in a particular security, is not publicly available;

15.2. The order by the alleged Front Runner ("FR Order") in securities was placed (directly or indirectly) in advance of the Big Client order, while in possession of the aforesaid non-public information. By market practice, orders above the minimum lot size (particularly for large orders) are often placed in smaller tranches so as to have minimum impact on the price, the alleged Front Runner can gain from placing his order(s) at any time before the last tranche of the Big Client's order. In other words, all the tranches of the order of the first leg placed by the alleged Front Runner that have been placed on or before the time of last tranche of the order placed by the Big Client, would qualify as front running transactions. However, any tranche of the order placed by the alleged Front Runner subsequent to the last tranche of the order of the Big Client will be excluded from being qualified as a front running trade.

16. The act of placing orders using pre-existing knowledge of non-public information regarding a large transaction that can potentially change the price of a security ("front running behaviour") can be executed in the following ways for gaining economic advantage:

- 16.1. Buy-Buy-Sell (“BBS”) – In this type of front running behaviour, the alleged Front Runner, by using the non-public information regarding an impending Buy order of the Big Client, places his Buy order before the last tranche of the Big Client’s Buy order. As and when the Buy order of the Big Client gets executed, the price of the security rises and the alleged Front Runner Sells the securities bought earlier, at the raised price, thereby pocketing the difference between the new raised price of the security which is established during / post Big Client’s Buy trades and the price at which he had bought his securities. This pattern of front running is thus labelled as BBS denoting Buy by the alleged Front Runner, Buy by the Big Client, Sell by the alleged Front Runner.
- 16.2. Sell-Sell-Buy (“SSB”) - In this type of front running behaviour, the alleged Front Runner by using the non-public information regarding an impending Sell order of the Big Client, places his Sell orders before the last tranche of the Big Client’s Sell order. As and when the Sell order of the Big Client gets executed, the price of the security falls which gives an opportunity to the alleged Front Runner to buy back the securities at a lower price to meet his obligations which he had created earlier by selling securities. Thus, he pockets the difference between the price at which he had sold his securities and the new lower price which is established during/post Big Client’s Sell trades. This pattern of front running is thus labelled as SSB denoting Sell by the alleged Front Runner, Sell by the Big Client, Buy by the alleged Front Runner.
17. The aforesaid front running behaviour which is executed in the cash segment of the market can be also mirrored in the derivative segment of the market. The alleged Front Runner, in anticipation of the impact of the imminent substantial Buy order of the Big Client, will take a long position i.e., he will buy the securities / contracts and when the price of the contracts has started getting impacted by the Big Client order, the alleged Front Runner will exit his position. Similarly, the alleged Front Runner will take a short position i.e., he will sell the securities / contracts, if a substantial Sell order is imminent from the Big Client and will

subsequently exit his position, as and when the impact of the Big Client order on prices is felt.

18. Before dealing with the main issues, I shall address the preliminary objections raised by the Noticee. The Noticee has submitted that grave prejudice has been caused against him by not giving him complete documents by not providing him copy of alert generated with respect to his trades, documentary evidence to show that he was in possession of information with respect to impending trades of BC, documentary evidence of his connection with dealers of Reliance Securities Ltd., complete market order log and trade log file for contracts executed on dates on which front running instances by Noticee are alleged and details of complaints received by SEBI and stock exchange with respect to his trading activities. I note that during the investigation, no connection of the Noticee could be established with the BC or other front runners/intermediate entities identified in SEBI order number WTM/SM/IVD/ID15/23243/2022-23 dated January 30, 2023. In view of the same, I note that there is no documentary evidence with respect to him being in possession of information regarding impending orders of BC and with respect to his connection with the BC or other front runners/intermediate entities identified in the aforesaid SEBI order. Further, details of instances for which alerts were generated by SEBI were shared with the Authorized representative of the Noticee vide email dated December 20, 2022. Additionally, the investigation report and all annexures have also been shared with the Noticee. Hence, I find that all documents collected during the investigation barring those that constitute third party information were shared with the Noticee. Also, no complaint was received by SEBI with respect to his trading activities and necessary clarification with respect to his request for average buy/sell price of his front run trades has been provided to him by SEBI. Therefore, I find that principles of natural justice have been complied in this regard.

19. The Noticee has stated that he had not received any query or inquiry from any entity/person connected to any transaction, such as broker through whom he sold the shares, purchaser of his shares, Exchange (NSE) on whose trading terminal the said transactions were executed. I note that the alert was first generated in

August 2020 and post detailed investigation, the SCN was issued to the Noticee in June 2022. Hence, I do not find any delay in bringing the suspected transactions to the notice of the Noticee.

