

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Section 11(1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992

In the matter of trading activities of certain entities in the scrip of Alexander Stamps and Coin Ltd. (Formerly Rudraksh Cap Tech Limited)

In Respect of:

Sr. No.	Name of the Noticee	PAN
1.	Mr. Anirudh Sethi	ANBPS5743A

1. Securities and Exchange Board of India (“**SEBI**”) had conducted an investigation in the trading activities of certain entities in the scrip of Alexander Stamps and Coin Ltd. (formerly Rudraksh Cap Tech Ltd.) (hereinafter referred to as “**ASCL**” / “**Company**”), to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and/or SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the “**PIT Regulations**”) during the period March 18, 2016 to October 14, 2016 (hereinafter referred to as the “**Investigation Period-1**” / “**IP1**”) and from May 24, 2017 to July 17, 2017 (hereinafter referred to as the “**Investigation Period-2**” / “**IP2**”) [IP1 and IP2 are collectively referred to as “**investigation period**”]. It was observed that Mr. Anirudh Sethi, director and a designated person of ASCL (hereinafter referred to as “**Noticee**”) had executed contra trades during IP2. In terms of Clause 10 of ‘*Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders*’ (as applicable at the relevant time) specified under Schedule B of PIT Regulations (hereinafter referred to as “**Code of Conduct**”), a designated person who is permitted to trade shall not execute a contra trade within a minimum period of six months.

2. Pursuant to the investigation, a show cause notice dated November 23, 2022 (hereinafter referred to as the “**SCN**”) was issued to the Noticee alleging violation of Clause 10 of the *Code of Conduct*. Vide the SCN, the Noticee was called upon to show cause as to why appropriate directions for disgorgement of ₹1,18,14,031.39, should not be issued against him under the provisions of Sections 11(1), 11(4) and 11B(1) of the SEBI Act, and why penalty should not be imposed upon him under the provisions of Sections 11(4A) and 11B(2) for indulging in contra trades.
3. The contents of the SCN and the allegations levelled therein are summarized as under:
 - 3.1. The Noticee was the promoter and director of the Company and a designated person during ‘IP2’ and during the six-month period prior to the beginning of IP2.
 - 3.2. The Noticee had executed contra trades in the scrip of ASCL during IP2 commencing from May 24, 2017 and ending on July 17, 2017. In terms of Clause 10 of the Code of Conduct, a Designated Person who is permitted to trade shall not execute a contra trade within a period of six months. The details of the contra trades executed by the Noticee in the scrip of ASCL from November 23, 2016 (i.e., six months prior to the beginning of IP2) till July 17, 2017 (end of IP2) {as provided by BSE Ltd. (*the company is listed only on BSE*) and National Securities Depository Ltd. (NSDL)} are provided below.

Table – 1 (figures in ₹)

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss
06/12/2016	-			45000	92.55		
07/12/2016	-			3725	97.00		
08/12/2016	-			16290	98.32		
09/12/2016	-			42110	94.45		
12/12/2016	-			8818	89.45		
14/12/2016	-			11869	81.80		
15/12/2016	-			10335	77.52		
29/12/2016	-			7796	78.28		
06/03/2017				8915	70.70		
06/03/2017	-			139785	70.70		
08/03/2017	-			50000	61.40		
08/03/2017	40415	61.65		40415	61.33		1248823.50

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss
09/03/2017	675	63.04		10740	58.42		19919.25
10/03/2017	3198	60.43		5000	58.20		102719.76
14/03/2017	400	57.88		-			13868.00
22/03/2017	312	55.90					11434.80
22/03/2017	3725	55.90		-			153097.50
22/03/2017	963	55.90					40850.46
23/03/2017	15327	56.60					639442.44
23/03/2017	29673	56.60		25000	56.60		1123123.05
23/03/2017	7320	56.85		5914	56.35		275232.00
24/03/2017	2850	57.66		3000	58.00		104851.50
24/03/2017	2267	57.45					83879.00
24/03/2017	8818	57.45					282176
24/03/2017	11869	57.45					289010.15
24/03/2017	10335	57.45					207423.45
24/03/2017	7796	57.45					162390.68
24/03/2017	8915	57.45					118123.75
27/03/2017	13579	56.60		10522	55.53		191463.9
28/03/2017	14141	56.05		12883	53.77		207165.65
29/03/2017	38877	54.91		38877	53.18		613867.83
30/03/2017	13862	52.92		25862	52.11		246466.36
30/03/2017	59326	52.40					1085665.8
30/03/2017	15674	52.40					141066
31/03/2017	50	51.35					502.5
31/03/2017	34276	51.35					344473.8
31/03/2017	40415	51.35					403341.70
31/03/2017	309	51.35					2184.63
03/04/2017	10431	49.4					94087.62
03/04/2017	5000	49.4					44000.00
03/04/2017	25000	49.40					180000.00
03/04/2017	5914	49.40					41102.30
03/04/2017	3000	49.40					25800.00
03/04/2017	10522	49.40					64499.86
03/04/2017	12883	49.40					56298.71
03/04/2017	2250	49.40					8505.00
03/04/2017	24248	49.77		17731	49.33		82685.68
05/04/2017	12379	47.50					70312.72
05/04/2017	1701	47.50		14080	46.95		7841.61
06/04/2017	24161	46.61					132885.50
06/04/2017	17731	46.61		37647	45.86		48228.32
06/04/2017	8654	46.61					2942.36
07/04/2017	5426	49.24					-12425.54
07/04/2017	15744	49.24		21105	49.33		-53214.72
10/04/2017	21903	48.14					-49938.84
10/04/2017	21105	48.14					25114.95
10/04/2017	34936	48.14		76444	47.18		-33538.56
11/04/2017	25383	48.18		20452	47.99		-25383.00

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss
12/04/2017	16125	46.82					5805.00
12/04/2017	20452	46.82		48420	46.64		23928.84
12/04/2017	15888	46.82					-2859.84
13/04/2017	30433	44.67		30433	44.31		59953.01
17/04/2017	2099	42.67					8333.03
17/04/2017	14326	42.67		16338	42.10		23494.64
17/04/2017	16107	42.60					27542.97
17/04/2017	16338	42.60					-8169
17/04/2017	14255	42.60					
18/04/2017	4050	41.01		1400	40.50		-2940
19/04/2017				12855	41.11		-19153.95
19/04/2017	19185	41.40		4050	41.11		405.00
19/04/2017				446	41.11		-129.34
20/04/2017	34469	42.98		18739	42.02		11618.18
20/04/2017				11231	42.02		-10781.76
21/04/2017				23238	46.13		73199.70
21/04/2017	42889	46.09		14301	46.13		572.04
24/04/2017				28588	44.79		-37164.40
24/04/2017	50358	45.47		13636	44.79		-9272.48
25/04/2017				36722	43.93		-56551.88
25/04/2017	75038	44.75		28340	43.93		-23238.80
26/04/2017				46698	43.50		-58372.50
26/04/2017	92418	44.39		41220	43.50		-36685.80
27/04/2017				51198	44.24		-7679.70
27/04/2017	133275	44.64		44458	44.24		-17783.20
27/04/2017	48200	45.80					
28/04/2017				88817	44.42		-19539.74
28/04/2017	111408	46.35		7527	44.42		-10387.26
02/05/2017				40673	44.85		-38639.35
02/05/2017	55427	45.31		14866	44.85		-22299.00
03/05/2017	42289	43.01		42289	42.62		-157737.97
04/05/2017	15659	40.70		15659	40.50		-91605.15
05/05/2017	14873	38.86		14873	38.66		-114373.37
16/05/2017	11115	37.42		11115	36.58		-108593.55
17/05/2017				12606	37.85		-107151.00
17/05/2017	24095	38.72		9734	37.85		-72615.64
18/05/2017	19041	38.08		17270	37.48		-135224.10
19/05/2017				28423	36.84		-240742.81
19/05/2017	49961	38.01		6661	36.84		-41098.37
22/05/2017				35628	37.02		-213411.72
22/05/2017	69935	37.49		15659	37.02		-57625.12
22/05/2017				14255	37.02		-26229.20
23/05/2017				618	35.93		-1810.74
23/05/2017				11115	35.93		-16561.35
23/05/2017				24095	35.93		-67225.05
23/05/2017				19041	35.93		-40938.15

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss
23/05/2017	63122	36.40		8253	35.93		-17166.24
24/05/2017				41708	35.09		-121787.36
24/05/2017	59808	35.82		10840	35.09		-26016
25/05/2017				59095	35.32		-128236.15
25/05/2017	133648	35.97		27621	35.32		-29830.68
26/05/2017	52700	39.10					
26/05/2017	13625	38.61		13625	38.37		26841.25
29/05/2017	23986	40.39		16420	39.91		57634.20
30/05/2017				5456	41.13		25806.88
30/05/2017	16350	41.97		10894	41.13		57847.14
31/05/2017				48914	41.67		286146.90
31/05/2017	122918	42.54		74004	41.67		421822.80
01/06/2017				59644	41.53		331620.64
01/06/2017	150075	43.15		52700	41.53		128061.00
01/06/2017				13625	41.53		39785.00
01/06/2017				23986	41.53		27344.04
01/06/2017				4512	41.53		-1985.28
02/06/2017				11838	41.22		-8878.5
02/06/2017	39513	43.53		11416	41.22		-15069.12
05/06/2017	22452	44.35		1000	45.55		3010
06/06/2017	19217	47.17		-	0.00		
07/06/2017	7009	49.99		-	0.00		
08/06/2017	2450	50.74		2400	48.10		13344
09/06/2017	9586	50.88		-	0.00		
12/06/2017	8783	52.97		-	0.00		
13/06/2017	8833	54.00		-	0.00		
14/06/2017	9308	55.81		5463	53.61		60475.41
15/06/2017	12328	58.75		7515	58.53		120164.85
16/06/2017	28019	60.56		28019	56.54		392266.00
19/06/2017	22752	61.72		20604	58.62		331312.32
20/06/2017	1675	63.98		15763	58.96		258828.46
Total Profit							11814031.39

Note 1: Profit/Loss from each contra trade has been calculated using First In First Out (FIFO) method. E.g. for sale transaction on December 6, 2016 (for 45,000 shares @ ₹92.55), the contra trade executed on March 8, 2017 (buy transaction of 40,415 shares @ ₹61.65), and the profit from such contra trade was $40,415 \times (\text{sell rate} - \text{buy rate})$, i.e. $40,415 \times (92.55 - 61.65) = ₹12,48,823.50$. Similarly, out of the balance sale transaction (of 45,000 shares) on December 6, 2016, for 675 shares contra trade was carried out on March 9, 2017, and the profit from such contra trade was $675 \times (92.55 - 63.04) = ₹19,919.25$ and so on.

