

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) & 11B OF SEBI ACT, 1992 IN THE MATTER OF BLUE BLENDS (INDIA) LTD

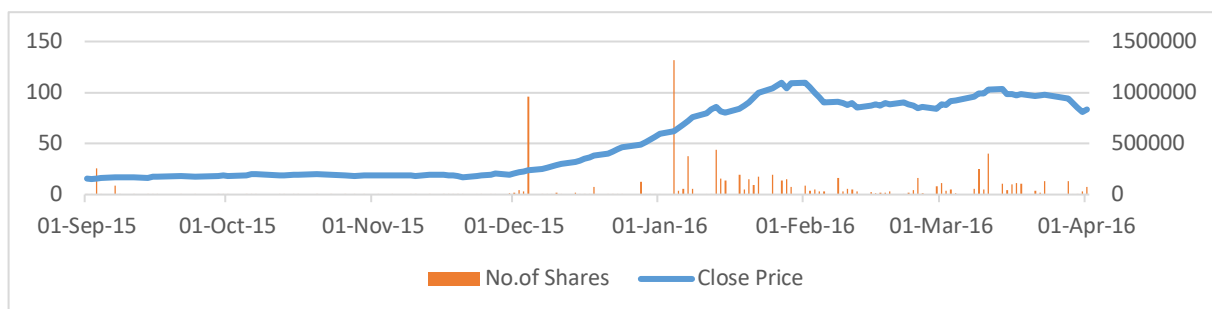
IN RESPECT OF

	Noticee	PAN
1	BP Fintrade Pvt Ltd	AAACY2372G
2	BP Comtrade Pvt Ltd	AAACA3758Q

BACKGROUND –

- 1.1 Blue Blends (India)Limited (‘Company/Blue Blend’) is engaged in the manufacture of denim and denim products. The Company is listed on the BSE Ltd. (BSE) and the National Stock Exchange of India Ltd.(NSE). The scrip of the Company witnessed unusual fluctuation in price and volume during the period September 01, 2015 to April 01, 2016 (“Investigation Period”) even though there was, prima facie, no change in the fundamentals of the Company.
- 1.2 The price of the scrip on BSE rose from Rs. 15.65 on September 01, 2015, touched a high of Rs. 114.8 and finally closed at Rs. 82.50 on April 01, 2016. The price movement of the scrip on NSE was similar to the movement on BSE. On NSE, price of the scrip moved from Rs. 17 on September 01, 2016, reached a high of Rs. 112.8 and finally closed at Rs. 82.75 on April 01, 2016. The average volume of shares traded in the scrip also saw a steep rise during the Investigation Period. The unadjusted price-volume chart of the scrip on BSE during the investigation period is given below:

The price volume chart (BSE) during the period of investigation



- 1.3 Based on the above, SEBI conducted investigation into the scrip for the Investigation Period, so as to determine whether the movement in the price of the scrip was on account of normal trades or due to any act of price manipulation. Investigation Period was divided into two patches; Patch-1- September 01, 2015 to February 01, 2016 and Patch II – February 02, 2016 to April 01, 2016.

Price Volume Analysis

- 1.4 The price volume data for the scrip on BSE during the investigation periods was as under,-

Table 1 - Price /Volume (BSE):							
Period	Dates		Opening Price/volume on first day of the period (Rs)	Closing price /volume on last day of the period (Rs.)	Low price/volume during the period (Rs.)	High Price/volume during the period (Rs.)	Total no. of shares traded during the period (avg. daily vol.)
Before Investigation period	02/06/2015 - 31/08/2015	Price	17.5	16.2	16.2	28.5	52307 (902)
		Date	02/06/15	31/08/15	31/08/15	30/06/2015	
		Vol	5	246	1	9220	
		Date	02/06/15	31/08/15	24/06/2015	20/08/15	
During Investigation Period	01/09/2015 - 01/04/2016	Price	15.65	82.50	15	114.8	8414560 (66782)
		Date	01/09/15	01/04/16	03/09/15	01/02/16	
		Vol	5	77773	5	1316470	
		Date	01/09/15	01/04/16	01/09/15	04/01/16	
After investigation period	02/04/2016 - 03/07/2016	Price	85	66.6	56.3	101	1659759 (26770)
		Date	04/04/16	01/07/16	21/06/16	12/05/16	
		Vol	9625	9063	3234	132098	
		Date	04/04/16	01/07/16	03/06/16	11/05/16	

Company Financials

Table 2				
(Rs. crore)				
Description	Quarter ended			
	June 2015	September 2015	December 2015	March 2016

Net Sales/Revenue From Operations	42.27	43.07	46.57	48.23
Expenditure	-38.2	-38.95	-39.15	40.41
Net Profit	1.51	1.86	2.8	2.48

Corporate Announcements

- 1.5 During the Investigation Period, no major corporate announcements were made by the Company other than issue of bonus shares and declaration of financial results.
- 1.6 It is therefore noted from the financial performance and corporate announcements made by the Company during the Investigation Period that the price movement witnessed in the scrip was not supported by any change in the fundamentals of the Company during this period.