20. Before discussing the key issues in this matter, I deem it apposite to refer to the relevant provisions of law which are alleged to have been violated and relevant extract thereof is reproduced hereunder:

“SEBI Act, 1992

Section 12A: No person shall directly or indirectly

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

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

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

SEBI (PFUTP) Regulations, 2015

Regulation 3: Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a)

(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 manipulative, fraudulent or an unfair trade practice in securities markets.

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 manipulative, fraudulent or an unfair trade practice if it involves any of the following: —

(a)

(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;”

21. I note that in front running, an FR trades ahead (first leg) of the substantial buy/sell order of the BC as he has non-public information about the substantial buy/sell order and thereafter reverses his position (second leg) to reap the benefit due to movement in the price of the securities due to substantial buy/sell order. Thus, either there is a FR Buy - BC Buy - FR Sell (BBS) pattern or a FR Sell - BC Sell - FR Buy (SSB) pattern. This benefit of movement in price accrues to the front runner due to matching of his second leg orders, either with the substantial order

or with other orders available in the system from other buyer/sellers, at such moved price.

22. In this regard, the trading profile of the Noticee from March 26, 2020 to June 10, 2020 as alleged in the SCN is summarised in the following table:

Table 2

Particulars	Calendar days	No. of Instances	Gross Trade Value (GTV – (Rs. In lakh)	Average Gross Traded Value (Rs. in lakh)	Square Off Difference (Rs. in lakh)
Number of scrip days traded	41	261	65,604.51	251.36	-46.44
Common scrip days with Tata Absolute Return Fund	36	216	55,570.17 (84.70% of GTV)	257.27	1.15
Number of Other Non-Common Scrip days with Tata Absolute Return Fund	24	45	10,034.34 (15.30% of GTV)	222.99	-47.59
Number of Scrip days wherein day trading has been carried out	37	237	57,182.18 (87.16% of GTV)	241.28	-12.96
Number of Scrip days wherein day traded and commonly traded with Tata Absolute Return Fund	35	212	51,138.97 (77.95% of GTV)	241.22	34.8

Instances where client earned a positive square off difference	35	188	43,480.74	231.28	99.35
			(66.28% of GTV)		
Instances wherein day trading has been carried out and client has common instances with Big clients and has earned a positive square off difference	32	173	41,359.86	239.0743	87.23
			(63.04% of GTV)		

23. From the above table, I note that around 85% of GTV of the Noticee had common scrip days with the BC during March 26, 2020–June 10, 2020. Also, the Noticee was mostly carrying out intra-day trades during the aforesaid period and more than 77% of GTV of the said trades of the Noticee were common with the BC which is a significant number. Further, during the investigation, it has been observed that maximum number of first leg of front running trades of the Noticee were executed just one minute before the first order of the BC and significant matching of second leg trades of Noticee with trades of BC was observed.

24. Further, as stated at table 1 above, the Noticee had a GTV of Rs. 656 crore during March 26, 2020 to June 10, 2020 whereas in comparison his trading was miniscule or nil before and after the said period. In this respect, the Noticee has contended that the spurt in his trading was on account of lockdown imposed in the wake of Covid-19 pandemic when his factories were shut and he had no other work. However, I note that Tushar Gupta has stated that his consolidated annual income was around Rs. 30-35 lakh during 2019-2021 and that his trading was disproportionate to his annual income. However, during the investigation, the Noticee submitted that funding of his trades was from his own source of capital and funds were also received from the market.

25. The Hon'ble Supreme court in *SEBI vs. Kishore R. Ajmera* has, inter alia, observed as follows:

"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."

26. In this regard, in the present matter, the first relevant fact to be taken note of is that the Noticee has shown a sudden and voluminous spurt in his trading during March 26, 2020 to June 10, 2020. While the Noticee may explain the spurt by way of the lockdown that left him with no work, trading of Rs. 560 crore within a span of about 2.5 months by a person who has no experience of capital markets and has an annual income of only Rs. 30-35 lakh attracts suspicion. Hence, the second relevant fact to note in this matter is with respect to the funding of alleged transactions of the Noticee. In this regard, the Noticee has stated that he received funding from various people in the market based on his goodwill in the market and he also used his own funds. To ascertain the veracity of Noticee's contention, the bank account statements of the Noticee for September 01, 2019 to October 31, 2020 were sought and analysed during the investigation. However, I note that, upon analysis, no suspicious transaction has been observed in his bank statement. The third relevant fact is whether any connection of the Noticee could be established with the BC or dealers of Reliance Securities or other connected entities, who were identified vide SEBI interim order number WTM/MPB/ISD/130/2020 dated August 07, 2020 and those who have been held guilty of playing role in front running the trades of BC vide SEBI order number WTM/SM/IVD/ID15/23243/2022-23 dated January 30, 2023. In the present matter,