Note 2: Only profits from the contra trades (gross basis) have been considered for arriving at the total profit figure.

Note 3: The quantity of the contra trades have been split on a single day / different days in order to match the relevant / corresponding contra trade quantity.

Note 4: For off-market transactions, closing price(s) of the scrip of ASCL on BSE for the respective dates have been considered as the buy/ sell rates.

- 3.3. From Table -1, it is noted that the Noticee executed a total of 116 contra trades, out of which, through 69 contra trades, he made a collective unlawful profit/gain of ₹1,18,14,031.39.
- 3.4. In terms of Clause 10 of the Code of Conduct, a designated person is not permitted to execute contra trades within a period of six months and if a contra trade is executed, whether inadvertently or otherwise, in violation of such restriction, the profits from such contra trade shall be liable to be disgorged for remittance to SEBI for credit to the Investor Protection and Education Fund (IPEF) administered by SEBI under the SEBI Act.
- 3.5. It is alleged that the Noticee being a designated person of the Company, has taken contra / opposite position within the 6-month period while trading in the scrip of ASCL and has acted in violation of clause 10 of the Code of Conduct.
- 3.6. SEBI vide letter dated May 10, 2022, informed ASCL about the contra trades executed by the Noticee during the period December 06, 2016 to June 20, 2017 and the profits to the tune of ₹1,18,14,031.39 made by him. ASCL was also advised to disgorge the said profit earned by the Noticee and remit the said amount to SEBI IPEF in terms of section 11(5) of SEBI Act within a period of 30 days from the date of receipt of the letter. Details of the contra trades executed by the Noticee along with calculation of profit of ₹1,18,14,031.39 were also provided to ASCL along with the said letter.
- 3.7. Thereafter, ASCL vide its letter dated June 02, 2022 informed SEBI that it had advised the Noticee to disgorge the profit amount, and that in response to the same, the Noticee provided ASCL with the copy of the Noticee's letter to SEBI dated June 02, 2022, which *inter alia* stated that he had made losses by executing contra trades during a certain period and made profits by executing contra trades during another period and has therefore made a net

loss. Moreover, *vide* the said letter, urging SEBI to view the contra trades holistically and to reconsider the advice given to ASCL regarding disgorgement of the alleged profit of ₹1,18,14,031, the Noticee requested SEBI to drop the instant proceedings.

3.8. Thereafter, SEBI, vide letter dated July 26, 2022 to ASCL, once again explained the details of contra trades executed by the Noticee and asked ASCL to remit the profit of ₹1,18,14,031.39 to SEBI IPEF. It was, *inter alia*, stated that as per the regulations, each contra trade is independent of the other and profits from one contra trade cannot be offset with loss from another and therefore, the request by the Noticee to offset the profit against the loss made through contra trades could not be considered. It was also informed that if ASCL failed to recover and remit the amount of ₹1,18,14,031.39 to SEBI IPEF within 7 working days from receipt of the letter, appropriate enforcement proceedings would be initiated against the Noticee under the provisions of SEBI Act.

3.9. In response to aforesaid letter dated July 26, 2022, ASCL forwarded the Noticee's letter dated August 02, 2022, wherein he had replied and sought the detailed working/methodology of arriving at the profit of ₹1,18,14,031 during the period from December 06, 2016 to July 17, 2017 and also sought interpretation and implication of Clause 10 of the Code of Conduct. In response, SEBI vide letter dated August 12, 2022, once again provided the detailed calculations of profit made by the Noticee and provided a final opportunity to the Noticee to make payment of ₹1,18,14,031.39 within 7 working days from the date of receipt of the letter. It was also intimated that in the event of Noticee failing to ensure the aforesaid, appropriate enforcement proceedings would be initiated against the Noticee under the provisions of SEBI Act.

3.10. In response, the Noticee vide his letter dated August 20, 2022 responded to SEBI and stated that the trading data relied upon by SEBI was incorrect and provided his trading data [as provided by his stock broker [Marfatia Stock Broking Pvt. Ltd.]] and stated that he had actually made a loss of ₹14,28,011.81 and requested SEBI to withdraw his letter dated August 12, 2022.

- 3.11. The letter and trading data provided by the Noticee was perused and it was observed that the minor difference in buy/sell rates as provided by the Noticee from the rate furnished by SEBI (as provided by BSE) is because of the element of brokerage. Upon verification, it was seen that the methodology of calculation of loss by the Noticee was incorrect (as the loss calculated by the Noticee was by reducing the total purchase cost from the total sale price for the entire period and not individually for each contra trade) and that the Noticee had made a profit of ₹1,18,14,031.39 from the contra trades. It was stated that the Noticee, had executed repeated and continuous contra trades over the period of 6 months and it was not an isolated event. It was further stated that there is no ambiguity in law regarding disgorgement in case of contra trade executed whether inadvertently or otherwise. Therefore, the arguments provided by the Noticee against disgorgement of the profits do not stand.
- 3.12. In light of the allegations, the Noticee, *vide* the said SCN, was called upon to show cause as to why appropriate directions for disgorgement of ₹1,18,14,031.39 should not be issued against him under the provisions of Section 11(1), 11(4) and 11B(1) of the SEBI Act and why penalty should not be imposed upon him under the provisions of Section 11(4A) and 11B(2) for indulging in contra trade in violation of clause 10 of the Code of Conduct as specified under Schedule B read with Regulation 9(1) of the PIT Regulations.
- 3.13. The Noticee was advised to file the written submissions along with the relevant documents/records in support of his reply within 21 days from the date of receipt of the SCN.

Service of SCN, personal hearing and submissions of noticee:

4. The SCN was duly served on the Noticee and was acknowledged by the authorised representatives (hereinafter referred to as “ARs” / “AR”) of the Noticee vide letter dated December 14, 2022. Vide the aforesaid letter, the AR of the Noticee also sought inspection of certain documents as mentioned in the letter. In response, an opportunity of inspection of documents was provided to the Noticee on December 28, 2022, which was availed by the ARs of the Noticee and they were provided with copies of all the relied upon and relevant documents.

Pursuant thereto, the Noticee filed his reply to the SCN vide letter dated February 17, 2023. An opportunity for personal hearing was granted to the Noticee on March 21, 2023 for which the Noticee sought an adjournment. Subsequently, hearing in the matter was scheduled on April 11, 2023 which was attended by the ARs of the Noticee via video conference wherein the ARs made submissions in line with the reply of the Noticee already available on record. During the hearing, the ARs also sought further time to file additional written submissions which was granted to them. Thereafter, additional written submissions were received from the Noticee vide letter dated May 3, 2023.

5. The submissions made by the Noticee vide reply dated February 17, 2023 and additional written submissions dated May 3, 2023, are summarised as below:

5.1. Violation of Principles of Natural Justice

5.1.1. The Noticee had not been provided with all the documents referred to and relied upon by SEBI;

5.1.1.1. In this regard, the Noticee provided a list of documents which were sought by him and which were not provided by SEBI. The Noticee also sought to place reliance on the judgments of Hon'ble Supreme Court in the matters of *T. Takano v. SEBI*¹ and *Reliance Industries v. SEBI*².

5.1.1.2. The Noticee submitted that (i) SEBI has a duty to disclose all material that is relevant to the proceedings, (ii) SEBI must provide cogent reasons for non-disclosure of materials sought in the inspection letter, (iii) SEBI must not act in an opaque manner while conducting its proceedings.

5.1.2. There has been inordinate delay of 6 years in initiating the proceedings

5.1.2.1. The period of investigation by SEBI in the trading activities in the scrip of ASCL, which constitutes the basis of the SCN, dates back to March 18, 2016 to July 17, 2017. The SCN has not provided any

¹ SCC Online SC 210

² 2022 SCC Online SC 979

explanation for the delay in initiation of proceedings against the Noticee.

5.1.2.2. The delay in issuance of SCN prejudices the ability of the Noticee to adequately respond to the SCN and defend himself and the same is liable to be withdrawn. In support of his contention, the Noticee has relied upon multiple Judgments and Orders by Hon'ble Supreme Court and Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**").

5.2. The SCN has erroneously considered only profits and not the losses for the purposes of determining the disgorgement amount and arbitrarily split the period of alleged contra trades into two;

5.2.1. The Noticee has denied to have earned any profit from the alleged contra trades. It is submitted that the SCN has proceeded on fundamentally erroneous interpretation of Clause 10 of the Code of Conduct. The SCN has arbitrarily split the period of contra trades into two separate phases: (i) March 18, 2016 to October 14, 2016 and (ii) December 6, 2016 to June 20, 2017.

5.2.2. The SCN has sought the disgorgement of a sum of ₹1,18,14,031.30, which is the alleged profit made by the Noticee from contra trades executed from December 6, 2016 to June 20, 2017. In arriving at this figure, the SCN has admittedly considered only profits from the contra trades. The SCN has completely ignored the loss of ₹2,16,47,323.77 which was admittedly incurred by the Noticee as a result of alleged contra trades carried out from March 18, 2016 to October 14, 2016. It is submitted that this approach of considering only the profits made by the Noticee from contra trades is contrary to Clause 10 of the Code of Conduct.

5.2.3. Clause 10 prohibits a designated person from carrying out 'a' contra trade, which means that the designated person is prohibited from carrying out more than one contra trade. Thus, when clause 10 stipulates

that 'profit from such trade' shall be liable to be disgorged, it implies that the profit from all the contra trades considered together shall be liable to be disgorged which is contrary to what SEBI has propounded in the SCN.

5.2.4. SEBI's approach of computing the profits allegedly earned from each trade is also contrary to the definition of 'trade' contained in Clause 2(1)(I) of the PIT Regulations. Clause 2(1)(I) does not define 'trade' as to mean only a single trade. It could include multiple transactions of buying and selling of securities.

5.2.5. The amount liable to be disgorged by the Noticee must include the net of all the alleged contra trades executed by the Noticee. As per SEBI's own case, the Noticee had incurred a loss of ₹2,16,47,323.77 as a result of the contra trades carried out from March 18, 2016 to October 14, 2016. Therefore, even if it is assumed (though denied) that the Noticee has made profits of ₹1,18,14,031.30 from the alleged-contra trades executed from December 6, 2016 to June 20, 2017, taking into account the loss of ₹2,16,47,323.77, he has made an overall loss of ₹98,33,292.