Trading Analysis on BSE

- 1.7 An analysis of the trading in the scrip on BSE during the Investigation Period was carried out. As stated earlier, during patch II i.e between February 02, 2016 to April 01, 2016, price fall was observed. The price of the scrip opened at Rs.110 (previous day closing price Rs.112.8) on February 02, 2016, reached a low of Rs.72.9 on April 01, 2016, and closed at Rs.82.50 on April 01, 2016. Since this was a price fall patch, LTP analysis was carried out on the sell side.
- 1.8 It was observed that BP Fintrade Pvt Ltd.(Noticee No. 1) had contributed Rs.-125.70 to negative LTP from 109 trades which represented 6.89% of the total market negative LTP during the period; BP Comtrade (Noticee No. 2) had contributed Rs.-57.60 to negative LTP from 57 trades which represented 3.16% of the total market negative LTP during the period.

Connection among entities

- 1.9 It was observed that Noticee no.1 and Noticee no.2 were related to each other and the basis of their connection is given below:

Table 3		
Sr No	Client Name	Basis of Connection

1	BP Fintrade Pvt Ltd	- As per UBI Bank a/c no. 317901011012298 held by BP Fintrade Pvt Ltd, financial transactions observed with BP Comtrade Pvt Ltd. - Both the entities have common email nil_dhan@yahoo.com - Both the entities have common mobile no.9821041120.
2	BP Comtrade Pvt Ltd	

Trading by connected entities:

1.10 Details of trading by the above connected entities on BSE are as under:

Table 4					
					Exchange – BSE
Sr. No.	Client Name	Gross Buy Qty	Gross Buy % to total market Vol	Gross Sale Qty	Gross Sell% to total market Vol
1	BP Fintrade Private Limited	268364	3.19	358205	4.26
2	BP Comtrade Pvt Ltd	79482	0.95	69721	0.83
Market total		8414560	100	8414560	100

1.11 Details of the analysis of trades carried out by the connected entities as sellers during this patch is as follows:

Table 5												
Seller Name	All trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of negative LTP to Total Market negative LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
BP FINTRADE PRIVATE LIMITED	-21.05	106263	476	104.65	7055	131	-125.70	25984	109	73224	236	6.89
BP COMTRADE PVT LTD	-12.85	32723	224	44.75	6860	71	-57.60	8264	57	17599	96	3.16
Group Total	-33.90	138986	700	149.4	13915	202	-183.30	34248	166	90823	332	10.05

Market Total	-30.30	2774140	8337	1794.8 5	466853	2147	-1825.15	966983	2337	1340304	3853	100.00
--------------	--------	---------	------	-------------	--------	------	----------	--------	------	---------	------	--------

1.12 From the above table, it was observed that the Noticees had contributed negative LTP of Rs.183.30 in 166 trades with a volume of 34248 (10.05% of the market negative LTP) which was significant.

1.13 It was observed that in 31 trades out of the total 166 trades, sell orders were placed by the Noticees before the corresponding buy orders and the negative LTP contribution of such trades was Rs.39.25 (2.15% to total market negative LTP).

1.14 However, in respect of the remaining 135 trades, the Noticees sell orders had matched with buy orders already pending on the exchange platform, and the LTP contribution from such trades was Rs.144.05 to negative LTP (7.8% to total market negative LTP).

1.15 Further, it was observed that the Noticees traded among themselves and acted either as buyer and /or seller in 5 trades and contributed Rs.2.50 to negative LTP (0.13% to total market negative LTP).

1.16 There were also 124 sell trades by the Noticees where the buy order quantity was more than the sell order quantity. BP Fintrade (Noticee No.1), traded on 85 instances and BP Comtrade (Noticee No.2) traded on 39 instances, contributing an LTP of Rs. 99.00 (5.42%) and Rs.40.62 (2.2%) to negative LTP (total of 7.65% to total market negative LTP) respectively.

1.17 It was observed from the trading pattern of Noticees, as tabulated below that buy orders for large quantity of shares were available but the Noticees repeatedly placed sell orders for small quantity and contributed to significant negative LTP. They followed this trading pattern on several days and contributed to significant negative LTP.

