

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S.K.MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Sl. No.	Noticees /Name of the entities	PAN
1	Somani Overseas Limited	AAECS2257A
2	Sumeet Menthol Private Limited	AABCM9702F
3	Sumeet Silk Processors Private Limited	AADCS3516M
4	Sitaram Prints Private Limited	AAECS2255C
5	Ambaji Syntex Private Limited	AABCA9728K
6	Urmila Sunder	ABIPS4331F
7	Ganga Somani	ABNPS7081F
8	Sumandevi Somani	ACIPS4869H
9	Shankarlal Somani	ABNPS7087D
10	Raj Kumar Somani	ACIPS4806L
11	Bajranglal Somani	ABNPS7085B

IN THE MATTER OF SUMEET INDUSTRIES LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") carried out an investigation into the suspected price and volume manipulation in the scrip of Sumeet Industries Ltd. (hereinafter referred to as "**the Company**" or "**SIL**") for the period October 1, 2006 to March 12, 2007 (hereinafter referred to as "**Investigation Period**"). During the course of the investigation following were *inter alia*, observed :

- (a) The total paid up share capital of the Company for the quarter ended March 2007 comprised 1,73,99,300 shares bearing face value of Rs. 10/- each. The promoters' holding in the Company came down from 79,78,832 shares (45.84%) as on September 30, 2006 to

67,57,677 shares (38.83%) as on December 31, 2006, and was further reduced to 49,38,010 shares (28.38%) as on March 31, 2007.

- (b) There was substantial increase in the profit of the Company. It increased from Rs. 6.02 million as on September 30, 2006 to Rs. 18.91 million as on December 31, 2006 (a rise of 214%). The profit of the Company subsequently reduced to Rs. 9.32 million as on March 31, 2007 (a fall of 50.68%).
- (c) During the Investigation Period, the shares of the Company were listed on BSE Ltd. (BSE). Price of the scrip went up by 507.4%, while the Sensex recorded an increase of 3.4% (from 12,473.79 on October 03, 2006 to 12,902.63 on March 12, 2007), during the same period. On October 03, 2006, i.e., the first trading day during Investigation Period, the scrip opened at Rs. 4.33, however, the price of the scrip mainly increased during the period from December 05, 2006 to February 21, 2007 during which, in 52 trading sessions, the price of the scrip increased from Rs. 4.81 on December 05, 2006 to Rs. 34.25 on February 21, 2007 (a rise of 612%).
- (d) One month before the Investigation Period, i.e., during the period from September 01, 2006 to September 30, 2006, the price of the shares of the Company remained in the range of Rs. 4.30 to Rs. 5.90 and the shares of the Company were traded with an average daily volume of 17,775 shares, whereas, one month after the Investigation Period, the price of the scrip decreased from Rs. 27.60 on March 13, 2007 to Rs. 15.10 on April 30, 2007 and the scrip was traded with an average daily volume of 5,26,582 shares.
- (e) It was also noticed during the Investigation Period that the Company had come out with a number of positive corporate announcements and some of the corporate announcements were not implemented and further, the factum of non-implementation of such corporate announcements was not intimated to shareholders or investors at large of the securities market.
- (f) The investigation also noted that major counter party to the sales of promoter group entities (i.e. for 11,53,032 shares accounting for 31.80% of total quantity sold by the group) was one Mr. Purshottam Madanlal Khandelwal (hereinafter referred to as **“Mr. Purshottam Khandelwal” or “PK”**), who had placed buy orders for 18,39,36,413 shares of the Company, and was found to be indulging in activities of generating artificial trading in the scrip. The pattern of trading in the scrip evident of creating a false appearance of

volume in the scrip and apparently there was no genuine intention to trade in the scrip of SIL.

- (g) It was also observed that the Company and PK were connected with each other as there was transfer of shares as well of money between them. PK was found to be the counterparty to the sales made by the promoter group entities for 1153032 shares (31.80% of total sales by promoter group entities in the scrip). The buy orders placed by PK accounted for around 77% of the total valid buy orders placed during this period which provided counterparties to mainly the sale of shares by the promoter group entities.
- (h) Based on the aforesaid irregularities alleged to have been committed by the promoter/director and other related entities, SCNs dated March 19, 2012 (“hereinafter referred to as **“2012 SCN”**”) were issued to several entities in terms of the allegations made in the said SCN of 2012 asking them as to why appropriate directions including the directions to disgorge an alleged ill-gotten profit of Rs. 4.69 crore should not be issued against them for the said alleged violations.

2. The Noticee entities filed replies to the said 2012 SCN and were also granted opportunity of personal hearing to present their case on the allegations levelled in the said SCN. Considering the allegations made in the 2012 SCN, respective replies of the entities and evidences available on record, SEBI, vide its order dated May 21, 2014 (hereinafter referred to as **“2014 order”**) found the entities guilty of the violations alleged in the said 2012 SCN. While holding the Noticees guilty of the violations alleged in the said SCN, for the reasons recorded in the 2014 order, the entities were restrained from accessing the securities market and were prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the appropriate periods. Besides restraining the entities from the market for appropriate periods, the 2014 order also directed for disgorgement of wrongful gain of Rs. 4,69,40,232/- made by the promoter group entities, i.e., the Noticees herein, on account of their fraudulent, manipulative and unfair trading in the scrip of SIL and further directed them to pay the amount with a simple interest @ 12% per annum from March 12, 2007 till the date of payment. For the sake of brevity, the findings recorded in the 2014 order of SEBI are not repeated here in this order.

3. Being aggrieved by the aforesaid order dated May 21, 2014 passed by SEBI, an Appeal no. 225 of 2014 (Somani Overseas Ltd. And others Vs. SEBI) was filed by Noticee no. 1 to 8, whereas Appeal no. 227 of 2014 (Shankarlal Somani and others Vs. SEBI) was filed by

Noticee no. 9 to 11, before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). The above stated two appeals were disposed of by Hon'ble SAT vide their common order dated June 30, 2016, wherein, while upholding the order passed by SEBI in principle including the directions to disgorge unlawful gains from the Noticees, Hon'ble SAT was pleased to remand the proceedings to SEBI for the limited purpose of adjudication of the quantum of amount to be disgorged by setting out the norms laid down by SEBI for the purpose. The relevant observations made by Hon'ble SAT in their order dated June 30, 2016 are extracted here under:

"...18. In these circumstances, while upholding the decision of WTM of SEBI that the appellants are liable to disgorge the illegal gains made on sale of SIL scrip during the investigation period, we set aside the illegal profits quantified at Rs 4,69,40,232/- and direct that the quantum of illegal profits be determined afresh by setting out the norms laid down by SEBI for determining the illegal profits...

"... 20. In the result, we pass the following order:-

- a) The WTM of SEBI was justified in holding that the trades executed by the appellants in the scrip of SIL during the investigation period were fraudulent and manipulative trades and therefore the wrongful gains made by the appellants from the said fraudulent and manipulative trades are liable to be disgorged by the appellants. However, the quantum of unlawful gains determined by the WTM of SEBI being not in accordance with any precise norms, we set aside the quantum of unlawful gains determined by SEBI and direct the WTM of SEBI to recompute the quantum of unlawful gains liable to be disgorged by the appellants...."*
(underline supplied)

4. The proceedings were accordingly remanded back by Hon'ble SAT as according to Hon'ble SAT, the 2014 order did not determine the quantum of unlawful gains in accordance with any precise norms providing a rationale for arriving at the amount to be disgorged from the Noticees. Accordingly, vide show cause notice dated April 05, 2018 (hereinafter referred to as **"SCN of 2018"**), Noticees were called upon to explain as to why a suitable direction for disgorgement of unlawful gain of Rs. 4,77,58,471/- in aggregate (as per detailed calculation of unlawful gains made in the SCN) should not be passed against them. The Noticees vide letter dated April 27, 2018, sought eight weeks' time to respond to the SCN of 2018. Thereafter, vide letter dated July 20, 2018, the Noticees were informed about the

personal hearing, which was scheduled on August 23, 2018, in response to which the Noticees vide letter dated July 30, 2018 sought to have inspection of the documents including the papers relating to calculation of the amount of disgorgement indicated in the SCN of 2018.