I note that the Noticee's bank statements, call data records, KYC details, Unique Client Code, off market transactions data, IP address and MAC details of devices used to place the alleged trades were analysed. However, no evidence of the Noticee's connection with the BC or other suspected entities could be established. The fourth relevant fact to note is that the Noticee has stated that he used to place orders during the investigation period by personally visiting the house of dealer of his broker, i.e., Achintya Securities. While personally visiting a dealer's house for placing orders raises doubts, specially during a time when the whole country was under lockdown, I note that both the dealer Mr. Dinesh Kumar and the trading member have agreed to the Noticee's submission regarding mode of order placement. Hence, while I note that the Noticee had the option to place trades over phone, I find that merely because the Noticee chose to place orders by personally visiting the house of the dealer, it does not act as any evidence of wrongdoing on the part of the Noticee. Further, the Noticee has submitted that he was guided by his friend's father Mr. Jain with respect to trades in the capital market. The Noticee has also submitted that Mr. Jain used to accompany the Noticee to the dealer's house when orders for alleged trades were placed. I note that during the investigation, no evidence of connection of Mr. Jain/his dependents and the dependents of the Noticee with the other suspected entities (refer paragraph 22) has been found.

27. Further, the Noticee has made submissions with respect to timing and matching of his orders/trades and that of BC's orders/trades which are detailed at paragraph 10.30 to 10.40 above. With respect to the contention of the Noticee regarding the timing and matching of his orders/trades and that of BC's orders/trades, it is noted that in the final order dated June 03, 2022, in the matter of Fidelity Group, WTM SEBI has observed as follows:

"The order in securities was placed (directly or indirectly) by the front runner during the entire period of placement of impending substantial order of the Big Client and not just before the placement of substantial order, while in possession of the aforesaid non-public information. Since orders above the minimum lot size (particularly for large orders) are often placed in smaller tranches so as to have minimum impact on the price, the purported front runner can gain from placing his

order(s) at any time before the last tranche of the Big Client's order. In other words, all the tranches of the order of the first leg of the front runner that have been placed on or before the time of last tranche order placed by Big Client(s), would qualify as front running transactions. Conversely, any tranche of the first leg of the order put by the front-runner subsequent to the last tranche of the order of the Big Client will be excluded from being qualified as front running trade, though the earlier tranches of the front runner will still qualify as front running trades. It may be noted that the second leg of the Front Runner's orders which encashes the "advantage" of the first leg, need not necessarily be placed after the Big Client order since the Exchanges permit "limit orders" i.e., contingent orders like "sell if the price is more than Rs. X" or "buy if the price is lower than Rs. Y". Such limit orders can be placed in advance/"waiting" for the Big Client order to come and impact the price of the scrip. Accordingly, if the trade execution time of any second leg order of the front-runner is on or after the first tranche of order placed by Fidelity Group entities, i.e., Big Clients, all such orders have been taken into consideration for calculation of unlawful gains made by front running the trades of big clients."

In this regard, it is noted that in the present matter, the trade end time of the FR in the second leg of buy/sell transactions of the Noticee is on or before the first leg of the order by the BC. Hence, I find that all the 144 alleged instances qualify as front run trades. Further, if front running of trades is proved, the amount of profit with respect to each trade is immaterial and the entire unlawful gains are liable to be disgorged as they have been made in violation of the applicable laws.

28. However, I find that there is no cogent material on record to evidence the Noticee's possession of non-public information regarding the impending trades of the BC or connection of the Noticee with the BC or its dealers or other suspected entities. Further, there is no evidence of communication of information with respect to the impending substantial orders of the BC to the Noticee. Hence, I find that although the peculiar trading pattern of the Noticee and value of his trades vis-a vis his annual income are factors that point to the Noticee's likely involvement in front running the trades of the BC, there is no sufficient evidence beyond reasonable

doubt to hold the Noticee guilty of front running the trades of the BC during the investigation period.

29. Accordingly, I find that the allegation of front running of trades of BC by the Noticee in violation of provisions of the SEBI Act and PFUTP Regulations is not substantiated.

30. Further, as the violations are not established, Issues 2, 3 and 4 do not require any consideration.

F. Order

31. In view of the above, I, in exercise of powers under Section 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 15HA of the SEBI Act read with Section 19 of the SEBI Act and Rule 5 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, hereby dispose of the SCN against the Noticee without any direction.

32. This order shall come into force with immediate effect.

33. A copy of this Order shall be served on the Noticee.

Date: February 27, 2024

Place: Mumbai

Dr. Anitha Anoop
Chief General Manager
Securities and Exchange Board of India