1.18 The analysis of the trade log was done for Noticees and following were observed:

Table 6								
Buyer Name	No. of trades (LT	when sell order qty was of 1 share only	Negative LTP Contribution when sell order qty was between 2-9 shares	Negative LTP Contribution when sell order qty was between 10-25 shares	Negative LTP Contribution when sell order qty were more	Total negative LTP contribution	% of negative LTP to Total	

	P <0)							than 25 shares		n (Rs.)	Mark et positi ve LTP
		Negativ e LTP contrib ution	No. of trade s	Negativ e LTP contribu tion	No. of trades	Negativ e LTP contribu tion	No. of trade s	Negati ve LTP contri bution	No. of trade s		
BP COMTRA DE PVT LTD	57	-10.55	13	-11.50	15	-2.55	5	-33.00	24	-57.60	3.16
BP FINTRAD E PRIVATE LIMITED	109	-73.05	59	-25.30	17	-3.75	6	-23.60	27	- 125.70	6.89
Total	166	83.60	72	36.80	32	6.30	11	56.60	51	- 183.30	10.05

1.19 It was observed that out of 166 sell trades of Noticees which contributed negative LTP of Rs 183.30 (10.05% of total market negative LTP), 72 trades which contributed to negative LTP of Rs.83.60 (4.58 % of total market negative LTP), the sell order quantity was 1 share. For another 32 trades, the sell order quantity was in the range of 2-9 shares, which contributed negative LTP of Rs. 36.80 (i.e., 2 % of total market negative LTP). Hence, it was observed that in the majority of the trades (104 trades out of 166 trades), Noticees had put sell orders with quantity of shares in single digits i.e. mostly from the range of 1-9 shares when buy orders were available in the range of 10 to 50000 shares (Average of buy orders was 2652 shares).

1.20 The Noticees were following the above trading pattern on several days and contributed to the negative LTP of Rs. 139.65 i.e., 7.65 % of total market negative LTP.

SHOW CAUSE NOTICE

2. Consequent to the investigation, a common Show Cause Notice dated August 7, 2017 (hereinafter referred to as “SCN”) was served on BP Finttrade Pvt. Ltd. and BP Comtrade Pvt. Ltd. The SCN inter alia alleged as follows:

- a. Based on the trading pattern of the Noticees in the scrip, it was alleged that they were not acting as genuine sellers; they sold small quantity of shares in each transaction. By these trades,

the Noticees were instrumental in establishing a price lower than the last traded price and thus contributed to decreased scrip price with most of their trades.

- b. In view of the repeated nature of such trades, it is alleged that the Noticees manipulated in the scrip price and created a misleading appearance of trading in the scrip by such trades.
- c. It was alleged that the Noticees have violated Section 12A(a),(b),(c) of SEBI Act, 1992, Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2)(a) and (e) of SEBI (PFUTP) Regulations, 2003.

Reply of the Entity

- 3. The Noticee Nos.1 and 2 vide replies dated September 23, 2019 and November 11, 2019 made similar submissions in response to the SCN. The main submissions made by the Noticees are reproduced below,-
 - a. The Noticees' volumes on the exchanges are reasonably high and their volume traded in the scrip Blue Blend was a very small portion of their overall volume and not a significant part of their business.
 - b. The Noticees were into large scale jobbing, arbitrage and positional trading and several dealers execute transactions for us under our pre-defined trading strategy.
 - c. One such strategy is momentum trading strategy wherein our dealers try to analyse the momentum of price movement and the quantity traded. The decision to purchase is generally made only after a trend of momentum is established. The shares are held till the momentum continues and the same are sold when it appears that the momentum is not sustainable.
 - d. The Noticees' trading in Blue Blend was similar to their trades in several other securities and was in normal course of business.
 - e. The Noticees started trading in the scrip only from November 23, 2015 and prior to it the movement in price did not reflect any specific trend and volumes were also low.
 - f. The volume of their trades were about 3.14% of the total volume of BSE and it was not a significant portion of their overall trading.

- g. They had similar % of trading in multiple securities due to their large volumes and therefore it is not abnormal for them to do such volumes.
- h. They submitted that the investigation has to consider the overall impact of transaction on all markets and not just the BSE.
- i. Noticee No. 1 denied having any connection with Noticee No. 2 except that they carry out their commodity transactions through them as a client.
- j. As regards the common email id and password, the Noticees stated that they were completely unaware as to how the email id and mobile number of Noticee 1 was also appearing for Noticee 2.
- k. They submitted that any analysis carried out by clubbing our turnover with Noticee No. 2 is not correct.
- l. Without prejudice to the aforesaid, it was also submitted that even if the volumes are clubbed, the same cannot result in any adverse inference as the same are in compliance with the requirements of SEBI.