5. The Noticees were informed that they can undertake the inspection on August 03, 2018. However, as the Noticees did not turn up to carry out their inspection work and they were granted another opportunity to inspect the document on August 08, 2018. The Noticees inspected the documents and raised an objection stating that the 'policy' concerning the methodology adopted by SEBI for calculation of the alleged amount of illegal gains has not been provided to them. It is noticed that vide letter dated August 10, 2018, email dated August 20, 2018, August 24, 2018 and further vide a supplementary show cause notice dated August 29, 2018, various concerns raised by the Noticees pertaining to the determination of amount for disgorgement have been addressed and explained by SEBI.

6. I further note that notwithstanding the clarification given to the Noticees by SEBI through the aforementioned letters on the issue of computation of disgorgement amount, the Noticees have continued to raise objections for not being provided with the documents on the basis of which, the calculation of the alleged amount proposed to be disgorged has been made. Vide letter dated September 18, 2018 and letter dated October 15, 2018, the Notices were again requested to file their replies on the issue for determination by the competent authority so that their concerns pertaining to the computation of illegal gains can be adjudicated appropriately by the competent authority, in terms of the directions of Hon'ble SAT. However, the Noticees vide email dated October 19, 2018 sought two week time to file their replies. Thereafter, the matter was fixed for personal hearing on February 06, 2019 and the Noticees were informed about the same vide letter dated November 16, 2018. The Noticees have again, vide email dated February 04, 2019, sought an adjournment. The proceedings were accordingly adjourned to February 15, 2019.

7. The Noticees finally appeared before me on February 15, 2019 and made their submissions. Subsequently, the Noticees have filed their written submissions vide letter dated March 19, 2019. During the course of hearing, Noticees indicated that they would be exploring the possibility of filing an application for settlement of the issue under the settlement mechanism of SEBI, however, as I understand, no such application has been filed till date. I now turn to the issues and the concerns raised by the Noticees in their submissions which are summarised as under:

- i. There has been an efflux of time of around 13 years from the date of events under consideration hence the proceedings for disgorgement, being equitable remedy have been rendered irrelevant. To buttress their submission, reliance has been placed on SEBI's order dated September 28, 2018 passed in the matter of Vital Communication Ltd., wherein it was held that: *"...considering the fact that the fraud in the mater dates back to the year 2002 or before, the identification of each of such investors and the quantification of losses suffered by each of them for the purpose of restitution to investors as a class is a hugely complex task beyond the capacity of SEBI. Further, while the complainants may have suffered losses in the matter, they cannot deny the fact that any investment in the securities market carries inherent risks which an investor is expected to factor in. Thus, having considered all the facts and circumstances in totality, I deem it fit not to issue any direction regarding restitution of losses to the complainants..."*
- ii. The SCN has been issued after 3 years of the order passed by Hon'ble SAT. Reliance has been placed on the order passed by Hon'ble SAT in the matter of *Aditi Dalal Vs. SEBI (Appeal no. 143 of 2011)* and it has been prayed that present proceedings may be disposed of without any adverse order.
- iii. Adjudication proceedings, arising out of same allegations are pending against the Noticees. Initially, a monetary penalty was imposed on the Noticees on the same allegations, however, Hon'ble SAT has remanded back the said proceedings. The Noticees have already undergone the debarment period, as imposed by SEBI and as reduced/modified by SAT. As monetary penalty is likely to be imposed on the Noticees and there is no possibility of identification of individual shareholders whose losses can be restituted, directions of disgorgement are not required.
- iv. SCN has been issued in disregard of the Hon'ble SAT's order which remanded the matter for re-calculation of the quantum of amount to be disgorged, following laid down norms. Hon'ble SAT's order had directed that for the purposes of disgorgement, the price of the scrip of the company at the beginning of investigation cannot be taken, however, the SCN issued again to the Noticees calculates the amount reckoning the price at beginning of the Investigation Period. Hon'ble SAT had accepted the stand of the Noticees that price of Rs. 4.34 per share cannot be taken as the cost of acquisition. However, the SCN has mechanically taken the price of October 01, 2006 and without assigning any reason, the acquisition price has been taken as Rs. 4.34.

v. The order of Hon'ble SAT mandated to SEBI to re-consider the issue as to why price as on April 30, 2006, i.e., Rs. 15.10 ought not be considered while computing the disgorgement amount and the SCN is silent on this aspect. By issuance of supplementary SCN, the calculation has been amended by taking October 03, 2006 as the relevant date instead of September 30, 2006 and the price per share has been changed from Rs. 4.33 to Rs. 4.34. In this respect, various judgments of Hon'ble Supreme Court of India and High Courts viz: *Tirupati Balaji Developers (P) Ltd. & Ors. Vs. State of Bihar & Ors. (2004) 5 SCC 1*; *P.K. Vijayan Vs. T.A. Jayaprabha (2016) SCC*; *Ayyappally Mohammed Haji and others Vs. M.M. Abdul Salam and others (AIR 2001 SC 797)* etc., have been relied upon.

vi. The instances cited by Hon'ble SAT in its order for calculating disgorgement amount were indicative and not conclusive and were given by Hon'ble SAT only to demonstrate that SEBI's theory is incorrect. The two instances cited by Hon'ble SAT are also incorrect as, had the same been correct, Hon'ble SAT would itself had calculated the amount for disgorgement. SEBI has to demonstrate the basis of calculation of amount of disgorgement, based on cogent evidence. Illustration given in Hon'ble SAT's order cannot become the basis for further calculation and in order to use such illustrations, SEBI needs to specify on what basis the said illustration is necessary over others as fair and equitable measure. Noticees have relied upon the meaning of 'disgorgement' as laid down by Hon'ble SAT in the matter of *Karry Stock Broking Ltd. Vs. SEBI (Appeal no. 6 of 2007)* and *Dushyant N. Dalal Appeal no. 182 of 2009* to contend that disgorgement amount cannot exceed the total amount realized.

vii. Hon'ble SAT had expressly directed SEBI to formulate a policy for calculation of disgorgement of allegedly ill-gotten gains. Not providing such a policy vitiates the entire proceeding being in non-compliance of the order passed by Hon'ble SAT. No justification or basis for the 'approved policy' as mentioned in the Annexure 3 of the SCN has been provided. It is also not clear whether there is such a policy and whether the same has been approved by SEBI Board. In the absence of the policy, Noticees will not be able to demonstrate incorrectness and the same is also not in compliance with the principles of natural justice. The Noticees have placed reliance on the order dated August 03, 2011 passed by Hon'ble SAT in the matter of *Amadhi Investments Limited Vs. SEBI*.

viii. The policy, if any, is contradictory to SAT's order wherein it was observed that first date of investigation cannot be taken as the basis for calculating the value of shares for disgorgement purposes.

ix. The SCN does not provide any grounds to take price of Rs. 4.33 as the basis of calculation of disgorgement amount or to take October 03, 2006 as the date to calculate the acquisition/purchase price and in absence of details and material in support of the allegations, Noticees are not in a position to demonstrate that SEBI's case is devoid of merit. Various judgments like *Canara Bank & Ors. Vs. Debasis Das & ors. (2003) 4 SCC* etc., have been relied upon in this regard.

x. While calculating the amount to be disgorged, impact of genuine public announcements on the price of the scrip need to be factored in and ignorance of any such relevant factor would render the proceedings arbitrary. As a few of the announcements were genuine, it cannot be ascertained whether such announcements caused an increase in price of the scrip, or the alleged manipulation of caused such increase. In case the positive announcements are found to have not led to increase in price of scrip of the company, the allegation of incorrect announcements leading to increase in price will also require to be rejected.

xi. Reference has also been made to the SEBI's affidavit dated April 16, 2015 before SAT wherein it was mentioned *inter alia* that the Appellant therein along with the promoters were only net sellers during the period December 13, 2006 to January 09, 2007. It has further been submitted that the first incorrect positive corporate announcement by the company was allegedly made on January 08, 2007 and therefore there was no alleged fraudulent positive announcements at the time of synchronised trading with PK.

xii. As the positive genuine announcement/s had also contributed to price increase, it would be incorrect to take the alleged synchronised trades with PK as the basis of calculation of disgorgement amount.

xiii. If SEBI intends to calculate the gains on the basis of prices of trades which were synchronised with PK, a fresh Show Cause Notice needs to be issued containing justification as to why such trades led to price increase and genuine public announcements cannot be said to contribute to price rise in the scrip of the company.

xiv. Noticees have also submitted that the value of aggregate gains should be taken as Rs. 1,26,34,444/- by considering normal market rate of Rs. 15.10, when the alleged manipulative support by PK was over.