5.2.6. SEBI's approach of calculating the period profit/loss separately from the period between December 6, 2016 and June 20, 2017 does not have any basis. The SCN does not provide any explanation whatsoever for splitting the contra trades in these two periods. In fact, SEBI's approach is contrary to SEBI's Comprehensive FAQs upon PIT Regulations 2015, which states that a contra trade has to be calculated only date wise (and not share wise), i.e., the restriction upon placing a contra trade is applicable for 6 months from the date of trade. Query 43 of the FAQs and its response read as follows:

Query: Does contra trade restrictions apply on Share wise or Date wise.

Example: A Designated Person purchased 100 Shares on November 1, 2020 and then again 100 Shares on December 1, 2020. Whether the person can sell the 100 Shares acquired in November 2020 in May 2021? Or it will be treated as contra trade?

Answer : Contra trade restrictions are applicable on date wise. Since shares are last bought on December 01, 2020 the person cannot trade for a period of 6 months from December 01.2020.

5.2.7. An order of disgorgement can only be passed if there are profits made by the Noticee and is not merely based upon violation of any provision of law and since the Noticee has admittedly suffered a loss from the alleged contra trades, no order of disgorgement can be passed. Noticee has placed reliance on rulings of Hon'ble SAT in the matters of Kiran Madhusadhan Seth Vs SEBI, Karvy Stock broking Ltd. vs SEBI, National Stock exchange & Ors. Vs SEBI, etc. to support his contention.

5.3. SEBI does not have the authority to administer the Code of Conduct against the Noticee;

5.3.1. The SCN seeks disgorgement by the Noticee for alleged violation of Clause 10 of the Code of Conduct. Regulation 9(3) of the PIT Regulations states that it is the compliance officer of the Company who is responsible for administering the Code of Conduct. The PIT Regulations nowhere confer any authority on SEBI to seek the enforcement of the Code of Conduct directly against the Noticee. It is only the compliance officer who can do so. In such circumstances, SEBI does not have the right to seek any disgorgement against the Noticee and it cannot assume that power upon itself and pass an order of disgorgement against the Noticee.

5.3.2. It is trite law that when a statute has provided for a thing to be done in particular manner, it has to be done in the manner itself. The Noticee has submitted various judgments in support of this principle.

5.4. The FIFO (First In First Out) Method of Computation of Alleged Profits is Erroneous

5.4.1. It is submitted that even if it is only the period from December 6, 2016 to June 20, 2017, which is to be considered for the purposes of computation

of the amount that is allegedly liable to be disgorged, the First In First Out ("FIFO") method adopted by SEBI for calculating the alleged profits made by the Noticee is erroneous.

5.4.2. It is a settled law that the manner of computation of the profits illegally earned ought to follow defined criteria and failure to do so is fatal. The use of FIFO method to calculate the amount of alleged unlawful profits derived by the Noticee has previously been rejected by the Hon'ble SAT in *Shirpal Shares and Securities Private Limited v. SEBI*, wherein the Hon'ble SAT remanded the matter to SEBI for fresh consideration with regard to issue of quantification. Pursuant to reconsideration, the findings of SEBI were recorded in the Adjudication Order in the matter of *Sunteck Realty Limited*³, wherein it was found that upon adopting a different quantification methodology, the Noticee had in fact suffered a loss, instead of any unlawful profits.

5.4.3. SEBI's High level Committee under the chairmanship of retired Chief Justice A.R. Dave, had also recommended the need for reviewing the mechanism of quantification. It is imperative that neither has devised a procedure for computation of the amount of disgorgement nor has it provided any other basis for adopting of FIFO method. SEBI cannot arbitrarily choose to rely upon FIFO method for computation of profits.

5.4.4. The appropriate method for computing the profit/loss on the said trades is the Weightage Average Price (WAP). With this methodology, the alleged profit derived would not exceed ₹ 7,65,758.

5.5. There is no power to levy any penalty on the Noticee;

5.5.1. The penalty which is sought to be levied under the SCN is *ultra vires* the scope of SEBI's powers. Clause 10 of the Code of Conduct does not provide for any penalty which can be imposed on the Noticee. In such circumstances, *de hors* any express power to impose penalty for

³ Order/BM/LD/2021-22/15596-15602

violation of Clause 10, SEBI does not have such power. The provisions invoked in the SCN for justification of imposition of penalty are not attracted.

5.5.2. Since Clause 10 specifically provides for disgorgement of profits, even the residual Section 15HB of SEBI Act also cannot be invoked. In this regard, the Noticee has placed reliance on a judgment of Hon'ble SAT in the matter of *Snehlata Tiwari v. SEBI*. Although, Hon'ble Supreme Court had in *SEBI vs Snehlata Tiwari* while keeping the question of law open, dismissed SEBI's appeal, the same does not dilute the law laid down by Hon'ble SAT in its judgment.

5.5.3. Section 11(4A) and Section 11B (2) of the SEBI Act cannot be invoked as these provisions were inserted w.e.f March 08, 2019 and they do not have any retrospective application. The alleged contra trades last occurred on July 17, 2017 much before the insertion of these Sections. Thus, there invocation in the SCN is misplaced and without any basis.

5.6. Even if SEBI has the power to levy a penalty for violation of Clause 10, no penalty ought to be levied in the present case;

5.6.1. It is submitted that in view of the substantial compliance with the provisions of SEBI Regulations, as well as the non-repetitive and negligible nature of default, there should be no levy of penalty. In support, Noticee has placed reliance on observation of Hon'ble Supreme Court in the matter of *SEBI v. Bhavesh Pabari*.

5.6.2. The Noticee has also placed reliance on various Orders passed by SEBI wherein SEBI has exonerated individuals on the charge of contra trades.

5.7. It is impossible and impermissible to quantify without combining both investigation periods and hence, quantification cannot be undertaken without bunching of both investigation periods;

5.7.1. It is unreasonable and arbitrary for SEBI to bifurcate the investigation period and calculate the alleged unlawful profit separately for each period without any legal basis. Although, the present SCN is related to the alleged execution of contra trades in the scrip of ASCL during IP2, SEBI has divided the investigation periods into two smaller periods. In the SCN, the alleged contra trades have also been reckoned outside the IP2 which goes beyond SEBI's own identification of IP2.

5.7.2. It cannot be the case of SEBI that on one hand it defines a fixed period to determine the alleged unlawful profit from contra-trades executed during the said fixed period and on other, it relies on trades that occurred in a period that has not been defined either in the Investigation Report or in the SCN. Such approach by SEBI dilutes the sanctity and relevance of its own investigation period, and further illustrates Investigating Officer's misconceived understanding of the concept of contra-trade itself. This approach by SEBI undermines the relevance and integrity of free and fair investigation and the fair process needed in a quasi-judicial proceeding as envisaged under Article 14 and Article 21 of Constitution of India.

5.8. SCN is filled with glaring errors of facts and law

5.8.1. SEBI's own table and number of trades are mismatched and erroneous filled with ambiguity.

5.8.1.1. The table provided in paragraph 2 of the SCN lists 135 rows that include both buy and sell trades, with some rows featuring both types of trades. However, the table does not clearly specify which specific 'sell order' is contrary to which 'buy order' or vice versa. Additionally, even the note provided below the table fails to provide a clear methodology for calculating the alleged 116 contra trades during IP 2 as claimed by SEBI.

5.8.2. Whims and Fancies of Investigating Officer and erroneous application of law—

5.8.2.1. It is submitted that there is a legal obligation to follow established laws and judicial precedents in selecting the appropriate method for calculating unlawful gains. Calculating profits that are based on unrealistic assumptions or speculations calculated arbitrarily without sound financial principles and methods, are arbitrary and liable to be set aside. The SCN has not provided as to why gross basis has been taken and not net basis, or why only profits have been taken but not lack of profits or losses. No basis has been provided on selecting price of ASCL on BSE for off-market transactions. These notes are also in contradiction to SEBI's own Clarifications on Prohibition of Insider Trading Regulations, 2015 dated March 31, 2023 which holds that if both the trades have not been in open market, it is not contra trade.

5.8.3. False Statement in the SCN:

5.8.3.1. The statement in SCN that as per regulations, '*each contra trade is independent of the other and profits from one contra trade cannot be offset with loss from another*' is false. The Regulations do not state the same anywhere and the understanding of is not as per the Regulations'. This is only a general understanding misapplied in the SCN.

5.8.4. The SCN is vague in terms of the provision under which SEBI seeks to levy penalty

5.8.4.1. The present SCN has been issued by SEBI *inter alia* to determine whether a penalty should be levied upon the Noticee after holding the inquiry through its broad powers under Sections 11B(2) and 11(4), without disclosing the specific provision amongst Section 15A to 15HB of the SEBI Act, Noticee needs to respond to. The SCN is *ex facie* bad in law without demonstrating the exact provision under which the Noticee's trading activity might attract a penalty. The SCN

is in complete violation of principles of natural justice and Wednesbury principles of fairness.

5.9. Lack of Understanding and Perversity In Profit Quantification Methodology;

5.9.1. It is submitted that SEBI's adoption of the FIFO methodology to quantify unlawful profits is perverse as it lacks support in law or in facts or even from precedents. In absence of any express guidelines stipulated by SEBI for calculating profits arising subsequent to execution of contra trades, it is incumbent on SEBI to clearly set out the rationale for relying on any particular method.

5.9.2. As per the information available in public domain, as opposed to FIFO method, SEBI had itself recommended Last in First Out (LIFO) method, vide its Consultative Paper on Introduction of 'Short Swing Profit' Regulations dated January 1, 2008. It is on the basis of this consultative paper that SEBI for the first time introduced the concept of contra trade in the erstwhile SEBI (PIT) Regulations, 1992.

5.9.3. The SCN has not calculated and completely ignored various suitable alternative methods of quantifications which are not only supported by precedent but have been proposed and often applied by SEBI itself to calculate unlawful profits.

5.10. The computation of profits using the Average Cost Method for the two Investigation Periods combined shows that the alleged unlawful profits do not and cannot exceed ₹7,65,758.40/-.

5.11. SEBI ought to consider that the books/ relevant records were submitted by the Noticee to an independent and expert Chartered Accountant/Auditor to calculate/arrive at the actual profits /losses for the trades undertaken in the scrip of ASCL for the period 18.03.16 to 17.07.17 (first day of IP-1 to the last day of IP-II) and the auditor under a certificate dated April 27, 2023 has certified

arriving at a loss of ₹5,75,822.78/-. The above certificate by the auditor is also supported by a duly sworn affidavit of the Noticee in support of the certificate by the auditor and these submissions.

CONSIDERATION AND FINDINGS:

6. Before proceeding to consider the allegations levelled in the SCN against the Noticee, the submissions made by the Noticee and the material available on record on merits, it would be relevant to examine and deal with the preliminary objections raised by the Noticee.
7. I note that the Noticee has contended that he has not been provided with all the referred to and relied upon documents by SEBI. It is submitted that even pursuant to inspection undertaken by the ARs of the Noticee, he had provided a list of documents which were not provided to him. In this regard, I have perused the list of documents sought by the Noticee *vis-a-vis* list of documents provided for inspection by SEBI. I note that all the documents which are being relied upon and relevant for determination of the issue in the present case have already been provided to the Noticee. These documents were part of the investigation report and the annexures thereof, based on which the allegations were levelled on the Noticee. Further, the inspection of these documents was also undertaken by the ARs of the Noticee. Other than these documents, there is no other document which has been relied upon by SEBI for considering the allegations levelled against the Noticee. The matter under consideration relates to the Noticee doing contra trades in the scrip of ASCL and for that purpose trading details have been provided to the Noticee. The Noticee has not raised any doubts on the veracity of the trading details which is the crux of the matter. It is noted that Noticee has also sought copies of various notes for approval of proceedings, issuance of show cause notice, etc. which are part of the general decision making process of SEBI and has no relevance for the determination of the issue in the present case. The Noticee has not provided any rationale for seeking these documents and the same appears to be a roving and fishing enquiry. Further, the Noticee has not provided any cogent reason to justify that non-provision of any of these document(s) as sought by him has resulted in any prejudice against him. The list

of the documents which has been sought by the Noticee and the reason for its non-provision (if not provided) is mentioned hereunder:

Table 2

Required Document	Provided / If not provided, the rationale for not providing the document
Document on the basis of which investigation was initiated in the trading scrip of ASCL (BSE Report dated January 31, 2017)	<i>Not relied upon.</i> BSE Alert was only the starting reference, based on which SEBI had conducted its own investigation and the report thereof has been shared with the Noticee. Copies of correspondences with BSE have been provided
Copies of Opinion formed	Part of the decision making process of SEBI, not relevant for the current proceedings
Alert generated with SEBI surveillance division	<i>Not relied upon.</i> The observations have already been covered in the Investigation Report.
Copy of external legal opinions/opinion from legal department	Does not exist
Copy of Order log and Trade log	Already provided during the inspection
Copies of statements recorded by SEBI	Do not exist
Copies of administrative direction/approval for issuance of SEBI letters dated May 10, 2022, July 26, 2022 and August 12, 2022	Copies of these letters have been provided. Administrative approval for issuance of the letters is part of the internal decision-making process of SEBI and has no relevance to the present proceedings.
Copy of delegation of power order	Public document available on SEBI's website.

Copy of note for appointment of Investigating Authority	Already provided during the inspection.
Copy of notes for approval of initiation of proceedings, for issuance of show cause Notice.	Part of the decision-making process of SEBI, not relevant for the current proceedings

Considering the above, I am of the view that the proceedings have been conducted after following the principles of natural justice and in compliance with the principles propounded by the Hon'ble Supreme Court of India in the matters of *T. Takano v. SEBI* and *Reliance Industries v. SEBI*.

8. I also note that the Noticee has contended that there has been inordinate delay in initiation of the proceedings which led to issuance of the SCN and in its support has relied on various cases decided by Hon'ble SAT such as *Rakesh Kathodia vs SEBI* (Appeal No. 7 of 2016), *Ashok Shivrul Rupani & Ors. v. SEBI* (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019), *Sanjay Jethalal Soni & 7 Ors. v. SEBI* (Appeal No.102 of 2019 and other connected appeals decided on November 14 2019) and *Anilkumar Nandkumar Harchandani & Ors. v. SEBI* (Appeal no.75 of 2019 decided on December 5, 2019) wherein it was held that delay in launching the proceedings by SEBI caused prejudice to the Appellant(s) as they were not able to raise the proper defense for want of record. In this regard, I find it important to note that delay in issuance of show-cause notice itself would not exonerate the defaulters under the SEBI Act and the relevant Regulations, as has been held by the Hon'ble Supreme Court in *Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari* (2019) 5 SCC 90. On the aspect of delay and its impact on proceedings in the context of SEBI, the Hon'ble Supreme Court in its judgment in the matter of *SEBI v. Sunil Krishna Khaitan and Ors* (Decided on July 11, 2022) discussed its earlier decision in the matter of *Bhavesh Pabari* and held the following:

“81. This Court in the judgment authored by one of us (Sanjiv Khanna, J.) in Bhavesh Pabari (supra) had examined the question of delay and laches in initiating proceedings under Chapter VI-A of the Act and the principle of law that when no limitation period is prescribed proceedings should be initiated within a reasonable time and what would be reasonable time would depend upon facts and circumstances of each case. In this regard, it was held as under:

35. The Appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show-cause notice in 2014, the proceedings should have been dropped. This contention was not raised before the adjudicating officer in the written submissions or the reply furnished. It is not clear whether this contention was argued before the Appellate Tribunal. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc. The show-cause notice in the present case had specifically referred to the respective dates of default and the date of compliance, which was made between 30-8-2011 to 29-11-2011 (delay was between 927 days to 1897 days). Only upon compliance being made that the defaults had come to notice. In the aforesaid background, and so noticing the quantum of fine/penalty imposed, we do not find good ground and reason to interfere.

82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the

authorities did not have any knowledge. Though, no hard and fast Rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the duty of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified, should be done within reasonable time. This prevents miscarriage of justice, misuse and abuse of the power as well as ensures that the violation of the provisions are checked and penalised without delay, thereby effectuating the purpose behind the enactment.”

9. Viewing the present case in light of the above observations of the Hon'ble Supreme Court, I note that there is no dispute regarding the fact that the alleged contra trades took place in the year 2016- 2017 and the Investigation Report was submitted on March 21, 2022, pursuant to which, certain correspondence in that regard took place and finally SCN dated November 23, 2022 was issued to the Noticee.
10. Coming to the specific nature of allegations in the present case, the crux thereof is that the Noticee being a designated person indulged in large number of contra trades during the period from March 18, 2016 to July 17, 2017 (During IP1 and IP2) allegedly in violation of clause 10 of the Code of Conduct as specified in PIT Regulations which entails disgorgement of unlawful gains. Thus, it is clear that there is a time gap between the time of violation and the initiation of action which I am inclined to treat as a mitigating factor while issuing the appropriate directions, if the alleged violations are established.

11. Having dealt with the preliminary contentions of the Noticee, I shall now deal with the allegations levelled against the Noticee in the SCN vis-à-vis the submissions made by him on merits.

12. At the outset, it would be relevant to point out that Noticee is admittedly a designated person under the provisions of the PIT Regulations and at no stage, has he denied that he indulged in contra trades or objected to the veracity of the trades. Thus, moving forward, these admitted facts would be taken into account while dealing with the other objections raised by the Noticee.

Methodology of calculation of Profits:

13. It is contended by the Noticee that not only the gross profits but losses as well should be taken into account for determining the disgorgement amount, if any. In this regard, I find it relevant to refer to the following provisions of PIT Regulations:

Code of Conduct.

9(1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B in case of a listed company and Schedule C in case of an intermediary to these regulations, without diluting the provisions of these regulations in any manner.

Schedule B (see sub-regulation (1) of Regulation 9)

Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be

empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

14. In the context of PIT Regulations, contra trades are those trades or transactions which involve buying or selling the shares of the company and then, within the time specified, trading or transacting in an opposite transaction involving selling or buying of the shares purchased or sold. In my view, essentially, the provisions of Code of Conduct pertaining to 'contra trade' seek to prohibit designated persons (hereinafter referred to as “DPs”) from trading in a manner that one transaction is in a contra position to another transaction done within a period of 6 months. The objective of PIT Regulations is to prohibit 'contra trades' *per se* so that the DPs based on their functional role or by having access to UPSI do not make a profit from taking such contra positions. To elaborate on the point about the regulations being prohibitory in respect of contra trades, it needs to be emphasized that the usage of the words "*Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction...*" in clause 10, clearly indicates that the regulations envisage that a DP, even though permitted to trade, must not take a contra position to his earlier trades within a period of 6 months. The regulations discourage the very act of trading by the DPs exhibiting contra positions. This is the reason why only profits on gross basis are considered and netting after considering the losses, if any, is disregarded for computation of the disgorgement amount. If the Noticee's argument for allowing netting is accepted, the same would go against the very fundamental principle of the PIT Regulations which is - DPs should minimize their trading in the scrip of the company and such trading, if any, by them should only be carried out in a regulated manner in accordance with the provisions of the Regulations.

15. Any alternate interpretation of the provision which entails netting or favorable treatment to the violators as suggested by the Noticee would be grossly against the intent of the regulations. To reemphasize, Clause 10 of Schedule B to the PIT

Regulations shows that the profit from each contra trade has to be disgorged or in other words, when determining contra trades executed over a period, what is required to be disgorged is not the net profit but the gross profit. Thus, the contention of the Noticee that not only the gross profits but losses as well should be taken into account for determining the disgorgement amount, is untenable.

16. Noticee has placed reliance on the judgments of Hon'ble SAT in the matters of *Kiran Madhusadhan Seth v. SEBI*; *Karvy Stock Broking Ltd. v. SEBI* and *National Stock Exchange & Ors v. SEBI* to substantiate his stand on the calculation of profit. In this context, it is submitted that Hon'ble SAT in the matter of *Kiran Madhusadhan Seth v. SEBI*, has *inter alia* held that "*The concept of disgorgement under the SEBI laws is based on the principle that a person in possession of wrongful gains by which he is enriched may be asked to part with the amount equivalent to such gains along with interest*". In the matter of *Karvy Stock Broking Ltd. v. SEBI*, Hon'ble SAT *inter alia* held that "*Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity. In a disgorgement action, the burden of showing that the amount sought to be disgorged reasonably approximates the amount of unjust enrichment is on the Board*". Further, in the matter of *National Stock Exchange & Ors v. SEBI*, Hon'ble SAT held that "*It is not necessary that in each and every case there should be a direction to disgorge profits merely because the provisions of the Act or Regulations have been violated. Disgorgement should be ordered only where persons have made gains or averted loss/losses as a result of their illegal/unethical acts*". In my view, as already brought out earlier, only the profit gained by the Noticee from each contra trade has to be disgorged. Each contra trade needs to be dealt with independently for computation of profit and therefore the question of netting the profit does not arise. Hence, the question of disgorgement amount exceeding the total profits gained by the Noticee also does not arise.

17. Having noted that the Noticee had indulged in contra trades, the main issue for determination is the methodology for calculation of profits made by the Noticee. In

this regard, the Noticee had stated that the FIFO method adopted by SEBI for calculating profit in this matter is erroneous while suggesting alternate methods like netting the profits from contra trades, weighted average method and offsetting the losses from IP1 with gains from IP2. The Noticee has also submitted calculation by an independent expert auditor indicating a loss of ₹5,75,823. With regard to appreciation of the FIFO method to calculation for calculation of profits derived from contra trades, I note the following:

- 17.1. Contra trade refers to buying or selling shares of any company followed by an opposite transaction within six months as specified under PIT Regulations. The rationale behind restricting the contra trades is that these trades are seen to be encouraged by possible access to UPSI by the designated persons. The code of conduct provides that within six months, a designated person shall not execute a contra trade. It further provides that should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged. Clearly, the code of conduct seeks to impose a restriction on even a single trade as opposed to usage of the language like *contra trading*, which would have a pluralist connotation. Thus, each and every contra trade needs to be dealt with independently and profit made through each trade needs to be disgorged for credit to the IPEF. The FIFO methodology ensures the independence of contra trades which captures the intent of the provision. For this same reason, in respect of contra trade, FIFO is more suited for calculation of unlawful gains in comparison to the average cost method. The FIFO method of calculating profit ensures that the opposite position taken by the Noticee for the first buy/sell trade, is squared off with the first buy/sell trade that is executed within six months.
- 17.2. Further, in relation to the non-applicability of the average cost method to contra trade(s), it needs to be emphasized that violations like price manipulation, pump and dump, insider trading, etc., which are more of event based violations (to which average cost method is more suited), are different from contra trade which is a time / duration based violation focusing on individual trade to which FIFO method is more suited.

17.3. SEBI has earlier also applied the FIFO method for calculation of profits from contra trades as evident from SEBI's order in the matter of *Marksans Pharma*⁴ wherein FIFO method was applied as opposed to average cost method.

17.4. For deriving the profits from contra trades, it is essential to first identify the contra trades and then apply the profit calculation methodology. In cases where the shares bought and sold are not similar, FIFO method is best suited to identify the contra trades first and then derive the profits. Average cost method would be *not* suited in this scenario as it would only consolidate the shares bought and sold without identifying the contra trades first.

18. Considering the above, I am of the view that the FIFO method is the correct method for calculation of profits when it comes to contra trades. Accordingly, after applying the principles of FIFO method to the contra trades carried out by the Noticee, the profit earned during the IP2 comes out to be ₹1,18,14,031.39 [*The Noticee in his submissions has mentioned the figure to be 1,18,14,031 or 1,18,14,031.3, however, to maintain consistency, the amount hereinafter is retained as ₹1,18,14,031.39 as highlighted in the SCN*]. To recapture the methodology of calculation of profit by adopting the FIFO method as mentioned in the SCN, the following points are noteworthy:

18.1. Since the Noticee has executed contra trades at frequent intervals and in varying quantum, buy and sell quantity, as applicable, have been split to match the contra trade of reference trade and derive the profit. The balance, after matching of contra trades, is carried forward for the identification of next contra trade. The formula applied for calculating the profit/loss is **contra trade share quantity * (Sell rate — Buy rate)**.

18.2. Only the contra trades which resulted in profits have been considered and consolidated for deriving the overall profit and contra trades resulting into losses have *not* been considered.

⁴ https://www.sebi.gov.in/web/?file=/sebi_data/attachdocs/mar-2021/1615179164091.pdf#page=1&zoom=page-width,-16,793

- 18.3. During the IP2, the first trade of the Noticee i.e. Sell Trade of 45,000 shares at the rate of ₹92.55 done on December 06, 2016 has been taken as the reference point for identifying the contra trades and deriving the profits.
- 18.4. On the buy side, since the first trade during the investigation period is buy trade of 40,415 shares at the price of ₹ 61.65 done on March 08, 2017, the same is treated as contra trade for the sell trade done on December 06, 2016 and the profit/loss arrived is $40,415 * (92.55 - 61.65)$ which equals to ₹12,48,823.50. The remaining quantity on the sell side, 4,585 i.e. $(45,000 - 40,415)$ is carried forward which would be the reference point for the next contra trade.
- 18.5. The next buy trade is on March 09, 2017 for 675 shares at the rate of ₹63.04 per share which would be treated as contra trade for the outstanding quantity on the sell side. For this the profit is $675 * (92.55 - 63.04)$ i.e. ₹ 19,919.25. The remaining quantity is 3,910 i.e. $(4,585 - 675)$ on the sell side which would be reference rate for next contra trade.
- 18.6. The next buy transaction is of 3198 shares at the rate of ₹60.43 on March 10, 2017 and the remaining sell quantity is 3910. So the profit would be $3198 * (92.55 - 60.43)$ amounting to ₹1,02,719. The remaining sell quantity i.e. $3910 - 3198$ equals to 712 which would be carried forward and would be treated as reference trade for next contra trade.
- 18.7. Carrying the calculation forward, the profit/loss from the contra trade have been arrived for each contra trade, then the contra trade resulting into losses have *not* been considered and only the contra trades resulting into profits have been aggregated.
- 18.8. With this methodology the overall profit made by the Noticee during the IP2 comes out to be ₹1,18,14,031.39 as mentioned in the SCN.

Splitting of Investigation Period:

19. It has been vehemently contended by the Noticee that the SCN has arbitrarily split the period of alleged contra trades into two periods and considered only the profits for determining the disgorgement amount. In this regard, it would be appropriate to discuss the genesis of the present proceedings which culminated into the issuance of the SCN. I note that the investigation in the scrip of ASCL was conducted for two investigation periods i.e. from March 18, 2016 to October 14, 2016 (IP1) and May 24, 2017 to July 17, 2017 (IP2). Based on BSE's report dated January 31, 2017, SEBI had initiated investigation for the period stated in IP1 for the alleged price manipulation in the scrip of ASCL. While the investigation based on the first BSE Report was undergoing, SEBI received another BSE Report dated March 20, 2018 (i.e. after 14 months from the initiation of the first investigation), whereas BSE had forwarded another letter pointing out to various disclosure violations for the period mentioned in IP2. While the investigation was being done for both the periods, it was noted that the Noticee had also executed contra trades for both the investigation periods. Both the investigation periods are independent and based on two independent and different references received from BSE for different set of violations. The two investigation periods could have resulted in 2 separate investigations, and for the reason that both the references from BSE related to one person and one company, a common investigation report was prepared. The same is also evident from the details brought out in the IR. In view of the above, I find that no arbitrary splitting of the investigation period has been done in the present case.

20. I also note that based on IP1 and IP2, separate proceedings (for alleged violations of indulging in reversal trades and failing to make disclosure) have been initiated against the Noticee and which are pending. As observed above, the alleged contra trades were noted while investigating the references received from BSE. It is worthwhile to mention here that during IP1, the contra trades were analyzed for the period from March 18, 2016 to October 14, 2016 as the scrip of ASCL was suspended during the six months prior to the IP1, (ASCL was suspended for the period from August 27, 2015 to March 17, 2016). It is noted that during, IP1, the Noticee executed 56 contra trades and made a loss of ₹2,16,47,323.77. It is noteworthy that the Noticee did not make profit in any of these contra trades. Thus,

no netting was done for IP1. Since no profit was made by the Noticee on account of trades done in IP1, no enforcement action was initiated for the same and only a warning letter dated May 10, 2022 was issued to the Noticee. Further, during the IP2, since the Noticee had made profits, various letters were issued to the ASCL/Noticee to disgorge the profits made by the Noticee in accordance with the code of conduct and only on the failure of the Noticee to disgorge the profits, enforcement proceedings resulting into the issuance of the SCN was initiated against the Noticee. Accordingly, even though the IR and the SCN refer to IP1 and IP2 as 2 parts of the investigation period, the period of relevance is only the IP2, which is the focus of the SCN as well.

21. In relation to the Noticee's argument the investigation period should not have been split and rather should have been considered as a whole, I find it relevant to refer to the FAQ No. 43 from Comprehensive FAQs on PIT Regulations, 2015 dated March 31, 2023 available on SEBI Website and also referred to by the Noticee, which reads as follows.

43. Question Does contra trade restrictions apply on Share wise or Date wise. Example: A Designated Person purchased 100 Shares on November 1, 2020 and then again 100 Shares on December 1, 2020. Whether the person can sell the 100 Shares acquired in November 2020 in May 2021? Or it will be treated as contra trade?

Answer Contra trade restrictions are applicable on date wise. Since shares are last bought on December 01, 2020, the person cannot trade for a period of 6 months from December 01, 2020.

22. It is clear from the FAQ referred above that contra trades restrictions are applicable date-wise. In the present case, since the Noticee had continuously indulged in the contra trades from June 16, 2016 to June 20, 2017 (period covered during both the IPs (IP1 and IP2)) and also during the intervening period between the IP1 and IP2 i.e. October 15, 2016 to May 23, 2017, without prejudice to what has been discussed earlier, for the purpose of bringing clarity, I am inclined to weigh the submission of the Noticee that calculation of profit derived through contra trades

should have been done looking at the investigation period as a whole, without there being any intervening period between the two IPs. In this regard, while applying the FIFO methodology without netting on the overall trades of the Noticee during the period from June 16, 2016 to June 20, 2017, the profit comes out to be ₹ 4,02,29,542.15 (considering only the trades which resulted in profit) as calculated below. It is pertinent to note that even after netting the profit and loss for each of contra trade, the profit comes out to be ₹1,37,26,610.9 which is more than what the SCN has mentioned. The Table below brings out the particulars:

Table 3⁵

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
16/06/2016	0	0		28802	56.86	1637601	
17/06/2016	0	0		11000	55.55	611050	
20/06/2016	0	0		5000	55.55	277750	
20/06/2016	0	0		12000	55.55	666600	
20/06/2016	0	0		13200	55.15	727980	
20/06/2016	0	0		6914	55	380302	
21/06/2016	0	0		18735	55.13	1032950	
22/06/2016	0	0		9438	54.95	518618	
23/06/2016	0	0		22911	54.74	1254103	
01/07/2016	0	0		34533	57.31	1979001	
04/07/2016	0	0		15467	58.23	900713	
05/07/2016	0	0		8000	65.65	525200	
05/07/2016	0	0		11000	65.65	722150	
05/07/2016	0	0		8000	65.65	525200	
05/07/2016	0	0		8000	65.65	525200	
05/07/2016	0	0		11000	65.65	722150	
05/07/2016	0	0		8000	65.65	525200	
05/07/2016	0	0		10000	72.22	722150	
08/07/2016	0	0		8000	72.1	576800	
08/08/2016	7308	63.85	466650.15	22714	61.25	1391241	-51082.92
09/08/2016	17881	63.79	1140571.05	36000	60.74	2186476	-123915.33
10/08/2016	3613	61.46					-16619.80
10/08/2016	4497	61.46	498451.25	12474	59.72	744945	-26577.27
25/08/2016	0	0	0.00	17355	68.02	1180408	
26/08/2016	6503	69.53					-90911.94
26/08/2016	5000	69.53	885552.30	23514	69.41	1632151	-69900.00

⁵ While all the particulars are same as compared to the trade details mentioned in the SCN, buy quantity has been adjusted for applying the FIFO methodology. Total Buy quantity on a single day and buy rate are same as given in the SCN

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
26/08/2016	1234	69.53					-17251.32
29/08/2016	10766	72.82					-185928.82
29/08/2016	6117	72.82	1229416.45	30490	73.03	2226678	-108087.39
30/08/2016	7083	76.67					-152426.16
30/08/2016	6914	76.67					-149826.38
30/08/2016	11439	76.67	1950192.90	39225	76.59	3004352	-246396.06
31/08/2016	7296	80.24					-183202.56
31/08/2016	9438	80.24					-238687.02
31/08/2016	10043	80.24	2148696.20	35950	80.29	2886350	-256096.50
01/09/2016	12868	82.34					-355156.80
01/09/2016	27254	82.34	3303663.30	40059	81.79	3276233	-682167.62
02/09/2016	7279	83.2					-188453.31
02/09/2016	13901	83.2	1762184.30	21180	80.89	1713273	-347107.97
21/09/2016	1566	84.88					-41733.90
21/09/2016	3442	84.88	425077.60	0	0	0	-66189.66
22/09/2016	8900	84.79					-170346.00
23/09/2016	19884	87.38					-432079.32
26/09/2016	15318	92.25					-407458.80
27/09/2016	6456	96.19					-197166.24
27/09/2016	3166	96.19	925556.40	29900	96.67	2890334	-75889.02
28/09/2016	6834	101.91					-202901.46
28/09/2016	1166	101.91	815270.15	48000	101.65	4879355	-34758.46
29/09/2016	6834	99.82					-189438.48
29/09/2016	22714	99.82					-876078.98
29/09/2016	36000	99.82					-1406880.00
29/09/2016	2023	99.82					-81122.30
30/09/2016	10451	100.76					-428909.04
30/09/2016	17355	100.76					-568202.70
30/09/2016	23514	100.76					-737163.90
30/09/2016	2082	100.76	5381006.05	80253	98.68	7919081	-57733.86
03/10/2016	28408	106.23					-943145.60
03/10/2016	13640	106.23	4466924.40	42048	105.54	4437940	-404289.60
04/10/2016	25585	111.13					-883705.90
04/10/2016	14675	111.13	4474215.50	71539	110.46	7901887	-452577.00
05/10/2016	21275	116.75					-775686.50
05/10/2016	6773	116.75	3274687.90	28048	115.39	3236452	-236784.08
06/10/2016	33286	121.26					-1313798.42
06/10/2016	3499	121.26	4460465.60	36785	120.37	4427806	-141254.63
07/10/2016	17681	120.48					-699990.79
07/10/2016	29900	120.48					-711919.00
07/10/2016	48000	120.48					-903840.00

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
07/10/2016	8407	120.48	12528664.45	103988	118.95	12369551	-183272.60
10/10/2016	71846	125.51					-1927628.18
10/10/2016	42048	125.51					-839698.56
10/10/2016	42983	125.51	19689107.40	156877	123.73	19410685	-646894.15
13/10/2016	28556	127.16					-476885.20
13/10/2016	14475	127.16	5471848.60	84274	120.01	10113941	-170370.75
14/10/2016	13573	124.81					-127857.66
14/10/2016	36785	124.81					-163325.40
14/10/2016	30811	124.81	10130414.85	88542	120.59	10677373	-180552.46
17/10/2016	73177	124.37	9101268.81	111519	120.56	13445201.45	-396864.66
17/10/2016	8992	124.37	1118365.19			0	-5785.03
18/10/2016	98777	120.67	11919097.35	71975	119.24	8582217.5	302580.86
19/10/2016	12720	115.76	1472406.50	26228	114.81	3011312.8	101439.10
20/10/2016	50	109.10	5455	3761	109.10	410325.1	731.50
21/10/2016	27825	104.05	2895268.75	0	0.00	0	547518.50
24/10/2016	8513	107.42	914453.86	18398	107.90	1985174	138859.63
24/10/2016	26112	107.42	2804912.39			0	328788.73
25/10/2016	15536	113.01	1755782.40	9303	114.15	1061942.75	108692.96
26/10/2016	28747	119.04	3421955.25	44330	119.13	5281246.05	27972.22
27/10/2016	13879	124.16	1723206.04	63467	124.44	7897875.65	-57587.25
27/10/2016	49351	124.16	6127382.46			0	-176145.37
28/10/2016	23439	124.26	2912452.25	13126	124.70	1636747.2	-85943.24
30/10/2016	15752	125.67	1979503.11	84092	119.84	10077246.6	-79969.43
30/10/2016	78853	125.67	9909202.54			0	-402351.96
01/11/2016	32666	123.25	4026210.41	118868	119.77	14236283.2	-87859.54
01/11/2016	44818	123.25	5523991.24			0	-179943.67
02/11/2016	27157	121.85	3309104.40	84498	118.57	10018639.9	-70934.47
02/11/2016	26228	121.85	3195904.93			0	-184592.13
02/11/2016	3761	121.85	458281.17			0	-47956.07
02/11/2016	18398	121.85	2241812.53			0	-256638.53
02/11/2016	9303	121.85	1133578.75			0	-71636.00
02/11/2016	27576	121.85	3360159.92			0	-74898.45
03/11/2016	16754	119.27	1998278.35	91662	115.99	10631784.8	-2293.78
03/11/2016	63467	119.27	7569818.09			0	328057.56
03/11/2016	7149	119.27	852673.51			0	38771.39
04/11/2016	5977	118.50	708302.70	122469	113.74	13930161.75	36999.60
04/11/2016	84092	118.50	9965298.76			0	111947.84
04/11/2016	15893	118.50	1883395.49			0	20037.30
07/11/2016	52985	115.92	6142141.2	6593	111.58	735631.1	203632.81
08/11/2016	0	0.00	0	25849	110.77	2863294.95	

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
16/11/2016	2000	93.96	187912.8	0	0.00	0	51618.16
06/12/2016	0	0.00	0	45000	92.55	4164750	
07/12/2016	0	0.00	0	3725	97.00	361325	
08/12/2016	0	0.00	0	16290	98.32	1601699.05	
09/12/2016	0	0.00	0	42110	94.45	3977215.2	
12/12/2016	0	0.00	0	8818	89.45	788777.6	
14/12/2016	0	0.00	0	11869	81.80	970912.3	
15/12/2016	0	0.00	0	10335	77.52	801125.15	
29/12/2016	0	0.00	0	7796	78.27	610229.8	
06/03/2017	0	0.00	0	8915	70.70	630290.5	
06/03/2017	0	0.00	0	139785	70.70	9882799.5	
08/03/2017	0	0.00	0	50000	61.40	3070000	
08/03/2017	40415	61.65	2491584.75	40415	61.33	2478651.95	2348737.17
09/03/2017	675	63.04	42550.00	10740	58.42	627438.5	38291.70
10/03/2017	3198	60.43	193269.50	5000	58.20	291001.25	189740.51
14/03/2017	400	57.88	23150.00	0	0.00	0	24756.19
22/03/2017	3302	55.90	184581.80	0	0.00	0	210883.82
22/03/2017	1698	55.90	94918.20			0	106407.87
23/03/2017	15327	56.60	867508.20	0	0.00	0	949761.96
23/03/2017	29673	56.60	1679491.80	25000	56.60	1415000	1838734.69
23/03/2017	7320	56.85	416142.00	5914	56.35	333253.9	451765.45
24/03/2017	2850	57.66	164331.00	3000	58.00	174000	173583.79
24/03/2017	2267	57.45	130239.15			0	138551.31
24/03/2017	8818	57.45	506594.10				538926.11
24/03/2017	11869	57.45	681874.05				725392.83
24/03/2017	4676	57.45	268636.20				285781.18
24/03/2017	5659	57.45	325109.55				331272.27
24/03/2017	7796	57.45	447880.20				456370.14
24/03/2017	8915	57.45	512166.75				521875.29
27/03/2017	13579	56.60	768615.85	10522	55.53	584260.3	806398.94
28/03/2017	14141	56.05	792625.35	12883	53.77	692748.5	847575.27
29/03/2017	38877	54.91	2134748.10	38877	53.18	2067580.05	2374556.71
30/03/2017	2695	52.92	142619.40	25862	52.11	1347787.35	169970.99
30/03/2017	11167	52.92					679225.97
30/03/2017	59326	52.40	3108682.40			0	3639317.31
30/03/2017	15674	52.40	821317.60				961511.98
31/03/2017	36302	51.35	1864107.70	0	0.00	0	2265041.16
31/03/2017	6593	51.35	338550.55			0	397080.55
31/03/2017	25849	51.35	1327346.15			0	1535948.80
31/03/2017	6306	51.35	323813.10			0	259807.20
03/04/2017	10431	49.40	515291.40				450097.65

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
03/04/2017	5000	49.40	247000.00			0	215750.00
03/04/2017	23263	49.40	1149192.20				1003798.45
03/04/2017	1737	49.40	85807.80			0	82681.20
03/04/2017	1988	49.40	98207.20				94628.80
03/04/2017	3926	49.40	193944.40			0	192075.89
03/04/2017	3000	49.40	148200			0	146772.20
03/04/2017	9364	49.40	462581.60				458124.96
03/04/2017	1158	49.40	57205.20			0	52165.86
03/04/2017	12883	49.40	636420.20			0	580356.42
03/04/2017	2250	49.40	111150.00			0	101358.53
03/04/2017	24248	49.77	1206822.96	17731	49.33	874702.8	1083357.86
05/04/2017	1571	47.50	74614.88	14080	46.95	661071.05	73763.29
05/04/2017	8818	47.50	418812.26			0	369965.34
05/04/2017	3691	47.50	175304.61			0	126627.93
06/04/2017	8178	46.61	381180.20	37647	45.86	1726440.30	287799.56
06/04/2017	10335	46.61	481718.93			0	319406.22
06/04/2017	7796	46.61	363375.01			0	246854.79
06/04/2017	8915	46.61	415532.10			0	214758.40
06/04/2017	15322	46.61	714165.21				369100.19
07/04/2017	21170	49.24	1042308.20	21105	49.33	1041128.80	454410.80
10/04/2017	77944	48.14	3752224.16	76444	47.18	3606677.50	1758416.64
11/04/2017	25349	48.18	1221381.84	20452	47.99	981563.40	570792.46
11/04/2017	34	48.18	1638.21			0	449.39
12/04/2017	49966	46.82	2339408.12				728504.28
12/04/2017	2499	46.82	117006.08	48420	46.64	2258254.80	36257.59
13/04/2017	30433	44.67	1359573.85	30433	44.31	1348571.90	506882.04
17/04/2017	2099	42.67	89564.33	16338	42.10	687904.80	39167.34
17/04/2017	5384	42.67	229735.28				100465.44
17/04/2017	8942	42.67	381555.14			0	140842.91
17/04/2017	1798	42.60	76594.80				28445.65
17/04/2017	5000	42.60	213000.00				78001.25
17/04/2017	9309	42.60	396563.40			0	130326.00
17/04/2017	15691	42.60	668436.60				219674.00
17/04/2017	647	42.60	27562.20				8896.25
17/04/2017	5267	42.60	224374.20				72421.25
17/04/2017	3000	42.60	127800.00				46200.00
17/04/2017	5988	42.60	255088.80			0	77409.84
18/04/2017	4050	41.01	166080.00	1400	40.50	56700	58806.35
19/04/2017	484	41.40	20037.60	12855	41.11	528422.55	6837.71
19/04/2017	12883	41.40	533356.20	4050	41.11	166480.85	159392.30
19/04/2017	5818	41.40	240865.20	446	41.11	18333.45	68551.18
20/04/2017	33059	42.98	1421023.12	18739	42.02	787366.26	337140.55
20/04/2017	1410	42.98	60608.08	11231	42.02	471926.62	12873.48

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
21/04/2017	24452	46.09	1127011.94	23238	46.13	1072052.47	147293.84
21/04/2017	17731	46.09	817235.76	14301	46.13	659756.53	57467.04
21/04/2017	706	46.09	32540.10			0	607.36
24/04/2017	13374	45.47	608167.90	28588	44.79	1280583.26	19755.70
24/04/2017	36984	45.47	1681806.60	13636	44.79	610816.89	14229.42
25/04/2017	663	44.75	29667.85	36722	43.93	1613203.13	736.43
25/04/2017	21105	44.75	944404.23	28340	43.93	1244976.20	96724.57
25/04/2017	53270	44.75	2383720.12			0	129593.03
26/04/2017	23174	44.39	1028679.99	46698	43.50	2031453.30	64684.36
26/04/2017	20452	44.39	907852.04	41220	43.50	1793149.70	73711.36
26/04/2017	48420	44.39	2149334.82			0	108919.98
26/04/2017	372	44.39	16512.86			0	-28.49
27/04/2017	30061	44.64	1341923.04	51198	44.24	2264999.52	-9835.51
27/04/2017	16338	44.64	729328.32	44458	44.24	1966821.92	-41423.52
27/04/2017	1400	44.64	62496			0	-5796.00
27/04/2017	17351	44.64	774548.64			0	-61311.79
27/04/2017	29970	44.64	1337860.80			0	-78521.40
27/04/2017	37539	44.64	1675740.96			0	56068.04
27/04/2017	616	44.64	27498.24				95.13
27/04/2017	27972	45.80	1281117.60			0	-28127.71
27/04/2017	13636	45.80	624528.80				-13711.91
27/04/2017	6592	45.80	301913.60				-12326.02
28/04/2017	30130	46.35	1396525.50	88817	44.42	3945137.45	-72909.95
28/04/2017	28340	46.35	1313559.00	7527	44.42	334349.34	-68582.80
28/04/2017	46698	46.35	2164452.30				-132999.00
28/04/2017	6240	46.35	289224.00				-17771.93
02/05/2017	34980	45.31	1585024.41	40673	44.85	1824193.90	-63326.77
02/05/2017	20447	45.31	926500.69	14866	44.85	666740.10	-21925.41
03/05/2017	30751	43.01	1322600.51	42289	42.62	1802357.18	37823.73
03/05/2017	11538	43.01	496249.38				14191.74
04/05/2017	15659	40.70	637341.30	15659	40.50	634189.50	55412.86
05/05/2017	14873	38.86	578010.50	14873	38.66	575044.20	79971.02
16/05/2017	2388	37.42	89365.99	11115	36.58	406581.00	16279.13
16/05/2017	8727	37.42	326590.01			0	61052.15
17/05/2017	24095	38.72	933060.00	12606	37.85	477148.39	137209.06
17/05/2017				9734	37.85	368431.90	0.00
18/05/2017	19041	38.08	725026.90	17270	37.48	647358.50	120749.95
19/05/2017	36954	38.01		28423	36.84	1047103.32	236726.58
19/05/2017	7527	38.01	286121.89	6661	36.84	245392.88	48227.45
19/05/2017	5480	38.01	208309.81			0	37469.51
22/05/2017	35193	37.49	1319282.11	35628	37.02	1318848.19	259132.47
22/05/2017	14866	37.49	557282.64	15659	37.02	579652.07	109457.46
22/05/2017	19876	37.49		14255	37.02	527679.94	102022.31

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
23/05/2017	22413	36.40	815725.67	618	35.93	22202.67	139516.39
23/05/2017	15659	36.40	569912.47	11115	35.93	399324.67	64277.03
23/05/2017	14873	36.40	541305.84	24095	35.93	865652.54	33738.36
23/05/2017	10177	36.40	370393.97	19041	35.93	684079.27	1875.47
				8253	35.93	296502.61	
24/05/2017	938	35.82	33598.02	41708	35.09	1463544.06	713.54
24/05/2017	22340	35.82	800191.68	10840	35.09	380378.29	45377.32
24/05/2017	17270	35.82	618590.43			0	28768.07
24/05/2017	19260	35.82	689869.82			0	19668.58
25/05/2017	9163	35.97	329593.11				7971.81
25/05/2017	6661	35.97	239607.14	59095	35.32	2087457.96	5785.74
25/05/2017	65542	35.97	2357653.72	27621	35.32	975573.72	68526.48
25/05/2017	618	35.97	22230.48				-27.81
25/05/2017	11115	35.97	399824.86				-500.19
25/05/2017	24095	35.97	866736.85				-1084.31
25/05/2017	16454	35.97	591877.49				-740.45
26/05/2017	2587	39.10	101151.70				-8209.47
26/05/2017	8253	39.10	322692.30				-26189.69
26/05/2017	41708	39.10	1630782.80	13625	38.37	522791.25	-167238.74
26/05/2017	152	39.10	5943.20				-609.48
26/05/2017	10688	38.61	412663.68				-37619.11
26/05/2017	2937	38.61	113397.57				-9651.67
29/05/2017	23986	40.39	968761.80	16420	39.91	655333.65	-121485.95
30/05/2017	16350	41.97	686227.65	5456	41.13	224388.43	-108684.07
				10894	41.13	448070.22	
31/05/2017	15822	42.54	673067.88				-114175.25
31/05/2017	27621	42.54	1175077.22	48914	41.67	2038393.41	-199503.50
31/05/2017	13625	42.54	579646.90	74004	41.67	3083746.68	-56855.65
31/05/2017	16420	42.54	698554.29			0	-43220.64
31/05/2017	5456	42.54	232114.02			0	-7725.59
31/05/2017	10894	42.54	463462.27			0	-15392.05
31/05/2017	33080	42.54	1407318.87				-28775.83
01/06/2017	15834	43.15	683216.79	59644	41.53	2476851.12	-23366.41
01/06/2017	74004	43.15	3193177.68	52700	41.53	2188485.91	-109431.00
01/06/2017	59644	43.15	2573562.10	13625	41.53	565808.74	-96710.98
01/06/2017	593	43.15	25587.19	23986	41.53	996072.54	-961.53
				4512	41.53	187370.94	
02/06/2017	39513	43.54	1720226.90	11838	41.22	487915.28	-79360.79
05/06/2017	12594	44.35	558543.90	11416	41.22	470567.52	-35549.75
05/06/2017	9858	44.35	437235.49	1000	45.55	45550	-27859.89
06/06/2017	3767	47.17	177689.09				-21255.95
06/06/2017	15450	47.17	728775.26	0	0.00	0	-87179.30
07/06/2017	7009	49.99	350369.65	0	0.00	0	-59305.18

Date	Buy Volume	Buy rate	Buy Value	Sell Volume	Sell rate	Sell Value	Profit/Loss (in ₹)
08/06/2017	1527	50.74	77479.98				-14067.87
08/06/2017	923	50.74	46833.02	2400	48.10	115445	-8503.37
09/06/2017	3589	50.88	182619.77	0	0.00	0	-33578.48
09/06/2017	5997	50.88	305146.48			0	-57973.99
12/06/2017	5841	52.97	309397.77				-68654.98
12/06/2017	2942	52.97	155834.34	0	0.00	0	-34565.10
13/06/2017	8474	54.00	457577.58	0	0.00	0	-108279.30
13/06/2017	359	54.00	19385.22			0	-3032.77
14/06/2017	641	55.81	35773.40	5463	53.62	292904.15	-6575.85
14/06/2017	2400	55.81	133940.98			0	-18495.98
14/06/2017	5463	55.81	304883.15			0	-11979.00
14/06/2017	804	55.81	44870.23			0	2188.11
15/06/2017	6711	58.75	394297.33	7515	58.53	439855	-1500.66
15/06/2017	5617	58.75	330020.57			0	-12450.34
16/06/2017	22402	60.56	1356601.37	28019	56.54	1584119.7	-90051.90
16/06/2017	5617	60.56	340149.53			0	-10894.50
19/06/2017	14987	61.72	924990.17	20604	58.62	1207756.95	-46488.26
19/06/2017	7765	61.72	479251.93			0	-21431.29
20/06/2017	1675	63.98	107173	15763	58.96	929378.85	-8415.81
Total Net Profit/Loss from June 2016 to June 2017							1,37,26,610.9
Sum of gross profits of the trades wherein the entity incurred only profit							4,02,29,542.15

23. Thus, even considering the investigation period as one (without there being any gap between IP 1 and IP 2), as has been argued by the Noticee, the profit (calculated by applying the FIFO methodology without netting) is coming out to be ₹4,02,29,542.15, which is more than the amount mentioned in the SCN and is sought to be disgorged from the Noticee. As a quasi-judicial authority, in the interest of natural justice, I deem it appropriate not to go beyond the ambit of SCN and accordingly, I am inclined to maintain the scope of these proceedings to the amount of ₹1,18,14,031.39, which has been mentioned in the SCN. Thus, I do not find any merit in the contention of the Noticee in this regard.

SEBI' authority to administer the Code of Conduct:

24. The Noticee has stated that since the PIT Regulations require the Compliance Officer of the Company to administer the Code of Conduct, SEBI cannot assume that power itself and pass an order of disgorgement against the Noticee. Further,

the Noticee has sought to place reliance on the decisions of Hon'ble SAT in the matters of *DLF Limited v. SEBI* and *NDTV Limited v. SEBI* to refer to the trite law that where a statute has provided for a thing to be done in a particular manner, it is to be done in the same manner. In this regard, I note that it is not denied that Regulation 9 of PIT Regulations casts responsibility on the board of directors of every listed company to ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B, without diluting the provisions of these regulations in any manner. Further, responsibility to administer the code of conduct has been vested upon the compliance officer of the listed company.

25. In this regard, to ensure that ASCL have formulated a code of conduct, its website was perused wherein it is observed that the company had only disclosed the Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information, as required under Regulation 8(1) of the PIT Regulations and has not disclosed the Code of Conduct as required under Regulation 9(1) of PIT Regulations. Further, documents available on record also do not suggest that the company had in fact formulated any Code of Conduct for dealing by the DPs. Thus, I am inclined to note that no such code of conduct has been formulated by ASCL. Without prejudice to the same, I also note that in the instant case, it is evident from the sequence of events that at first instance SEBI had issued letter dated May 10, 2022 to the compliance officer of ASCL only to direct the Noticee to disgorge the unlawful profit/gain made by him. Subsequently also, letters dated and July 26, 2022 and August 12, 2022 were issued to the company reiterating the direction of disgorgement and its calculation methodology. It is only when the Noticee has refused to disgorge the amount, that the present proceedings have been initiated. If the argument of the Noticee that only the compliance officer of the company has the power to ensure compliance with the relevant provision of the Code of Conduct is accepted, the same would render the provisions unenforceable since the Noticee has already disregarded the communications of the company / its compliance officer. The PIT Regulations have been framed by SEBI in accordance with the provisions of SEBI Act and SEBI has all the power to enforce compliance with the

provisions of these regulations even though the provisions allude to the obligation of the compliance officer in this regard. Also, the code of conduct is to be read with the provisions of regulation 9 and SEBI is empowered under the PIT Regulations to enforce compliance with the provisions thereof.

26. Further, I also note clause 12 of the Code of Conduct clearly stipulates that without prejudice to the power of SEBI under SEBI Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, etc., that may be imposed, by the listed company required to formulate a code of conduct under sub-regulation (1) of regulation 9, for the contravention of the code of conduct. Thus, power of SEBI to initiate any action against is unhindered and without prejudice to any sanction or disciplinary action which may be imposed by the listed company for the contravention of the code of conduct.

Regarding action for violation of Code of Conduct:

27. The Noticee has placed reliance on various Orders by SEBI to contend that SEBI has exonerated the individual in these cases on charges of contra trades. In this regard, I have perused all the orders referred by the Noticee and note that in all these cases, the individuals had disgorged the contra trades profits and because of this reason, penalty was not imposed upon them. These cases are clearly distinguishable from the present case / proceedings wherein the Noticee has not disgorged the profits made through the contra trades.

28. The Noticee has also contended that penalty which is sought to be levied under the SCN is *ultra vires* of the scope of SEBI's power since the consequence for violation of Clause 10 of the Code of Conduct is disgorgement of any profits made by the Noticee and it does not provide for any penalty. It is also submitted by the Noticee that even the residual provision i.e., Section 15HB cannot be invoked as the consequential action for entering into contra trades in violation of Clause 10 has been provided under the said clause itself in the form of disgorgement of profits made. In support, the Noticee has placed reliance on the order of Hon'ble SAT in its order dated April 28, 2021 in *Snehlata R Tiwari v. SEBI*. In this regard, as already observed in preceding paragraphs, Noticee had executed contra trades during the

period from June 16, 2016 to June 20, 2017, whereas the proceedings have been initiated vide the SCN dated November 23, 2022. Thus, without going into the merits of the contention raised by the Noticee in this regard, I am inclined to treat the said gap between the time of violation and the initiation of action as a mitigating factor. Accordingly, I am of the view that only the direction to disgorge the unlawful gains made by the Noticee without any levy of interest or imposition of penalty would be commensurate and appropriate in this case.

Other submissions of the Noticee:

29. The Noticee has relied on the order of Hon'ble SAT in the matter of *Shripal Shares and Securities P. Ltd. v. SEBI* to support his argument that the average cost method and not the FIFO method should be adopted for calculating the profits in the present case. In the said matter, the entities while trading in the scrip of Sunteck Realty Ltd. were allegedly creating misleading appearance of trading in the securities market, inflating the price of the scrip by way of indulging in circular trades, namely, that they were buying and selling among themselves, thus contributing to 78% to 85% of the market volume. While the Hon'ble SAT affirmed the findings of SEBI in the said matter with regard to fraudulent and unfair trade practice committed by the appellants vis-à-vis violation of regulations 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, the matter was remanded by the Hon'ble SAT to SEBI to reconsider as to which method of calculation (FIFO method or average cost method) was appropriate, and SEBI was directed to provide reasons for the same. The Hon'ble SAT emphasized that if a special method is used for calculation of profits then specific reasons are required to be given. The present case is distinguishable from *Shripal Shares* matter as *firstly*, the nature of violation is different in both the cases and *secondly*, justification is provided for using the FIFO method over the average cost method, and therefore the reliance placed by the Noticee on the aforesaid order of Hon'ble SAT is misplaced.

30. The Noticee has also relied on the Consultative Paper on Introduction of 'Short Swing Profit' Regulations dated January 1, 2008. In this context, it is noted that the above reference is only that of a consultative paper, calling for comments from the public on the same. Further, the proposal, if any, through this consultative paper

was to be introduced in the erstwhile PIT Regulations, 1992. Keeping these aspects in mind, I note that the allegations dealt in this matter are with respect to violations of PIT Regulations, 2015 and therefore, the submission of the Noticee with respect to reliance on the Consultative Paper on Introduction of '*Short Swing Profit*' Regulations dated January 1, 2008 is not related and thus untenable.

31. The Noticee has also highlighted certain errors in the SCN which are discussed below.

31.1. It is submitted that as per the table provided in the SCN the total no. of contra trades were 116 whereas the Noticee made unlawful profit from 69 trades. It is also submitted that the SCN has not clearly specified which sell order is specific to which buy order. In this regard, I note that in the SCN, the total number of contra trades that had been carried out by the Noticee during the referred period was 116, whereas the profit was made from 69 contra trades out of the total 116 contra trades. Thus, only these 69 trades have been considered for deriving the profit earned by the Noticee.

31.2. Noticee has further objected to taking the gross basis of profit calculation as opposed to net basis. This issue has already been discussed in preceding paragraphs and thus, does not merit reexamination.

31.3. Further, the Noticee has objected to the statement in the SCN which states that '*as per the regulations, each contra trade is independent of the other*'. The Noticee has stated that the regulation nowhere mentions that contra trade is independent of each other. In this regard, the understanding of a contra trade and its independent nature has already been discussed and the same has been the intent of the PIT Regulations also. Thus, the contention of the Noticee does not merit further consideration.

32. In view of the observations above, I find that, it stands established that the Noticee as a Designated Person in ASCL, had executed contra trades and failed to remit the profits amounting to ₹ 1,18,14,031.39 made through these contra trades to the Board for credit to the Investor Protection and Education Fund. Hence, I am of the view that the Noticee has violated Clause 10 of 'Minimum Standards for Code of

Conduct to Regulate, Monitor and Report Trading by Insiders' as specified under Schedule B read with Regulation 9(1) of PIT Regulations.

33. As the allegations levelled against the Noticee in the SCN stand established, and there is a violation of the provisions of securities laws, I shall now proceed to determine the directions that need to be issued against the Noticee. In this regard, the obligation of the Noticee to disgorge the profits made from contra trades flows from Clause 10 of Schedule read with Regulation 9(1) of the PIT Regulations. In the present case, since the allegation of making profits from contra trades has been established, it follows that the profits be disgorged for remittance to the IPEF administered by SEBI. In the present case, the amount of profit made by the Noticee from contra trades has been quantified to be ₹ 1,18,14,031.39.

Directions

34. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992 read with Section 19 thereof, hereby direct the Noticee namely, Shri Anirudh Sethi to disgorge the amount of ₹1,18,14,031.39, which has been earned by him as profit from the contra trades as brought out in this Order.

35. This order comes into force with immediate effect.

36. This Order is without prejudice to the right of SEBI to initiate / continue other actions against the Noticee in accordance with law.

37. A copy of this order shall be sent to the Noticee and compliance officer of the Company ASCL. Further, a copy of this Order shall also be sent to Market Infrastructure Institutions for their information and record.

Sd/-

AMARJEET SINGH

WHOLE TIME MEMBER

Date: February 01, 2024

Place: Mumbai

SECURITIES AND EXCHANGE BOARD OF INDIA