Response to allegations of negative price manipulation in Patch II

- m. Negative price movements come in a stock because of the sale of securities. It can be observed from our trading pattern that we have been purchasing the securities first, holding it for some short period and then selling them. It also means that we can only profit when we purchase at a lower price first and then sell at higher price. Having purchased shares of Blue Blend in huge quantity, we can never have any intention to deliberately suppress the price of the same and therefore the allegation of causing negative price manipulation is illogical and absurd.
- n. Further, it was submitted that when a person intends to sell its holdings the attempt is to exit at the earliest and therefore the impact on price can be more but same cannot be a reason for allegation of manipulation of price by causing negative price movement.
- o. Of the 476 trades only 109 resulted in negative price movement whereas 131 resulted in positive price movement and 367 trades resulted in either no price movement or positive price movement.

- If a person wants to artificially suppress the price of a security, why will such a person execute 131 trades that result in positive price movement and 367 trades that have positive or no impact on price.
- p. Without prejudice to denial of relationship with BP Comtrade, even in case of collective analysis, it can be observed that out of the 700 trades, 202 trades resulted in positive price movement and 534 trades resulted in either positive or no price movement.
 - q. Though it is alleged that there was a negative movement of Rs. 183.9 from 166 trades, the same analysis ignores the fact that there was also a positive movement of Rs. 149.4 from 202 trades. A holistic view of trading will substantiate that the transactions were absolutely normal and were not manipulative as alleged or otherwise.
 - r. Placing pending orders or matching an existing pending order is a process of the Exchange. As transacting parties, if the seller places the order before the buyer at a particular price it remains as a pending order and in other cases the sellers' pending order matches with the existing pending buy order of the buyers. Both types of orders may result in positive or negative price movement.
 - s. Noticees are unable to understand as to how the order quantity of buy or sell is relevant for the SCN.
 - t. Noticees execute trades in hundreds of securities and all these securities cannot fit the market of the trading screen. A longer list of market watch requires the dealers to scroll. Further each dealer keeps trading in multiple securities and therefore tracking the price movement of all shares at a time is not possible from the market watch. Therefore, the dealers place orders of smaller quantities to keep a check of the price movement as the same is immediately reflected in message area upon execution of trade. It is also a known fact that the market watch works on a broadcast basis and trade messages are 1 on 1 communication with the Exchange and therefore faster. Therefore, to keep a real time watch on price movement, orders of smaller quantity are placed. Noticees also requested that a list of orders that are found to be allegedly not in line with SEBI's comfort may be shortlisted and we will try to explain the same in detail. In any case, placing orders of smaller quantities is a normal pattern of our trading and our trade logs for other securities may also be analysed by SEBI to confirm the same.

Consideration –

- 4.1 After perusing the SCN and considering the submissions made by the Noticees, I find that the following two issues merit consideration:
- a. whether the trading by the Noticees in the scrip can be considered as genuine trades executed in the normal course of dealing in securities or they were manipulative in nature, in violation of the provisions of the SEBI Act and PFUTP Regulations; and
 - b. Whether the Noticees were connected to each other so as to ascertain whether the trades should be treated collectively or separately, for the purpose of the adjudication.
- 4.2 I, first proceed to address the issue of manipulative trading alleged in the SCN. I, note from the SCN, that it has been alleged that the Noticees had engaged in manipulative trades during Patch II of the Investigation Period which resulted in lowering the price of the scrip of the Company.
- 4.3 It is noted from the material available on record that the Noticees have traded in the scrip Blue Blends during Patch II of the Investigation Period and had cumulatively executed 700 sell trades with a combined volume of 1,38,986 shares on BSE. Out of these 700 trades, 166 trades for a volume of 34248 shares contributed to a negative LTP of Rs.183.30 which was 10.05% of the total market LTP during Patch II.
- 4.4 It is further noted that out of the 166 orders, which contributed to negative LTP, 72 trades, which contributed a negative LTP of Rs. -83.6 (4.58% of total market LTP), sell order quantity was only 1 share. In a further 32 out of the 166 trades, sell order quantity was in the range of 2-9 shares, and these trades contributed to negative LTP of Rs. 36.80, which was 2% of total market negative LTP.
- 4.5 It has also been alleged that in respect of 135 of the above mentioned 166 trades, Noticees sell orders had matched with buy orders already pending on the exchange platform, and the LTP contribution from such trades was Rs.144.05 to negative LTP (7.8% to total market negative LTP). It was therefore alleged that Noticees were not acting as genuine sellers and had no bona fide intention to sell because in spite of sufficient buy order quantity available in the market, they had sold small quantities of shares in each transaction. It was also alleged that the Noticees have executed such trades only with the

intention of manipulating the price of the scrip and such trades attract the rigor of the anti-manipulation provisions of the Indian securities laws.

4.6 I, therefore, note from the SCN that the main thrust of the allegations against the Noticees is that they sold small quantities of shares below the last traded price on multiple occasions and such trades were executed with the intention of depressing the price of the scrip.