Consideration of the Issues and Findings:

8. I have carefully gone through the submissions made by the Noticees in reply to the SCN and note that the Noticees have raised certain preliminary objections in the written reply filed by them. Based on the material available on record, I shall first deal with the preliminary objections raised by the Noticees before moving on to dispose of the instant proceedings on merit, in compliance with the order of the Hon'ble SAT.

9. I note that Hon'ble SAT has already upheld the findings of SEBI that the acts of the Noticees were in breach of the provisions as alleged under the 2012 SCN issued in the matter. The limited issue that requires determination in the instant proceedings is computation of quantum of unlawful gains made by the Noticees for the purpose of disgorgement of such unlawful gains. From a plain reading of the order of Hon'ble SAT, I find the directions of Hon'ble SAT are clear and unambiguous, i.e., to re-compute the quantum of unlawful gains for which the Noticees are liable for disgorgement and to pass appropriate direction to disgorge the same amount from the Noticees.

10. It has been contended that the breach of provisions of securities law pertains to the year 2006-2007 and the instant proceedings have been pending for around 13 years hence, any directions of disgorgement, as an equitable remedy, have become irrelevant as on date. To buttress the submission, reliance has been placed on SEBI's order dated September 28, 2018 passed in the matter of Vital Communication Ltd. (*already cited at Para 7(i) of this order*)

11. I have carefully analysed the points raised by the Noticees and find the same are utterly irrelevant to the issue under consideration in the instant proceedings, for the following reasons:

- (A) It is factually misleading to contend that the instant proceedings have remained pending for 13 years. The original proceedings were initiated in the year 2012 and the present proceedings are mere continuation of the already initiated proceedings, with a view to comply with the directives of Hon'ble SAT on the determination of a specific issue which cannot be subjected to plea of laches.

- (B) The instant proceedings are in compliance with the order passed by Hon'ble SAT, wherein the Hon'ble Tribunal has upheld that the Noticees have committed serious breach by their acts of fraudulent and manipulative trades, hence, dropping of the instant proceedings on the ground of delay as contended by the Noticees would not only amount to reward their fraudulent action but at the same time, would also amount to non-compliance of the order passed by the Hon'ble SAT.
- (C) It needs to be remembered that the Noticees have been enjoying their unlawful gains arising out of their fraudulent transactions for over a decade after committing serious contraventions as already found in the 2014 order and upheld by Hon'ble SAT in its order dated June 30, 2016. It would not be desirable that the persons, who have been found to have committed serious breach by manipulating market mechanism, be allowed to retain their unjust enrichment from wrongful gains made out of such fraudulent, manipulative and unfair activities.
- (D) The reliance placed by the Noticees on the SEBI's order in the case of *Vital Communication (supra)* is factually misplaced as the said case is glaringly distinguishable from the present proceedings. In the above case referred to and relied upon by the Noticees, the finding of SEBI was categorically with respect to the disgorgement of unlawful gain made, even though the investors are not identified for restitution. Even in the order of *Vital Communication (supra)*, it was directed that illegal profit made by an entity would not become redundant merely for the reason that there is no corresponding individuals, identified for restitution. Thus, the contentions of the Noticees that the proceedings deserve to be disposed of without any adverse findings/observations on the ground of efflux of time and absence of identified individuals to be restituted, are not worthy of acceptance.

12. Without prejudice to the aforesaid, it is observed that there is no provision in the SEBI Act, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. As observed above, the proceeding in the matter were initiated in 2012 and the instant proceedings have been commenced as an offshoot of the same, in compliance with the order dated June 30, 2016 of Hon'ble SAT. Therefore delay if any, cannot defeat the ends of justice in the facts and circumstances of the case in hand. In this regard, I note that a similar issue came up for consideration before the Hon'ble SAT in the matter of *Gagan Rastogi Vs. SEBI* (Date of decision- July 12, 2019), wherein the Hon'ble SAT

while rejecting the contention of the Appellant that disgorgement is a penal provision and hence limitation would apply, has observed that “ *Firstly, in the Indian context disgorgement is treated as an equitable remedy and not as a penal provision and there are no limitations to the application of provisions under SEBI Act. Secondly, in the instant appeals it is clearly evident that the gain or unjust enrichment made by the appellants only has been directed to be disgorged. As such what is directed to be disgorged is a direct gain to the appellants and no indirect gains are involved.*” In view of the above, I find no merit in the submission advanced by the Noticees and the same is rejected accordingly.

13. It has been contended by the Noticees that they have already undergone restraint from dealing in securities for a specified period and further, adjudication proceedings are also pending for the same breach of rules and regulation. Therefore the present proceedings may be disposed of without any adverse directions. In this respect, I note that this issue has already been dealt in the 2014 order wherein, while referring to the observation made by Hon’ble SAT in the order dated December 02, 2010 in the matter of Appeal no. 70 of 2010 – *Yashraj Containeurs Ltd. vs SEBI*, wherein , it was recorded as under,

“... we cannot resist observing that in view of the serious allegations made against the appellants which stand established during the course of the adjudication proceedings, the Securities and Exchange Board of India (for short the Board) should not have been content with initiating only adjudication proceedings against the appellants in which only a monetary penalty could be levied. This is a fit case where the Board should have considered initiating proceedings under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 for issuing appropriate directions against the appellants to protect the integrity of the market and the interests of the investors.....

This is, indeed a very serious market illegality/irregularity and, in our view, imposing a monetary penalty alone on the company and its promoters will not meet the ends of justice. We are constrained to make these observations because the lenient view taken by the Board does not, in our opinion, protect the integrity of the market and not even the interest of the investors which is its primary duty. This kind of a lenient view will not be a deterrent for others and would send a wrong signal that the delinquent could continue with their nefarious activities by paying a monetary penalty.”

14. I further note that the Hon’ble SAT in the matter of *Sunita Gupta vs SEBI* (Date of Decision- 21.04.2017) has held that “*SEBI Act itself contemplates that where a person violates SEBI Act*

and the regulations made thereunder, then apart from imposing penalty under Chapter VI A, it would be open to the Board to issue such directions as it deems fit under Chapter IV of SEBI Act.”

15. I am of the view that considering the seriousness and magnitude of violation and fraudulent acts perpetrated by the Noticees thereby deriving unlawful gains, they don't deserve leniency of any sorts and the ill-gotten gains made by them need to be disgorged. Any leniency would send a wrong signal to the market and the deterrence which the 2014 order sought to inflict upon the Noticees by way of disgorgement order that was upheld by Hon'ble SAT would fail to have any impact on the conduct of the perpetrators of such fraud. The monetary penalty which might be imposed on the Noticees in the adjudication proceedings cannot be a ground for dropping the present proceedings, since both of the proceedings are independent of each other and run parallel to each other under the statutory framework of SEBI Act, with a view to safeguard the interest of securities market. The arguments of the Noticees on this point too, don't deserve to be considered favourably, being devoid of merit.

16. The Noticees have also raised a preliminary objections that they have not been provided with a complete set of documents, more particularly with a copy of the policy regarding computation of unlawful gains, which further handicap them from defending effectively. It has been submitted that not giving the requisite policy is against the mandate of the order dated June 30, 2016 passed by Hon'ble SAT, whereby the proceedings were remanded back to the WTM for determining the quantum of unlawful gains in accordance with precise norms, but the SCN is silent on the prescribed norms for calculation of the quantum as well as on the issue of considering the price on April 30, 2006 while computing the disgorgement. It has been pointed out that there is no material difference between the 2012 SCN and the SCNs issued subsequent to the remand of the matter to the WTM of SEBI, except for the date to be reckoned for calculating the shares purchase price, which has been modified from September 30, 2006 to October 03, 2006.

17. After hearing the Noticees in person through their authorised counsel, and after perusing their submissions, I find the Noticees have grossly misconstrued the order of Hon'ble SAT so much so that the directions of the Hon'ble SAT have been subjected to a narrow technical interpretation by marginalizing the substantive part of the decision delivered by Hon'ble Tribunal. I find that the Noticees have chosen to place a superfluous emphasis on the observations of the Hon'ble SAT about “setting out norms laid down by SEBI” and “in accordance with precise norms” so as to mislead the present proceedings to believe that it was

the wish of the Hon'ble SAT that SEBI has to first formulate a policy for the computation of unlawful gains without which it will not be possible to comply with the order of the Hon'ble SAT. To put the things into the context in which Hon'ble SAT has issued the directions to re-compute the unlawful gains, it should be first noted that while remanding the matter to SEBI for the purposes of re-computing the disgorgement amount, Hon'ble SAT has given a categorical finding that SEBI was justified in holding that the trades executed by the Noticees were fraudulent and manipulative and therefore, unlawful gains made through such fraudulent and manipulative trades, deserves to be disgorged. Thus, while upholding the directions including disgorgement order passed by SEBI on merit, it is only for the limited purpose of re-computation of the amount proposed to be disgorged that the matter has been remanded back to SEBI, to accomplish the task of re-computation, based on the precise norms on which the quantum of unlawful gains can be calculated. Accordingly, I find that the SCNs which were issued pursuant to the order of Hon'ble SAT, contained a set of norms/methodology based on which the quantum of unlawful gains were proposed to be computed. The details of the said norms proposed to be adopted vide the SCNs issued to the Noticees are discussed at length, later in this order.

18. It is therefore, patently erroneous on the part of the Noticees to submit that Hon'ble SAT has expressly directed SEBI to first formulate a policy *de novo* for calculation of disgorgement of allegedly ill-gotten gains made by an entity and that without a policy in place, that is approved by the Board of SEBI, the re-computation of unlawful gains cannot be proceeded with. The Hon'ble SAT, while setting aside the 2014 order of SEBI, has categorically recorded that the "quantum of unlawful gains determined by the WTM of SEBI being not in accordance with any precise norms, we set aside the quantum of unlawful gains determined by SEBI and direct the WTM of SEBI to recompute the quantum of unlawful gains liable to be disgorged by the appellants...." And further record that "we set aside the illegal profits quantified at Rs 4,69,40,232/- and direct that the quantum of illegal profits be determined afresh by setting out the norms laid down by SEBI for determining the illegal profits." (emphasis supplied). To set the records straight, the 2014 order of SEBI was not aside on the ground of absence of any policy, or guidelines, rules or regulations nor has Hon'ble SAT issued any direction to SEBI to first legislate a policy on disgorgement afresh before initiating the present proceedings of computation of amount for disgorgement. It may be noted that the 2014 order proceeded and calculated the amount on the lines of allegations made in 2012 SCN and in the absence of any precise norms to justify the amount so calculated, Hon'ble SAT was pleased to remand the matter to re-compute the amount afresh and provide a rationale for the calculations so made to determine the amount to be disgorged.

Thus, what is pending for adjudication before me as a result of Hon'ble SAT's order, is effectively the determination of the quantum of amount to be disgorged, based on certain precise norms which can objectively justify such computation to be made after due consideration of the responses of the Noticees, in the compliance with the instructions of the Hon'ble Tribunal.

19. At this point, before discussing the communications exchanged between SEBI and the Noticees, I deem it fit to highlight the main bone of contentions, in respect of which the Noticees have advanced myriad counter arguments. In this case, out of the 11 Noticees, 3 Noticees have entered into both buy as well as sell transactions during the Investigation Period and, rest of the Noticees have entered into only sell transactions. Even for the said 3 Noticees, the quantity of sell was more than what was purchased during the Investigation Period, which means, shares held by them before the Investigation Period, were also sold during the Investigation Period. SEBI's 2014 order as well as the SCNs issued to the Noticees pursuant to the remand order of Hon'ble SAT contain the details of the buy value and sell value of the shares of SIL actually transacted by the Noticees during the Investigation Period and admittedly, the same have been considered for computing the gains made by the Noticees. However, as the Noticees have sold more quantity of shares than the quantities purchased by them during the Investigation Period and the actual cost of acquisition/purchase of those additional shares held prior to Investigation Period was not available, for the purpose of computing the cost of acquisition of the said pre-investigation period shares, the opening price of the scrip on the first trading day during the Investigation Period has been adopted as the cost of acquisition in the SCNs issued to the Noticees. Thus, wherever any reference to cost of acquisition of shares is made in the present order, the same is to be understood with reference to those 'excess shares' held by the Noticees prior to the Investigation Period but sold during the Investigation Period. Since the cost of the shares actually purchased and sales price of the shares actually sold during the Investigation Period have been taken from the actual transactions, there is no disagreement over those prices adopted for computing the quantum of unlawful gain. What is being vehemently disputed by the Noticees is the notional cost of purchase proposed to be adopted for those excessive (pre-investigation period) shares (hereinafter referred to as "**excess shares**"), in the absence of actual cost of purchase, for computation of the unlawful gains made by the Noticees.

20. I find that pursuant to the order of Hon'ble SAT, SEBI on April 05, 2018 issued a fresh notice, in which at para number 5, the details of proposed computation of unlawful gains

have been presented in a tabular chart on the basis of which the total amount proposed to be disgorged has been indicated to be Rs. 477,58,471/-. I also find that a similar tabular computation has been enclosed to the said notice as its Annexure -3 which is titled as “*Revised Calculation of Ill-gotten Profit as per approved policy*”.

21. In response to the SCN, vide letter dated July 30, 2018, the Noticees while requesting for time for filing their response letter, have stated that the ‘approved policy’ as referred to in the Annexure -3 to the SCN be provided to them along with the internal notings confirming such policy. In this regard, from the internal records, it is noted that SEBI has not laid down any Board approved policy on the issue of computation of disgorgement of unlawful gains nor any circular or guidelines have been issued by SEBI on the subject. The word ‘policy’ mentioned in the title of the said Annexure-3 was merely a general expression of an internally arrived decision to compute disgorgement amount as applicable to the factual situation of the present proceedings. Such internally arrived policy decisions are not meant for placing in public domain or for public circulation and are meant for internally aiding the adjudication proceedings in the matter of computation of unlawful gains depending on the specific facts of the case and also after considering the explanations and clarifications that may be offered by the Noticees. Further, the final decision of applying any precise norms or methodology for computation of disgorgement amount is to be taken by the competent adjudicating authority. What is pertinent in this case is to set out some precise norms on the basis of which the quantum of unlawful gains can be objectively calculated and whether such precise norms should come out of a laid out policy duly approved by the Board or not, will be of no relevance, as long as the competent authority computes the disgorgement amount on the basis of a well laid out ‘set of norms’ and provide justification for arriving at the amount proposed to be disgorged as unlawful gains. Therefore, the insistence by the Noticees to have a copy of the policy with internal notings etc., is an attempt to digress the proceedings to areas entirely unrelated to the objective for which the proceedings have been remanded by the Hon’ble SAT to SEBI. Therefore, vide letter dated August 10, 2018, it was clarified to the Noticees that the methodology based on which disgorgement amount has been calculated is already mentioned at para no. 6 of the SCN.

22. I find that the Noticees have once again vide letter dated August 18, 2018, discussed the directions issued by Hon’ble SAT about setting out the norms for determining the unlawful gains made by the Noticees and have again reiterated their request that SEBI should make available to them, a copy of the policy for the purpose of calculation of

disgorgement amount, rationale underlying such a policy which is at variance with the standard approach of SEBI based on the principle of restitution, the exact provisions of law under which the policy has been framed, the date on which the policy has been approved by the Board, the minutes of the Board meetings etc. On a careful perusal of the letter of the Noticees, and the requisitions made by them in the said letter, I get the impression that the Noticees have over stretched themselves unnecessarily to the domains of policy making, the procedure followed thereunder, the rationale of the policy and Board minutes etc., which are of no use for giving effect to the directions of Hon'ble SAT in this case. What is of paramount interest and of relevance in this case is that there should be a set of precise norms on the basis of which the unlawful gains earned by the Noticees can be computed, based on certain rationale and justification which probably was lacking in the 2014 order, because of which the Hon'ble SAT had to remand back the proceedings. Moreover, as I have stated earlier, there has been no policy on the subject of disgorgement passed by the SEBI Board, therefore, the question of sharing any such policy and justifying the rationale of the policy to the Noticees, does not arise. It appears that the Noticees have just latched on to the word 'policy' mentioned in the title of the Annexure -3 to the SCN dated April 05, 2018 and are harping on the said word so as to critically assess the policy of SEBI and mislead the proceedings to a new dimension and direction even beyond the mandate of this proceedings, which has already been precisely set out by the Hon'ble SAT.

23. Under the circumstances, vide an email dated August 20, 2018, it was clarified to the Noticees that the basis of calculation of the unlawful gains has been mentioned at para no. 6 of the SCN and it was also clarified that in the absence of details of actual cost of acquisition provided by the Noticees, the opening price on the first trading day of Investigation Period has been adopted as the share purchase price. The Noticees, in response to the aforesaid email, vide their email dated August 21, 2018, have reiterated their contentions raised in their letter dated August 18, 2018.

24. I find that in this case, subsequent to the issue of the aforesaid SCN dated April 05, 2018, a discrepancy between the tabular chart at para no. 5 in the SCN and the table of computation enclosed to the said SCN as Annexure -3 was noticed with respect to the adoption of the cost price of the shares purchased by the Noticees prior to the Investigation Period for the purpose of computation of the unlawful profit. While the Annexure-3 to the SCN had adopted the opening price on the first trading day of the Investigation Period, i.e., October 03, 2006, in the tabular chart at para no. 5 in the body of the SCN, the cost price was

taken inadvertently as the closing price before start of the Investigation Period, i.e., September 29, 2006. In view of this apparent discrepancy that arose between the SCN and its Annexure, contrary to the intention of adopting the opening price on the first trading day of the investigation as the cost price (i.e. October 03, 2006), a supplementary SCN was issued on August 29, 2018 (hereinafter referred to as “**Supplementary SCN**” and both the Show Cause Notices are collectively referred to as “**SCNs**”) to the Noticees, wherein the opening price on October 03, 2006 (which was the first trading day of the Investigation Period), i.e., Rs. 4.33 per share of SIL, was adopted for the purpose of computation of unlawful profit by the Noticees. In the said supplementary show cause notice, the precise norms which were proposed to be adopted for the purpose of re-computation of disgorgement were also reiterated, apart from giving a detailed computation in the tabular chart. It would be appropriate to reproduce here the precise norms that was proposed in the Supplementary SCN for re-computation of the disgorgement amount along with the computation of the amount proposed to be disgorged that was communicated to the Noticees, as under:

Methodology and norms proposed to be applied:

(Qty of shares sold during PI x Wt. Avg. Sell Price) – [(Qty of shares bought during PI x Wt. Avg. buy Price) + (Qty of excess shares x opening price of shares on first day of PI)]

Computation of unlawful gains:

Table-1

NAME	Sell Qty	Sell Value	Buy Qty	Buy Value	Net Sell Qty	Net Sell Value	Opening price on first trading day of investigation period i.e 03/10/2006	Profit (₹)
	A	B	C	D	E=(A-C)	F=(B-D)	G	H
Sumeet Menthol Private Limited	600000	7219473			600000	7219473	4.33	46,21,473
Rajkumar Sitaram Somani	545000	10435350	50000	273341	495000	10162009	4.33	80,18,659
Shankarlal Sitaram Somani	334250	6844629	50000	250000	284250	6594629	4.33	53,63,827

Sumeet Processors Pvt Ltd	300000	3823000			300000	3823000	4.33	25,24,000
Sitaram Prints Private Limited	300000	4839000			300000	4839000	4.33	35,40,000
Urmila Shyam Sunder	250000	6287000			250000	6287000	4.33	52,04,500
Ganga Devi Somani	250000	6437500			250000	6437500	4.33	53,55,000
Bajranglal Siyaram Somani	250000	6385117			250000	6385117	4.33	53,02,617
Sumandevi Madan Somani	250000	6125978			250000	6125978	4.33	50,43,478
Somani Overseas Ltd	195000	2505200	67950	374119	127050	2131081	4.33	15,80,955
Ambaji Syntex Pvt Ltd	150000	1886026			150000	1886026	4.33	12,36,526
Total	3424250	62788273	167950	897460	3256300	61890813	4.33	477,91,034

25. On receipt of the Supplementary SCN, the Noticees vide letter dated September 17, 2018, have contested the adoption of acquisition price as indicated in the Supplementary SCN to be the opening price of first trading day on October 03, 2006, by citing different extracts from the order passed by the Hon'ble SAT and again reiterating their demand for providing a copy of the policy formulated by SEBI, the extract of provisions of law under which the policy has been framed, the date of Board meeting and minutes thereof etc. In the meanwhile, vide letter dated September 18, 2018, SEBI had once again responded to the concerns raised by the Noticees in letter dated August 18, 2018 and email dated August 21, 2018 and had informed the Noticees *inter alia* that:

"3. ...norms adopted for calculation of amount is based on the internal decision of SEBI which is subject to the satisfaction of quasi-judicial authority while adjudicating the issues considering the reply of the Noticees. Such norms are case specific and the norms for computation which was deemed to be appropriate in the case has been spelt out in the SCN itself.

4. Therefore, the phrase "approved policy" may not be construed as expressed in the form of any circular, guidelines nor any such policy has been put up in the public domain that can be shared with you.

5. You are therefore, once again, advised to file reply to the SCN, including on the method of computation of ill-gotten gains, along with supporting evidence, if any. Further, you are advised to provide actual cost of acquisition by Noticees supported by documents

substantiating the claims, as intimated earlier vide email dated August 20, 2018. In the absence of any reply/additional submission, SEBI would be constrained to proceed further in the matter, ex-parte, based on responses/submissions and material as available on records.”

26. The Noticees, in response to the aforesaid letter dated September 18, 2018, addressed another letter dated September 27, 2018 in which *inter alia*, the Noticees have stated: “...that grave prejudice would be caused to the Noticees if the proceedings are continued without providing the relevant documents and explanations on the subject matter. In any case, it would be necessary to go to the root of the matter given that SEBI will need to demonstrate as to why the specific ruling in the Order has been given a go by. This is a serious issue which could have implications even on other proceedings on the same point.” In response to the aforesaid two letters dated September 17, 2018 and September 27, 2018, it was clarified to the Noticees vide letter dated October 15, 2018 that all their contentions regarding policy on calculation of disgorgement have been addressed in the previous communication dated September 18, 2018, hence, the Noticees were advised to file their replies to the Show Cause Notice including the Supplementary Show Cause Notice. The Noticees were also advised to provide the actual cost of acquisition of the shares of SIL sold by them with supporting evidence to substantiate their claims. Keeping in view the adamant approach of the Noticees who have themselves engaged in protracted correspondences on technical ground insisting on a policy on disgorgement by SEBI Board, the rationale behind the policy, procedure followed, Board Minutes etc., which have no bearing with the objective of the present proceedings, in the said letter, it was intimated to the Noticees that in the absence of any reply to the SCNs, SEBI would be constrained to proceed the matter *ex-parte*, on the basis of materials available on record.

27. Pursuant to the aforesaid correspondences, the Noticees finally appeared before me on February 15, 2019 and made their submissions which have been already summarised by me at para no. 7. I also find from the submissions made by the Noticees that they have relied upon certain orders of Hon’ble SAT passed in the matters of *Jatin Manubhai Shah & Ors. Vs. SEBI, Canara Bank & Ors. Vs. Debasis Das & ors.* and *Swarnganga Trading Private Limited Vs SEBI* to support their contention that the SCN does not contain justification about the cost of purchase or the date of purchase of shares adopted for calculating the unlawful gains. The Noticees have further relied upon various judgments on the issue of remand and have attempted to project that that the present proceedings are in violation to the directions issued by Hon’ble SAT while remanding back the matter. In my view, the aforesaid objections raised by the Noticees are factually incorrect and misleading. I find the SCNs, especially the

supplementary SCN had made it amply clear about the norms based on which the unlawful gains of the Noticees have been proposed to be computed on which, the explanation of the Noticees have been sought. The methodology and the norms that have been elucidated in the said SCN are self-evident of the justification for the price that has been adopted to determine the cost of acquisition of the share of SIL. It has been clearly indicated in the SCN that the opening price on the first trading day of the Investigation Period has been proposed to be adopted as the cost of acquisition. I note that apart from indicating the norms proposed to be followed for computation of unlawful gains in the SCN and supplementary SCN, the Noticees were categorically and repeatedly asked to furnish the details of the actual cost of acquisition, which would have obviated the necessity for adopting any notional cost of acquisition of the shares. However, the Noticees have deliberately chosen not to provide the said details till date and instead, have remained adamant and insistent upon obtaining a copy of policy approved by SEBI board on the subject of computation of disgorgement amount. The conduct of the Noticees, instead of being cooperative in the present proceedings have been evasive and dilatory in nature. At this juncture, it is relevant to refer to the judgment of Hon'ble Supreme Court, in the matter of *Sahara India Real Estate Corporation Limited & Ors. Vs. Securities and Exchange Board of India & Anr*, [(2013) 1 SCC 1] wherein the Hon'ble Supreme Court, had observed that the principles of fairness, as a part of principle of natural justice, can be available only to a party which itself acted in a fair manner. The Hon'ble Supreme Court, while discussing the conduct of the parties, i.e., not-providing the information to SEBI available with such parties, as was sought for by SEBI, observed that if the company has not provided the information available with it, then in such a scenario the information collected by SEBI, need not be put to the company nor its response on the same is required to be sought. I find the conduct of the Noticees as visible from their available protracted correspondences raising various technical issues including the issues of SEBI's policy of disgorgement, has been similarly non-cooperative as in the aforementioned case wherein the Hon'ble Apex Court had to make the observation as stated above.

28. Keeping the aforesaid in view, it is erroneous on the part of Noticee to state that the cost of acquisition of the shares adopted in the SCNs is without any justification. Similarly, the contention of the Noticees that the present proceedings are in violation of direction of the remand orders issued by the Hon'ble SAT, is misplaced on facts and without any basis.

29. After having dealt with and addressed the resistance and objections made by the Noticees, on the issue of policy formulation on computation of disgorgement and the

procedural aspects related thereto in the aforesaid paragraphs, I now advert to the main task assigned by Hon'ble SAT in their order dated June 30, 2016, i.e., re-computation of the amount of disgorgement to be made from the Noticees in view of the violations committed by them that have been upheld by Hon'ble SAT in their order. As I recall the directions of Hon'ble SAT, the present proceedings are exclusively meant for re-computation of the quantum of unlawful gains made by the Noticees, and such re-computation should be based on a set of laid down precise norms so as to justify such re-computation. As stated earlier, the SCNs issued by SEBI pursuant to the order of Hon'ble SAT, have contained the methodology/norms proposed to be adopted for computation of the unlawful gains and on the basis of the such methodology/norms, an illustration of the computation has also been provided in the Supplementary SCN, whereby the total quantum of unlawful gains has been arrived at Rs. 477,91,034/-.

30. After carefully perusing and analysing the contentions of the Noticees with respect to the proposed computation and norms indicated in the SCNs, I find that there is no disagreement with the Noticees with respect to sell quantity, sell value, buy quantity, buy value, net sell quantity and net sell value, as have been presented in the tabular chart in which the computation of unlawful gains have been drawn up in the SCNs. The only point on which there is a resistance and grievance from the Noticees is on the issue of adopting a notional price to determine the cost of acquisition of those excess shares so as to compute the corresponding profits earned from sale of such shares acquired by the Noticees before the Investigation Period. While the SCNs issued by SEBI propose to adopt the opening price of the scrip of SIL on the first date of trading day of Investigation Period, i.e., October 03, 2006 as the cost of acquisition, based on the norms that have been laid out at para 6 of SCN dated April 05, 2018 and para 3 of the Supplementary SCN, the Noticees have been vehemently opposing to the said proposition on various grounds. According to the Noticees, the SCNs are vague insofar as no justification has been provided for adopting the said price (Rs. 4.33) as the cost of acquisition of those excess shares and that according to them, the price of the scrip of SIL as it prevailed on April 30, 2007 which was Rs. 15.10 per share, should be adopted as the cost of acquisition for those excess shares.

31. I have already observed earlier that it would be wrong on the part of the Noticees to ascribe the cost of acquisition of shares adopted in the SCN as without any justification for the simple reason that the opening price prevailing on the first trading day of the Investigation Period is unsupported and unaffected by any price manipulation in the scrip. Infact from the

2014 order, I find that one of the Noticees, Somani Overseas Ltd. (Noticee no. 1), had started purchasing the shares of SIL from October 03, 2006 onwards till October 13, 2006. The details of transactions including the buy transactions made by the Noticees during the Investigation Period can be observed from the following table:

TABLE-2

Sr. No.	Entity	Broker	Relationship	Buy Qty	Period of Buy	Sell Qty	Period of sell
1	Somani Overseas P. Ltd	Arihant	Promoter Group Company	67950	3.10.06 to 13.10.06	0	14.12.06 to 21.12.06
		CIL		0		195000	
2	Shanker Somani	CIL	Promoter / Chairman	50000	17.11.06	329250	6.10.06 to 2.2.07
		Arihant		0		5000	
3	Rajkumar Somani	Arihant	Promoter /Managing Director	50000	2.11.06	150000	17.11.06 to 18.1.07
		CIL		0		395000	
4	Sumeet Menthol Pvt. Ltd.	CIL	Promoter Group company	0		600000	15.12.06 to 20.12.06
5	Sumeet Silk Processors Pvt. Ltd	CIL	Promoter Group company	0		300000	13.12.06 to 20.12.06
6	Sitaram Prints Pvt Ltd	CIL	Promoter Group company	0	-	300000	13.12.06 to 9.1.07
7	Ambaji Syntex Pvt. Ltd	CIL	Promoter Group company	0	-	150000	15.12.06 to 21.12.06
8	Urmila Sunder	CIL	Wife of Bajranglal Somani	0	-	250000	2.2.07
9	Bajranglal Somani	CIL	Promoter Group/ Director	0	-	250000	2.2.07
10	Ganga Somani	CIL	Wife of Shankarlal Somani	0	-	250000	6.2.07
11	Sumandevi Somani	CIL	Wife of Rajkumar Somani	0	-	250000	6.2.07
Total				167950		3424250	

32. From the above tabular presentation of the entire transactions entered into by the Noticees during the Investigation Period, it can be seen that the first purchase transaction from a member of the Noticee group was executed on October 03, 2006 which was also the first trading day of the month of October, 2006. Since the Investigation Period starts from October 01, 2006, it is logically justified to take the price of the scrip as it prevailed on the first trading day of the Investigation Period and more so when it is at this price at which one of the member

of the Noticee group had started purchasing some shares of SIL. Therefore, it is prudent to assume that the opening price of the share of SIL on the first trading day of October 2006, was a normal rate unaffected by any manipulation on the said date. The shares purchased from that date onwards by different members of the Noticee group till November 17, 2006, were eventually sold at higher prices when the prices of the scrip got manipulated on the strength of false corporate announcement and fraudulent trading, as have been discussed in detail in 2014 order and upheld by Hon'ble SAT. Therefore, it is reasonable to take the opening price of the first trading day of Investigation Period as the price which was unaffected by subsequent manipulation, for the purpose of determining the cost of acquisition of those excess shares for arriving at the amount to be disgorged as profit.

33. In contrast to this, I find the suggestion made by the Noticees to adopt the price prevailing on April 30, 2007 for determination of the cost of acquisition of the scrip devoid of any justification and rationale for the following reasons:

- a) It is an accepted principle of accountancy that to ascertain the cost of acquisition of any asset, the price prevailing on a date falling after the date of the sale of the asset, cannot be adopted as a cost price for the asset. An asset, to be called as a short term or long term asset, depends on the duration of the ownership and holding of such asset and the holding period of an asset cannot be computed if the date of purchase is taken after the date of sale. The event of purchase has to precede the event of sale for computing the profit or loss if any. Moreover, in this case, from the records, I find that the Noticees have not bought any share other than what was enumerated in the Table no.1 during the investigation period. The Noticees have also not furnished any document to show their inclination in buying the shares of SIL, after PK entered into the market for trading in the shares of SIL. The Noticees sold the shares which they were holding prior to the commencement of Investigation Period and also those shares which they purchased during the Investigation Period. Thus, all those shares were acquired well before the sales transactions. Therefore, when all the shares including the 'excess shares' sold by the Noticees were actually purchased on dates before the sale dates, the market price of the scrip on a date as suggested by the Noticees falling after the Investigation Period will not be appropriate to be adopted as cost price of the shares.

- b) The Investigation Period commences from October 01, 2006 and ends with March 12, 2007. It is not disputed that manipulations in the scrip of SIL took place during this period. It was during this period false public announcements were made knowingly with the intention, not to implement the same and only with a view to inflate the price of the SIL scrip so that they could off-load the shares at the inflated price and make unlawful profits. Therefore, any price taken outside the period of investigation would neither be desirable nor tenable under the law.
- c) It is noted that the price of the scrip as it prevailed on April 30, 2007 was cited in 2014 order merely as a point of reference to make a comparison between the price of the scrip, as it existed a month before the initiation of investigation and the price, post the Investigation Period. Therefore, the price of April 30, 2007 does not provide any basis whatsoever, to be adopted as cost price of the shares sold by the Noticees.
- d) It is the case of the Noticees that the price of the scrip prevailing on April 30, 2007 is the price post the manipulation phase, hence deserves to be considered for determination of acquisition price for the excess shares sold by the Noticees. However, it is pertinent to note that the Investigation Period in this case ended on March 12, 2007 hence, the price of the shares of SIL on April 30, 2007 has no relevance with the acquisition price of the scrip. As pointed out above, this price was referred to in the 2014 order only for the purpose of drawing a comparison of prices of the scrip between the pre and post Investigation Period. Moreover, although the investigation period during which, the fraudulent trading and manipulation of price of the scrip took place was considered by SEBI for investigation purpose on the basis of material available about the alleged fraudulent trading, the public and investors at large were not aware of such alleged acts of manipulation or false corporate announcements, that had taken place during the Investigation Period, which had inflated the price of the scrip. Therefore, it cannot be said that the prices of the scrip post the Investigation Period automatically came to normal rates and by April 30, 2007 or it remained completely unaffected by the impact of price manipulation or by the false corporate announcements which took place during the Investigation Period. Since investors were ignorant about the adverse implications of the fraudulent trades and false corporate announcements on the price of the scrip, it cannot be stated

for sure that the price of the scrip prevailing on April 30, 2007 was a completely a market driven price so much so that it can be adopted for determination of cost of acquisition of the shares of SIL held by the Noticees from the time prior to the Investigation Period.

34. Under these circumstances and for the reasons cited above, the suggestion by the Noticees to adopt a price prevailing on a date months after the sales were executed, to calculate the cost of the those excess shares sold by the Noticees is illogical and fallacious. Such a proposition can be perceived to be a clandestine attempt on the part of the Noticees to increase the cost of acquisition of the shares, sold by them during the Investigation Period, so as to substantially neutralise the quantum of unlawful gains earned by the Noticees by way of their fraudulent trade practices in the scrip of SIL.

35. While on the issue of adopting a price for determining the cost of acquisition of those excess shares sold by the Noticees, I can observe from the submission made by the Noticees at para no 24 to 26 of their written reply dated March 19, 2019, wherein the Noticees have acknowledged that there are two instances cited by Hon'ble SAT, viz., the first date on which PK commenced trading and the other was April 30, 2007, which can be taken as alternative to SEBI's argument of taking the price of the beginning of the Investigation Period as the basis for calculating disgorgement amount. The Noticees have stated that these instances were merely indicative and were cited by Hon'ble SAT merely to demonstrate that the theory of SEBI is not correct and if either of the two instances was a conclusive mode of calculation of disgorgement, the Hon'ble SAT would have itself calculated the amount and would have directed for disgorgement in their order. Therefore, it cannot be contended that merely because Hon'ble SAT's order contained two illustrative instances, the same becomes basis for further calculation. Thus, the Noticees have made themselves clear about the fact that none of the instances of prices of scrip of SIL prevailing on either the date on which PK commenced trading or the price prevailing on April 30, 2007 has to be adopted for determination of cost of acquisition of shares of the Company. The Noticees have averred that the price that is to be adopted, as per the spirit of the order of Hon'ble SAT, is required to be based on cogent evidence, and an objective justification. I have no hesitation in agreeing with the aforesaid contentions of the Noticees. In my view also, at paras 16 and 17 of their order, Hon'ble SAT have merely explored the possibility of considering those two instances of prices of the share of SIL and have not selected either of these two instances as appropriate for determination of the cost of acquisition of shares. Therefore, the sole endeavour in the instant proceedings is

to arrive at a cost of acquisition for those excess shares of SIL, sold by the Noticees which were acquired before the Investigation Period, based on cogent evidence and objective justification. To achieve the same, one doesn't have to adopt either of the two instances of price of scrip of SIL referred to in 2014 order or Hon'ble SAT. It is the price prevailing on a date that can provide an objective rationale and empirical support which should be adopted for determining the cost of acquisition of those excess shares held by the Noticees.

36. I have already dealt with the challenges involved in adopting the price of the scrip prevailing on April 30, 2007 for determination of cost of acquisition of the shares of SIL with respect to the computation of profit for the Noticees. As regards the possibility of referring to the price prevailing on the day on which PK commenced its trading, for the purpose of determining the cost of acquisition, the same is fraught with similar challenges insofar as the determination of cost of acquisition of shares sold by the Noticees is concerned. It is on record that PK placed order in the scrip for the first time on December 06, 2006 before which, the Noticees had already acquired their shares. Apart from the shares which the Noticees were holding prior to the Investigation Period, some shares were acquired by some of the Noticees between October 03, 2006 and November 17, 2006. Therefore, when the events of purchase transactions had actually taken place before the day when PK started its trading, it would not make any sense to adopt any later date randomly for the purpose of taking prevailing price of the scrip, so as to determine the cost of acquisition of those excess shares sold by the Noticees, without any basis to justify such action. Since, I am not inclined to adopt either the date on which PK started trading or the date of April 30, 2007 for the purpose of referring to the price of the scrip prevailing on those days so as to compute the unlawful gains of the Noticees, the question of issuing a separate SCN as suggested by the Noticees in their written submission, does not arise.

37. In view of my aforesaid limitations in adopting either of the above mentioned two instances, it is incumbent upon me to adopt the price of the scrip of such a date which should be, in the words of Noticees, based on evidence and should demonstrate an objective basis for calculation of unlawful gains. In doing so, I am inclined to adopt the opening price of the scrip on the first trading day of the Investigation Period viz., October 03, 2006, as the same is not only evident by the fact that on the said date, one of the Noticees has actually purchased the shares of the Company but also by the fact that the opening price on the first trading of the Investigation Period is the best available normal price of the scrip which was without any influence of the price manipulations that ensued after that day in the scrip of the Company.

Hon'ble SAT in their order has held that the first day of Investigation Period should not be necessarily referred to for determination of cost of acquisition by the Noticees. In this connection, although the first day of Investigation Period falls on October 01, 2006, it is proposed to adopt the opening trading price of the first trading day, i.e., October 03, 2006 for the purposes of determining the cost of acquisition of those excess shares sold by the Noticees during the Investigation Period. The rationale behind the same is that being the first available price of the scrip on the first trading day of the Investigation Period, the said price is perfectly suited to be adopted as notional price for those excess shares sold by the Noticees, which were held by the Noticees before Investigation Period, for calculating unlawful gains. It may be emphasised here that as the Noticees have failed to produce the actual cost of acquisition of the shares held by them prior to the Investigation Period, I have to resort to a notional price which, under the facts and circumstances, is considered to be most suitable price to impute the cost of acquisition of those excess shares, so as to complete the process of computation of unlawful gains. Had the Noticees furnished me with the particulars of actual cost of acquisition of those excess shares, the necessity for adopting any notional price would not have arisen. Under these circumstances, the explanations offered and arguments advanced by the Noticees against the price of the scrip proposed to be adopted in the SCN and their alternative proposal to adopt the price of the scrip as it prevailed on April 30, 2007 for determining the cost of acquisition of shares has to be disregarded for want of merit. Instead, for the reasons detailed out above, the opening price of the scrip on October 03, 2006, is found to be the most appropriate price to be taken for the purpose of cost of acquisition of the shares of SIL for computation of unlawful gains.

38. I find that the Noticees in their written submission dated March 19, 2019 have advanced an argument stating that during the Investigation Period, the first alleged incorrect positive corporate announcement by SIL was made on January 08, 2007 and there were no fraudulent positive announcement at the time when the trades with PK were synchronised by the Noticees. According to the Noticees, certain legitimate positive announcements during the Investigation Period which have contributed to the increase of price of SIL, legitimately. Therefore, it has been contended that it would not be correct to take the prices pertaining to the synchronised trades with PK as the basis for calculating the disgorgement since there has also been price rise on account of genuine positive announcements which needs to be factored into the computation of unlawful gains. I find such contentions by the Noticees are untenable and not realistic in the context of sensitivity of share prices in the securities market. The prices of the shares of companies react to an interplay of several factors working concurrently at any

point of time and it is not feasible to break down the increase in the share price proportionately to the different factors that have cumulatively triggered such increase in share price. Therefore, it may not be feasible to compute as to how much of the increase in the price of a share was due to reaction to manipulative trades and what portion of the increase was the outcome of positive corporate announcements etc., as all causes of price rise were operating concurrently. I am aware of the fact that in the 2014 order passed by SEBI, an illustration of the gradual price rise in the scrip of SIL apparently attributable to different corporate announcements has been provided. However, the said illustrations were not provided for the purpose of using those indicative price rises triggered by different corporate announcement as basis for computation of unlawful gains, but to suggest how such announcements have had an impact over the prices over a period of time from December 11, 2006 to March 09, 2007. By no means it is possible to even use those illustration of price rises to bifurcate the price rise in the scrip of SIL over the entire Investigation Period in two different parts, such as one part of price rise on account of corporate announcement and another part of price rise on account of fraudulent trades. The Notices have not suggested as to how exactly their contentions can be quantitatively factored into the computation of unlawful gains and how exactly the sales price at which the Noticees have sold their shares at inflated rates during the Investigation Period can be apportioned into two parts so that the portion of sale price which can be attributed to only fraudulent trades can be factored into the computation of unlawful gains and the other portion of sale price shall be attributed to corporate announcements. Under the circumstances, such general propositions made by the Noticees about the price rise of the scrip of SIL is not practically feasible to be considered as the same would lead to further dilution of computation of unlawful gains rendering it more discretionary than objective, and that would certainly not be in consonance of the orders of the Hon'ble SAT.

39. The Noticees in their reply are found to have advanced a number of other arguments and have cited case laws touching upon various aspects of 2014 order on merit of the said order, which are not being taken into consideration in the present proceedings since the 2014 order has already been upheld by Hon'ble SAT on merit. Any consideration of those arguments pertaining to the said order that have no connection with computation of unlawful gains, would amount to revisiting/reviewing the order on merit, which is not permissible in terms of the directions of Hon'ble SAT. Therefore, after having decided on the adoption of cost price of shares in the foregoing paragraphs in adherence of the directives issued by the Hon'ble SAT, I set out to re-compute the unlawful gains in the subsequent paragraphs.

40. The Noticees have submitted that disgorgement amount cannot exceed the total amount realized and have relied upon the observation made by Hon'ble SAT in its order dated May 02, 2008 passed in the matter of *Karry Stock Broking Ltd. Vs SEBI*. I note that the submissions and reliance by the Noticees are wholly misplaced for the reason that the Noticees have not submitted their actual acquisition price in the scrip so as to determine actual price realised by them. Further, from a perusal of the proposed computation of unlawful gains as have been tabulated in the supplementary SCN, it is noted that the aggregate net sales amount realised by the Noticees stand at Rs. 6,33,14,362/- whereas the amount proposed to be disgorged in the SCN has been determined at Rs 477,91,034/- which is far less than what has been realised by the Noticees. Moreover, in the absence of actual cost of acquisition which has not been made available by the Noticees, the contention of the Noticees that the amount proposed to be disgorged should not exceed the amount realised by the Noticees becomes redundant.

41. To conclude, in the present case, for the reasons explained in detail in this order with respect to the Noticees whose buy quantity is less than the quantity of shares sold during the Investigation Period and the actual cost of acquisition of those excess shares not being made available by the Noticees, for the purpose of computation of unlawful gains, the cost of purchase for those excess shares shall be the opening price of the scrip of SIL on the first trading of the Investigation Period. The methodology proposed to be followed for computation of unlawful gains of the Noticees shall be based on the following norms:

“(Qty of shares sold during Period of Investigation x Wt. Avg. Sell Price) – [(Qty of shares bought during Period of Investigation x Wt. Avg. buy Price) + (Qty of excess shares x opening price of shares on first day of Period of Investigation)]”

The aforesaid methodology / norms have been demonstrated in the following tabulated calculations of unlawful gains in different columns as indicated below:

- i. Qty. of shares sold during Period of Investigation x Wt. Avg. Sell Price – **Column B;**
- ii. Qty. of shares bought during Period of Investigation x Wt. Avg. buy Price – **Column D;**
- iii. Qty. of excess shares x opening price of shares on first day of Period of Investigation - **Column H;**

iv. Profits : (Column I) = Column B – (Column D+ Column H)

TABLE-3

Name of the Noticee	Sell Qty	Sell Value	Buy Qty	Buy Value	Net Sell Qty or Excess Shares	Net Sell Value	Opening price on first trading day of investigation period i.e 03/10/2006	Buy Value of excess shares (if any) (rounded off to next integer)*	Unlawful gains for disgorgement (in Rs.)
	A	B	C	D	E=(A-C)	F=(B-D)	G	H = (E x G)	I = B-(D+H)
Sumeet Menthol Private Limited	600000	7219473			600000	7219473	4.33	25,98,000	46,21,473
Rajkumar Sitaram Somani	545000	10435350	50000	273341	495000	10162009	4.33	21,43,350	80,18,659
Shankarlal Sitaram Somani	334250	6844629	50000	250000	284250	6594629	4.33	12,30,803	53,63,827
Sumeet Processors Pvt Ltd	300000	3823000			300000	3823000	4.33	12,99,000	25,24,000
Sitaram Prints Private Limited	300000	4839000			300000	4839000	4.33	12,99,000	35,40,000
Urmila Shyam Sunder	250000	6287000			250000	6287000	4.33	10,82,500	52,04,500
Ganga Devi Somani	250000	6437500			250000	6437500	4.33	10,82,500	53,55,000
Bajranglal Siyaram Somani	250000	6385117			250000	6385117	4.33	10,82,500	53,02,617
Sumandevi Madan Somani	250000	6125978			250000	6125978	4.33	10,82,500	50,43,478
Somani Overseas Ltd	195000	2505200	67950	374119	127050	2131081	4.33	5,50,127	15,80,955
Ambaji Syntex Pvt Ltd	150000	1886026			150000	1886026	4.33	6,49,500	12,36,526
Total	3424250	62788273	167950	897460	3256300	61890813	4.33	1,40,99,779	477,91,034

* adopted for excess quantity of shares sold during Investigation Period but acquired before the Investigation Period and for which actual cost price not provided by the Noticees

42. On the basis of above stated computations, I, in compliance with the directions passed by Hon'ble SAT vide its order dated June 30, 2016 and in order to protect the interest of investors and the integrity of securities market, direct disgorgement of the unlawful gains as mentioned in Table no. 3 above. I, therefore, in exercise of the powers conferred under Section 11 and 11B of SEBI Act, direct that:

- a) Noticee nos. 1 to 11 shall disgorge the amounts of wrongful gains, as depicted in Table no. 3 above against each Noticee, along with interest @12% per annum from March 12, 2007 till the date of payment, to be calculated by excluding the period from order of Hon'ble SAT, i.e., June 30, 2016 till the date of present order. They shall pay the said amounts within 45 (forty five) days from the date of this order by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.
- b) The Banks and Depositories with whom the Noticees hold accounts and demat accounts, are directed that no debit shall be made, without permission of SEBI, in respect of the respective bank/demat accounts of the Noticees except for the purposes of compliance of this order; and
- c) The Noticees are also directed not to dispose of or alienate any of their assets/ properties/ securities, till such time the direction of this order is complied with. Further, the Noticees are directed to provide, within 15 days of this order, a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form and details of companies in which they hold substantial or controlling interest.

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

44. A copy of this order shall also be served upon the Depositories, Stock Exchanges and Registrars and Transfer Agents for necessary action on their part.

-Sd-

Date: September 30, 2019

Place: Mumbai

S. K. MOHANTY

WHOLE TIME MEMBER