4.7 At the outset, I note that each such individual trade of the Noticees –(i.e. sell orders for negligibly small quantities below the last traded price)– would not by itself be considered as a manipulative trade. I also note that it is a function of the market that every trade that takes place establishes the price of the scrip and the price fluctuates with every buy/sell order which is executed. That having been said, the question that arises for consideration is whether placing sell orders, for negligible quantities, below the LTP on multiple occasions can be considered to be trades executed in the normal course, especially when such trades had a disproportionate effect of depressing the price of the scrip. In this regard, it is proposed to analyse whether cumulatively the subject trades can be considered as manipulative after understanding the scope and objectives of anti-manipulation legislations and treatment of such trades by various Courts.

Anti-Manipulation provisions of Securities Laws

4.8 Addressing market manipulation was one of the main driving forces behind the enactment of securities laws the world over. When the SEBI Act was enacted in 1992, section 11(2)(e) was the principal provision which banned any fraudulent transactions in securities. The joint parliamentary committee setup to investigate the stock market scam of 2001 had stated in its report (JPC Report 2001) that the foremost duty of SEBI is to ensure safety and integrity of the market which is a pre-requisite for protection of the interests of investors in securities. The report also noted that it is SEBI's primary job to ferret out irregularities like price rigging and defuse them before they blow up.

4.9 Section 12A, which is now the mainstay of anti-manipulation measures of SEBI, was inserted via an amendment in 2002. This came on the back of the recommendations of the JPC Report 2001. Thereafter, SEBI in 2003 overhauled the regulatory architecture dealing with market manipulation by

notifying the SEBI(Prevention of Fraudulent and Unfair Trade Practices)Regulation, 2003 (FUTP 2003).

- 4.10 Courts in India have also consistently stressed on the importance of curbing manipulative practices in the securities market. The Hon’ble Supreme Court in the matter of N.Narayanan v. SEBI [(2013) 12 SCC 152] had 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.”* The Hon’ble Supreme Court therein quoted from Palmer’s Company Law that *“Market manipulation is normally regarded as the “unwarranted” interference in the operation of ordinary market forces of supply and demand and thus undermines the “integrity” and efficiency of the market.”* Finally, the Supreme Court made the notable observation that *“Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve ‘market integrity’ and to prevent ‘Market abuse’.”*
- 4.11 In another judgment, passed in Kishore Ajmera v. SEBI [AIR2016SC1079], the Hon’ble Supreme Court held that *“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 preempt 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.”*
- 4.12 In yet another case, namely, Rakhi Trading v. SEBI [(2018)13SCC753], the apex Court 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.”* It is relevant to note that in this case, the Hon’ble Supreme Court specifically held that it is not necessary that there could be a violation of the PFUTP Regulations, only if there is a direct market impact on account of sham transactions. On the other hand, the apex court recognised that there may be indirect factors that may also affect the market integrity. The Hon’ble Supreme Court interpreted Regulation 4(2) of the PFUTP Regulations and stated that *“.. dealing in securities shall be deemed to be fraudulent if the trader indulges in an act which creates a false or misleading appearance*

of trading in the securities market. It is a deeming provision. Such trading also involves an act amounting to manipulation of the price of the security in the sense that the price has been artificially and apparently prefixed. The price does not at all reflect the value of the underlying asset. It is also a transaction in securities entered into without any intention of performing it and without any intention of effecting a change of ownership of such securities, ownership being understood in the limited sense of the rights in the contract. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have prefixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.” With the said observations, the Supreme Court overturned the Tribunal’s view in the following words:

“According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect.”

4.13 Generally stated, anti-manipulation legislations seek to curb activities that interfere with or distort the proper functioning of the financial markets and thereby affect the efficient allocation of resources in the economy. Thus the Courts in India have held that the object behind the enactment of the anti-manipulation provisions is to curb activities that distort market efficiency, to preserve market integrity and prevent market abuse. The case law in this field has evolved over the years and the courts now recognise that trades that may have an indirect impact on the fair price discovery system would fall within the scope of the prohibition under the Regulations, even though there may not be direct factors to show the manipulation. To quote the Supreme court again in *Rakhi Trading*, *“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.”(Emphasis Supplied) From the facts before us, it is clear that the traders in question did not intend to transfer beneficial ownership and therefore these trades are non genuine. Rather than allowing the market forces to operate in their natural course, the traders repeatedly carried out the impugned transactions which deprived other market players from full participation. The repeated reversals and predetermined arrangement to book profits and losses respectively, made it clear that the parties were not trading in the normal sense and ordinary course. Resultantly, there has clearly been a restriction on the free and fair operation of market forces in the instant case.”

4.14 In Securities and Exchange Board of India and Ors.v. Shri Kanaiyalal Baldevbhai Patel and Ors., it has been held by this Court that a trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between the parties engaged in business transactions. To quote:

“31. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the ‘unfair trade practice’ may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of ‘unfairness’ appears to be broader than and includes the concept of ‘deception’ or ‘fraud’.

xxx xxx xxx

60. Coupled with the above is the fact that the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities. However the said question, as suggested by

my learned Brother, Ramana, J. is being kept open for a decision in a more appropriate occasion as the resolution required presently can be made irrespective of a decision on the said question.”

4.15 It is therefore noted that the Hon’ble Supreme Court has held that both direct and indirect impact of transactions on the market have to be considered. Further, the Hon’ble Supreme Court has also held that synchronised trades (Kishore Ajmera) or trades below prevailing market price (Rakhi Trading), may have an impact on the price discovery system affecting the fairness, integrity and transparency of the stock markets and such transactions would get covered under the definition of fraud under FUTP 2003. The Hon’ble Supreme Court has also recognised the fact that transactions on the exchange platform that may otherwise appear to be legal or facially legitimate need not necessarily be legal if there is an intention to manipulate the market and such an intention can be gathered from all the circumstances, as discussed above. The relevant factors to decide the genuineness of the transactions would be – whether the conduct of the entities undermines the ethical standard and good faith; whether the parties were trading in the normal sense and ordinary course; did the trades interfere with the free and fair operation of market forces; etc.

4.16 In this context, I note that the definition of the term ‘manipulation’ as discussed by Daniel R. Fischel and David J. Ross in their article titled ‘Should the Law Prohibit 'Manipulation' in Financial Markets?’¹ published in the Harvard Law Review sums up all the aspects of manipulation in the securities markets. The authors looked at the various attempts by courts and commentators to define the term ‘manipulation’ in relation to the securities and commodities markets, and stated that “*According to these definitions, conduct is manipulative if it is designed to do one of three things: (1) interfere with the free play of supply and demand; (2) induce people to trade; or (3) **force a securities price to an artificial level.***” (*emphasis supplied*)

¹ Daniel R. Fischel & David J. Ross, "Should the Law Prohibit 'Manipulation' in Financial Markets?," 105 Harvard Law Review 503 (1991).

Anti Manipulation provisions in SEBI Act and Regulations:

- 4.17 The prohibitions against manipulative practices in the Indian securities market is contained in section 12 A of the SEBI Act and regulations 3 and 4 of FUTP 2003. The provisions, as it existed at the time of alleged offence, are reproduced below for ease of reference.

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

12A. No person shall directly or indirectly—

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

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under*

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

“Advancing the Bid” and its reverse – A form of open market manipulation

- 4.18 I, now, move on to address the issue of unilateral price manipulation wherein the person on one side of the trade (buy or sell side) places trades above or below the LTP, as in the instant matter, where

collusion between buyer and seller has not been established but the trades result in adverse market impact. These transactions may be otherwise legitimate or facially legitimate transactions. The Technical Committee of International Organization of Securities Commissions (IOSCO) in its report on 'Investigating and Prosecuting Market Manipulation'² has labelled such practices as 'Advancing the Bid' which they have defined as *"Increasing the bid for a security to increase its price artificially, creating the impression of strength or the illusion that stock activity has caused the increase."*

4.19 The European Securities Markets Authority (ESMA) has also recognized such forms of market manipulation. In exercise of its delegated Authority under Article 12(5) of the Market Abuse Regulations, ESMA's report on Market Abuse Regulation³, under the section 'Advice on the specification of the indicators of market manipulation under Article 12(5) of Market Abuse Regulations, 2016,' has laid down that *"Entering orders to trade which **increase the bid (or decrease the offer)** for a financial instrument, ..., in order to **increase (or decrease)** its price – usually known as advancing the bid."* would get covered under the scope of market manipulations.

4.20 As noted in the preceding paragraphs, both the Hon'ble Supreme Court and the Hon'ble Securities Appellate Tribunal have held that legitimate transactions entered into with a view to manipulate the markets would attract the provisions of FUTP 2003. The Courts have repeatedly held that any deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price of security would be considered as a manipulative, unfair and fraudulent trade practise as defined under FUTP 2003. It is therefore noted that both the Hon'ble Supreme Court and SAT have recognized that trade based manipulations attract the rigor of the FUTP 2003.

² Investigating and Prosecuting Market Manipulations, Technical Committee of the International Organization of Securities Commissions, <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD103.pdf>

³ <https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-224.pdf>

4.21 It is reiterated that any person who deliberately executes facially legitimate transactions (i.e. transactions apparently lacking misconduct/ fraud/ deception) with an intention to interfere with the free and fair operations of the markets, cannot be allowed to defeat the purpose of ‘anti-manipulation’ laws, merely because they have resorted to employing methods which have not been expressly proscribed. Market participants ought to be held responsible for the trades which are solely intended to manipulate the markets, regardless of the methodologies that have been employed by them.

Views of SAT on LTP Manipulation:

4.22 I note that in the matter of M/s Nishith M. Shah v. SEBI (Appeal No. 97 of 2019 decided on January 16, 2020), the Hon’ble SAT had held that “in the absence of any finding of collusion between the buyer and the seller the charge contributing to the LTP cannot be sustained.” While arriving at the said conclusion, the Tribunal was relying on its earlier decisions in the matter of Jagruti Securities Limited vs Securities and Exchange Board of India (Appeal No. 102 of 2006 decided on October 27, 2008) and Vikas Ganeshmal Bengani vs Whole Time Member, SEBI (Appeal No. 225 of 2009 decided on February 25, 2010).

4.23 It was, however, noted that the same bench of the Tribunal in the matter of KNC Shares & Securities Pvt. Ltd. v. SEBI (Appeal No. 39 of 2009 decided on September 07, 2010, involving similar facts, held that they could have agreed with the conclusion reached by the Board that the appellant in the matter had manipulated the price of the scrip by continuously placing orders, of miniscule quantities, above the last traded price *“if there had been material on the record to show that there were sell orders pending in the system which were at a lower price than the price offered by the appellant as a buying member.”*

4.24 It is, therefore, noted that the Hon’ble Tribunal in this matter had observed that collusion between buyer and seller is not a sine qua non for establishing the charge of price manipulation by continuously placing trades above/below the last traded price.

- 4.25 It is further noted that in the matter of Shailesh Jain v. SEBI (Appeal No. 15 of 2012 decided on May 01, 2012), SAT has held that *“The appellant’s role has been one of conscious indulgence in manipulation of the trade in a crude and preplanned manner. The very fact that the appellant has placed orders above the last traded price when sell orders were available in the market at a lower price shows the intention behind the trade.”*
- 4.26 It is therefore noted that the Hon’ble Tribunal has in the matter of KNC Shares and Shailesh Jain, referred above, held that a charge of unilateral price manipulation by placing orders above the last traded price can be sustained if there is material to show that such trades were placed when sell orders for a lower price was available in the system.
- 4.27 In the matter of Systematix Shares & Stocks (India) Limited (Appeal No. 21 of 2012 decided on April 23, 2012) it was held by SAT that *“Obviously, an attempt was made to inflate the share price by **trading in single shares** above the last traded price over a period of time. The adjudicating officer found that during the investigation period there was more buying interest in the scrip than that of selling which is revealed through the quantum of buy and sell orders. He has established that the trading in minimum number of shares per day was for the purpose of setting a new high price so that it would serve as the opening price in the next day and the process continued over a period of time.”*
- 4.28 In this matter, a similar charge was upheld when it could be shown that appellant in the matter was trading in small quantities even when there was substantial buying interest in the scrip and the sole motivation for resorting to such a practise was to manipulate the price of the scrip.
- 4.29 In Saumil Bhavnagari v. SEBI (Appeal No. 28 of 2014 decided on March 21, 2014) it was held that *“From the nature of the trading, it is clear that the appellant has sought to create a misleading impression that a large number of persons were trading in the scrip. This lends support to the finding of the adjudicating officer in paragraph 20 of the impugned order. “... but by purchasing shares at the higher price in LTP in most of the trades, the noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the noticee’s trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible investors. By purchasing*

at a higher price in most of his trades, the noticee had given the wrong impression about the price of the scrip in the market.”.

12. It is an accepted state of affairs that in cases of manipulation of the volume and / or price of a particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant.”

4.30 The Tribunal here had observed that in cases where the malafide intention of the trades executed could be shown, a charge of unilateral price manipulation could be sustained.

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

4.32 It also noted that in the case of *Mrs Kalpana Dharmesh Chheda v. SEBI* (Appeal No. 454 of 2019 decided on February 25, 2020) it was held by Tribunal in a matter involving similar allegations, that *“looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. **This behavior cannot be justified in terms of normal rational expectations of a seller. ”***

4.33 It is therefore noted that the Hon’ble Tribunal has observed that a charge of unilateral price manipulation, without establishing collusion between buyer and seller, could attract the provisions of FUTP 2003, if any one of the following is established,-

1. Evidence on record show that such trades were placed when sell orders for a lower price was available in the system.
2. Malafide intention that can be established through an analysis of the trade and order log

3. In cases where no justifiable reasons have been provided for entering into such transactions in terms of normal rational expectations of a seller.

Whether the trades executed by the Noticees constitute fraudulent and unfair or manipulative trades

- 4.34 I note from the replies of the Noticees that they have stated, on similar lines, that they had adopted a momentum trading strategy in the scrip whereby their decision to purchase is made after a trend of momentum is observed and such shares which are bought are held till the momentum continues and sold when it appears that the momentum is not sustainable. I, however, note that the Noticees have conveniently side-stepped the issue and avoided explaining as to how such a trading strategy compelled them to repeatedly place sell orders in small quantities below the last traded price.
- 4.35 As stated above, Noticees had cumulatively executed 700 sell trades during patch II with a combined volume of 1,38,986 shares on BSE. Out of these 700 trades, 166 trades for a volume of 34248 shares contributed to a negative LTP of Rs.183.30 which was 10.05% of the total market LTP during Patch II. Out of these 166 trades, 72 trades, which contributed a negative LTP of Rs. -83.6 (4.58% of total market LTP), sell order quantity was only 1 share. In a further 32 out of the 166 trades mentioned above, sell order quantity was in the range of 2-9 shares which contributed to negative LTP of Rs. 36.80 which was 2% of total market negative LTP.
- 4.36 Therefore, even while noting that 202 trades by Noticees resulted in positive price movement and 534 trades resulted in either positive or no price movement, the disproportionate impact of the 72 trades for one share each on the negative LTP cannot be overlooked. These 72 trades for 72 shares had contributed to a negative LTP of Rs. -83.6 which was 45.6% of the total negative LTP contribution by the Noticees during patch II. i.e. such trades which were only 0.051% of the total sell trades by the Noticees during this period had contributed to 45.6% of the total negative LTP contributed by the Noticees.
- 4.37 I also note that even though the scrip witnessed a significant increase in the volume traded during the Investigation Period, it was still thinly traded in comparison to other scrips in the market with a daily

average traded volume of only 66782 shares. While such trades for miniscule quantities may not have an impact on liquid scrips, it can significantly affect the price movement or direction in thinly traded shares, as witnessed in the instant matter.

4.38 The other explanation that has been furnished for placing small orders were that they were being placed to track the price movement of the scrip as dealers, who were executing the trades, would be tracking multiple scrips and only 25 scrips could be accommodated in the market watch feature on the trading screen. It is, however, noted from the trade log that Noticees had executed more than one such trade on multiple days during the investigation period and almost all such trades were entered into from one terminal by the same trader. I, therefore, find the argument advanced by the Noticees in this regard to be untenable. If such trades, as claimed by the Noticees, were being executed to track the movement of scrip, then the Noticees would have executed only one such trade in a day. Further, it was also noted that such trades were executed when large buy orders were pending.

4.39 I, therefore, note that Noticees have failed to give justifiable reasons for executing such trades and this would invariably lead to an inference that such trades were not executed in the normal course of business. As noted by the Hon'ble Tribunal in the matter of Shri Lakhi Prasad Kheradi(supra) and Kalpana Cheda(such), such conduct by the parties, which is repeated across Patch II of the investigation period, leads me to conclude that such trades were executed with the intention of manipulating the market and cannot be justified in terms of normal rational expectations of a seller.

4.40 In view of the above, given the repeated nature of the trades for minuscule quantities that were below the LTP, for which no justifiable reason has been provided by the Noticees, I am compelled to conclude that such trades were executed with an intention to manipulate the price of the scrip. Having given such a finding, I also note that such trades were not a significant proportion of the total trades executed by the Noticees in the scrip during Patch II of the Investigation Period.

4.41 In view of the above, I note that the trades of the Noticees, especially the trades for minuscule quantities below LTP, would attract Regulations 3 (a), (b), (c), (d), 4(1) and 4(2)(e) of FUTP 2003. I also note that the Noticees are regular traders. Hence, while issuing directions proportionate to the

impact of the trades in the market, I also find it necessary to dissuade market players from perpetrating manipulative practices in the market and would like to advise the Noticees to exercise adequate care and caution in future in this regard.

- 4.42 As regards, the charge of connection between the two Noticees, I note that the only reply furnished by the Noticees are that they are unaware as to how the phone number of Noticee No. 1 was being shown for Noticee No.2 also, which I find unsatisfactory. I also find that they had a common email ID. Strangely the names of the Noticees are also similar. I am therefore inclined to uphold the allegation in the SCN that Noticees 1 and 2 are connected entities and for the purpose of this order their trades have been considered cumulatively.

Order –

- 5.1 In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, direct that Noticee No. 1 and Noticee No. 2 are prohibited from accessing the securities market, directly or indirectly, and also restrained from buying, selling or otherwise dealing in the securities including units of mutual funds, either directly or indirectly or in any other manner whatsoever, for a period of four weeks.
- 5.2 The Noticees shall at all times exercise due care and caution while trading in market and adopting strategies that may have an impact on the fair price discovery of the scrips.
- 5.3 In view of the current Covid-19 related lockdown, I direct that this Order shall come into force from the date of reopening of the Securities Appellate Tribunal.
- 5.4 A copy of this order shall also be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents of mutual funds, for ensuring compliance with the order.

Place: Mumbai
Date: May 28, 2020

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA