

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

**UNDER SECTION 15-I (3) OF THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992**

IN THE MATTER OF TRADING IN THE SCRIP OF RADFORD GLOBAL LTD.

In respect of:

Sl. No.	Name of the Noticee	PAN
1	Shailesh Lalman Ojha	AAJP00625L
2	Sangita Pramod Harlalka	AAAPH8161P
3	Rajeev Garg	ACJPG8162C
4	Artiben S Kansara	ATWPK6701D
5	Manisha Jayesh Shah	AOBPS1451C

Background

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference from BSE Ltd. (hereinafter referred to as “**BSE**”) with regard to astronomical increase in the price and volume in the scrip of Radford Global Ltd. during the period February 27, 2012 to May 21, 2013. Pursuant to a preliminary inquiry conducted by SEBI, two *Interim Orders* dated December 19, 2014 and November 9, 2015 were passed in the matter thereby restraining 123 entities from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions. Subsequently, a

detailed investigation in the matter was conducted by SEBI for the period February 27, 2012 to March 24, 2014 (hereinafter referred to as “**Investigation Period**”). In the meantime, vide three *Confirmatory Orders* dated October 12, 2015, March 18, 2016 and August 26, 2016, the directions given in the *Interim Orders* were *inter-alia* confirmed against 106 entities and interim directions were discontinued *qua* 16 entities. Further, vide *Revocation Order* dated November 10, 2015, direction given vide the *Interim Order* was revoked *qua* 1 entity.

2. Upon completion of investigation, it was *inter alia* found that price rise in Patch 1 (February 27, 2012 to January 28, 2013) of the investigation period was caused majorly by certain sellers viz, Mr. Rajeev Garg, Ms. Sangita Pramod Harlalka, Mr. Shailesh Lalman Ojha, Ms. Artiben S. Kansara and Ms. Manisha Jayesh Shah, who sold shares in limited quantity despite holding sufficient shares and despite a large number of pending buy orders being available in trading system apparently with a manipulative intent to increase the price of the scrip. The aforesaid action of the entities was allegedly in violation of regulations 3(a), (b), (c) and (d) and 4 (1), (2) (a) and (e) of SEBI Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and Sections 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).
3. In view of the above, SEBI initiated proceedings against the aforesaid five entities under Sections 11 (1), 11(4) and 11B of SEBI Act (11B proceedings) and Adjudication Proceedings under Section 15 (I) of SEBI Act to inquire into and adjudge under Section 15HA of the SEBI Act, the alleged violations of provisions of provisions of PFUTP Regulations and SEBI Act. The proceedings initiated under Sections 11 (1), 11(4) and 11B of SEBI Act were concluded vide an order of SEBI no. WTM/MPB/EFD1-DRA3/62/2019 dated August 29, 2019. In the said 11B proceedings, it was held that Mr. Rajeev Garg, Ms. Sangita Pramod Harlalka, Mr.

Shailesh Lalman Ojha, Ms. Artiben S. Kansara and Ms. Manisha Jayesh Shah (hereinafter collectively referred to as “**Noticees**”) had sold the shares of the *Company* in very small quantities with a manipulative intent to increase the price of the scrip. Therefore, they had violated regulations 3(a), (b), (c) and (d) and 4 (1), (2) (a) and (e) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. Further, it was found that the restraint undergone by Ms. Artiben S. Kansara (4 years), Ms. Manisha Jayesh (4 years) and Mr. Rajeev Garg (10 months) from accessing the securities market was commensurate with the violations committed by them and therefore, no further directions were imposed on them. The remaining two entities viz., Ms. Sangita Pramod Harlalka and Mr. Shailesh Lalman Ojha, were restrained from accessing the securities market and buying, selling or dealing in securities, either directly or indirectly, in any manner for a period of 6 months from the date of the Order.

4. In a parallel proceedings initiated under Section 15(I) of SEBI Act, the Adjudicating Officer (hereinafter referred to as “**AO**”) appointed under Section 15 (I) of SEBI Act issued a common Show Cause Notice dated November 2, 2018 (hereinafter referred to as “**SCN**”) to the *Noticees* to show cause as to why an enquiry should not be held against them and why penalty under Section 15 HA of the SEBI Act be not imposed on them for the alleged acts being in violations of regulations 3 (a), (b), (c) and (d) and 4 (1), (2) (a) and (e) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. After considering the material on record, the AO vide 4 separate orders dated March 4, 2020, March 6, 2020, March 20, 2020 and April 1, 2020 (hereinafter referred to as “**AO Orders**”) *inter alia* held that in the absence of any element of collusion between the buyer and the seller, it would be difficult to accept that the *Noticees* had manipulated the price in the scrip of the *Company*. In view of the same, the AO disposed of the SCN dated November 2, 2018 without imposition of any penalty on the *Noticees*.

Proceedings under Section 15-I (3) of the SEBI Act

5. SEBI, after examining the AO orders was of the opinion that the said AO orders, in as much as not holding the *Notices* liable for imposition of penalty under Section 15 HA of the SEBI Act was erroneous and not in the interest of the securities market. In view of the same, the Competent Authority granted approval to review the AO orders.
6. In view of the above, SEBI issued a common SCN dated May 29, 2020 under Section 15-I (3) of the SEBI Act to the *Notices* advising the *Notices* to show cause as to why penalty should not be imposed on the *Notices* in terms of Section 15HA of the SEBI Act, for the violation as alleged in SCN dated November 2, 2018, issued by the AO. The SCN dated May 29, 2020 further advised the *Notices* to file a reply to the SCN within 14 days of its receipt and to indicate as to whether they wish to avail of an opportunity of personal hearing before the Whole Time Member, SEBI.

Reply of the *Notices*

7. In response to the SCN dated May 29, 2020, the Ms. Sangita Pramod Harlalka vide her reply dated July 4, 2020 *inter alia* made the following submissions:
 - 7.1. Her husband is a sub-broker. He trades in many securities in a day and the scrip of Radford was one such scrip.
 - 7.2. Her patch 2 trades have not been considered where she has made negative LTP contribution or very negligible LTP contribution in the scrip.
 - 7.3. There is no connection between the buyer and the seller or with the Directors / Promoters of the *Company*.
 - 7.4. Selling miniscule quantity of shares is not in violation of provision of PFUTP Regulations unless collusion with others is established.
 - 7.5. The charges against the buyer have been dropped in the matter.
 - 7.6. There was no need to sell all the shares of the *Company* at one go when a lot of buyers were available and the price of the share was also increasing every day.

She is a small time trader who used to sell shares on a daily basis to earn maximum profit.

8. Mr. Shailesh Lalman Ojha vide his letter dated July 5, 2020 made submissions on similar lines as that of Ms. Sangita Pramod Harlalka.
9. Mr. Rajeev Garg vide his letter dated July 21, 2020 *inter alia* submitted as follows;
 - 9.1. He is a small time investor and buys and sells petty shares for investment purpose.
 - 9.2. It must be a coincidence that when he had placed sell orders, the system had pre-existing buy orders of large quantity.
 - 9.3. He is not connected to any other *Notices* / Entity.

Hearing and submissions

10. Considering the facts and circumstances of the matter, the *Notices* were granted an opportunity of hearing in the present matter on November 10-12, 2020 which was postponed to February 2 and 4, 2021. The hearings scheduled in the month of February 2021 were further postponed to May 20, 2021 due to administrative exigencies. The hearing scheduled on May 20, 2021 was further deferred and was finally scheduled on September 8, 2022. It is noted that on the scheduled hearing date, none of the *Notices* except for Mr. Rajeev Garg, appeared for the personal hearing. Mr. Shailesh L Ojha and Ms. Sangita P Harlalka in their respective replies had submitted that their written submissions should be considered as their final submission in the matter as they have no further submissions, either oral or written submissions, to be made in the matter.
11. Mr. Rajeev Garg appeared in person via Webex for the personal hearing. He denied the allegations levelled against him and *inter alia* submitted as follows:
 - 11.1. He was one of the original allottees of the shares of the company when the *Company* was being called Rosette Resorts Ltd.

- 11.2. He was selling shares in miniscule quantities as the price of the scrip was increasing every day.
- 11.3. *Notictee* was advised to submit documentary evidence with respect to his original allotment including his demat statement and any further submissions as he may wish to make, within 15 days from the hearing.
12. During the personal hearing and post the hearing as well, the following information was sought from all the *Noticees*:
- 12.1. When and from whom they had bought the shares of *Company* along with documentary evidence including proof of payment of consideration amount to substantiate the mode and manner of buying the shares of the *Company*?
- 12.2. Demat statement of the *Noticees* for the period January 2010 to December 2014 and ITRs for the Assessment Year 2010-11 to 2014-15.
- 12.3. Which other similarly placed scrip (parameters: suspended scrip whose suspension was revoked, low volume, everyday increase in price) have they traded during the same period?
- 12.4. In which other similarly placed scrip have they exhibited the trading pattern of selling shares in minuscule quantity every day for a sustained period?
13. Mr. Rajeev Garg vide his email dated September 22, 2022 made the following post-hearing submissions:
- 13.1. He had got the allotment of 600 shares of Rossette Resorts Ltd. through public issue in the year 1995 and he is an original allottee. Copy of Allotment Advice has been attached with his reply. He has also attached his demat statement and ITRs with his reply.
- 13.2. He has neither traded in any similarly placed scrip as that of the *Company* nor has he exhibited a similar trading pattern as exhibited by him in the scrip of the *Company* in any other scrip.
14. Mr. Shailesh L Ojha vide his letter dated September 21, 2022 made the following submissions to the post-hearing queries:

- 14.1. He does not remember from whom he had purchased the shares of the *Company*. He does not have any bank statement or invoice for the same.
- 14.2. He has attached his demat statement and ITRs with his reply.
- 14.3. He has traded in various illiquid scrips where the volume was low and has also traded in scrips which have been relisted, post their revocation.
- 14.4. He has been selling in small quantity in almost all scrips.
15. In response to the post-hearing queries, Ms. Sangita P Harlalka vide her letter dated September 22, 2022 submitted as follows:
- 15.1. She had dematerialise the shares in 2013 and she does not remember from whom she had purchased those shares.
- 15.2. She has attached her demat statement and ITRs with her reply.
- 15.3. It is very difficult to trace her trades in other similarly placed scrips as that of the *Company*. She has been trading in the securities market for more than 30 years, so it is very difficult to identify the scrip.
- 15.4. She did not specifically identify in which other scrip she had traded in miniscule quantity on a regular basis but has attached her demat statement from which it can be identified.
16. It is noted from the available records that Ms. Artiben S Kansara and Ms. Manisha J Shah have not responded to the post hearing queries.

Consideration of Issues & Findings

17. I have considered the orders passed by the AO, the material relied upon by the AO, SCN dated May 29, 2020, the oral and written submissions of the *Noticees* and other material available on record. In the facts and circumstances of the case and in light of the above material available on record, the issues arising for consideration in the present proceeding are as under:

- 17.1. Whether the orders passed by the AO in the present matter are erroneous to the extent they are not in the interests of the securities market requiring the invocation of Section 15-I (3) of the SEBI Act?
- 17.2. If the aforesaid issue is answered in the affirmative, whether the *Noticees* have violated the provisions of PFUTP Regulations and SEBI Act?
18. Before dealing with the issues for consideration in the present proceedings, I note that the relevant provisions involved in the present matter are as follows:

SEBI Act

Power to adjudicate

15 (1) (1) ...

...

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange

in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves: —

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

...

(e) any act or omission amounting to manipulation of the price of a security;

19. I note that in order to address the first issue which involves invoking of power under Section 15-I (3) of the SEBI Act, it is necessary to examine whether the AO Orders are erroneous to the extent that they are not in the interest of securities market. In this regard it is essential to analyze the reasoning of the AO which was arrived at by taking guidance from the order of Hon'ble Securities Appellate Tribunal (herein after referred to as "**SAT**") in the matter of *M/s Nishith M Shah HUF vs. SEBI* dated January 16, 2020 and the said reasoning is based on the following premises: -

19.1. Trading in small quantities in scrips by itself is neither illegal or manipulative nor in violation of regulations 3 and 4 of the PFUTP Regulations unless collusion with others is found.

19.2. No connection has been brought out between the *Noticees* and/or the buyer in the trades executed by the *Noticees* and/or the Promoters/Directors of the *Company*.

20. Thus, from the above, I note that the finding arrived at by the AO is primarily on the basis of a ground that no connection or collusion has been established between the

seller i.e., the *Noticees* and the buyer and/or the Promoters/Directors of the *Company*. In this regard, I concur with the said factual finding of the AO that the SCN does not mention connection or collusion between the sellers i.e., the *Noticees* and the buyers and/or the Promoters/Directors of the *Company*. However, at the same time I cannot lose sight of the fact that the inquiry which is conducted by the AO in any adjudication proceedings, requires to be disposed of pursuant to the appreciation of all the facts and circumstances of the matter and after application of the relevant provision of law to the said facts and circumstances of the case. There is no denying that all the facts and facets will not have equal weightage. Adequacy and relevancy of some facts will be more than the others depending on the circumstances of the matter. It will be apt here to note that the standard of proof for the matters adjudicated by the AO's is essentially dependent upon the preponderance of probabilities and not a proof beyond reasonable doubt. Therefore, upon examination of all facts and circumstances of the matter, the AO has to consider whether on a preponderance of probability basis, the facts proving the allegation as levelled in the SCN, outweigh the facts available to the contrary in support of the *Noticees*. It will be relevant here to note the order of the Hon'ble Supreme Court of India in the matter of *Narayan Ganesh Dastane vs. Sucheta Narayan Dastane* (A.I.R. 1975 Supreme Court 1534) wherein it was held as follows:

"The normal rule which governs civil proceedings is that a fact is said to be established if it is proved by preponderance of probabilities. Under s.3 of the Evidence Act a fact is said to be proved when the court either believes it to exist or if considers its existence so probable that prudent man ought, in the circumstances, to act upon the supposition that it exists. The first step in this process is to fix the probabilities. the second to weigh them. The impossible is weeded out in the first stage, the improbable in the second. Within the wide range of probabilities, the Court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies."

21. In the present matter, the absence of any connection with the buyer or Promoter / Directors of the *Company* is a material fact. However, one has to examine, by juxtaposing the absence of any connection with the buyer or Promoter / Directors of the *Company*, with the cumulative adequacy and seriousness of the other facts and circumstances of the case and to see whether, the former would outweigh the latter so much so that they would prove fatal to the charges levelled against the *Noticees* in the SCN. In other words, the question that needs to be answered is whether the AO has erred by solely placing reliance on the absence of any connection between the sellers i.e., the *Noticees* and buyers and /or the Promoters/Directors of the *Company* and stopped traversing beyond that by not considering any other material facts and whether the error of ignoring other material/crucial facts, is not in the interests of the securities market.
22. Given the above scenario, I now proceed to weigh the significance and implication of the various facts available in the records related to the present matter. It is noted from the records that the scrip of the *Company* was suspended by BSE on January 14, 2003 and the suspension was revoked with effect from December 19, 2011. Thereafter except for 1 trade for 100 shares on December 20, 2011 at a price of INR 3.05, there was no trade in the scrip till February 27, 2012. On February 27, 2012, the price of the scrip opened at INR 3.2. Within a period of 11 months i.e., till January 28, 2013, it rose to INR 241.35. Thus, when the *Noticees* were trading in the scrip during patch 1 of the investigation period, the increase in the price of the scrip was 7442.19%, with a net LTP contribution of INR 238.15. This astronomical increase in the price of the scrip has to be seen in light of the fact that the *Company* was suspended from BSE for almost 9 years and the fundamentals of the *Company* did not bode well for its future growth. Credence to it is led from the fact that the *Company* was making meagre profits in the previous financial years (INR 70,000/- for FY 2010-11 and INR 4,30,000/- for FY 2011-12). Moreover, no major corporate announcements were made during patch 1 of the investigation period. Thus, without

any positive change in the economic / fundamental attributes of the *Company*, rapid exponential upward swing was witnessed in the price of the scrip during patch 1 of the investigation period.

23. After taking note of the aforesaid undisputed facts related to the *Company* viz., its listing history and poor performance / no important corporate announcements etc. pertaining to the *Company*, I now move on to analyse the trading pattern / behaviour witnessed in the scrip of Radford and that of the *Noticees*. It is noted from the price-volume data, that during patch 1 of the investigation period which lasted for a period of 11 months, the scrip had traded only for 121 trading days. In these 121 trading days, on 98 trading days there was only one trade in the scrip i.e., on 80% instances, bare minimum trading activity used to take place in the scrip, with an average volume of 99 shares. Also there were days when there was no trading in the scrip at all and whenever there was any trading in the scrip on a given day, mostly it was confined to 1 trade with a meagre volume. Thus, by no standard, the scrip could be held to be a frequently traded scrip or a liquid scrip during patch 1 of investigation period, as it had very low volumes, in general.
24. So far as the *Noticees* are concerned, the details of their trades during patch 1 of the investigation period, are tabulated in summary manner, as under:

Table No. 1:

Sr. No.	Name	All Trades				LTP diff > 0			
		LTP Impact	LTP % net	Qty. traded	No of trades	LTP Impact	LTP % (+LTP)	Qty traded	No of trades
1	Rajeev Garg	102.95	43.23	550	29	102.95	41.76	390	25
2	Sangita Pramod Harlalka	16	6.72	35	6	16	6.49	35	6
3	Shailesh Lalman Ojha	15.3	6.42	18	4	15.3	6.21	18	4
4	Artiben S Kansara	7.84	3.29	10	10	7.84	3.18	8	8
5	Manisha Jayesh Shah	6.05	2.54	34	30	6.05	2.45	19	15

24.1. **Mr. Rajeev Garg**

It is noted from the above table that the *Noticee* has contributed INR 102.95 (41.76%) of market positive LTP in the scrip in 25 trades (out of 29 trades) executed by him by selling only 390 shares. He was a seller in 29 out of a total of 200 trades that were executed during patch 1. All his 25 positive LTP contributing trades also happened to be first trades of those trading days. Further, out of the 25 first trades, on 21 such trading days the scrip witnessed only a single trade, implying that the first trade of the *Noticee* was the only trade during the entire trading day on 21 such occasions. The order log analysis of his trades are as under:

Table No. 2

Sell order date	Sell order time	Sell order rate	Sell order qty.	Pending buy order at this rate	LTP	Shareholding before sell order	No. of Trades
16/11/2012	11:07:39	65.2	100	24150	3.1	500	1
26/11/2012	15:04:12	83.1	20	21550	4	400	1
27/11/2012	15:26:01	87.25	20	17950	4.2	400	1
29/11/2012	15:26:27	91.6	10	17850	4.4	380	1
04/12/2012	10:13:41	105.95	20	81236	5	350	1
05/12/2012	15:04:20	111.2	10	27301	5.3	350	1
06/12/2012	15:27:13	116.75	10	18900	5.6	330	1
07/12/2012	15:19:39	122.55	10	20111	5.8	320	1
19/12/2012	10:50:33	144.7	20	12911	2.8	280	1
21/12/2012	12:14:57	150.5	20	10096	3	260	1
26/12/2012	12:31:10	156.55	20	9851	3.1	240	1
28/12/2012	10:29:21	162.8	20	10101	3.2	220	1
02/01/2013	11:29:01	172.7	20	7701	3.4	200	1
07/01/2013	12:39:33	179.65	20	12901	3.5	180	1
14/01/2013	09:32:18	198.2	20	13088	3.9	120	1
15/01/2013	09:29:00	202.15	5	13591	4	120	1
16/01/2013	09:22:01	206.15	5	13305	4	100	1
17/01/2013	09:38:33	210.25	5	10905	4.1	95	1
18/01/2013	09:35:36	214.45	5	8550	4.2	90	1
21/01/2013	09:17:58	218.7	5	10991	4.3	85	1
22/01/2013	09:28:54	223.05	5	9803	4.4	80	1
23/01/2013	09:42:07	227.5	5	10050	4.5	75	1

24/01/2013	09:39:57	232.05	5	10910	4.6	70	1
25/01/2013	10:57:49	236.65	5	10855	4.6	70	1
28/01/2013	09:41:49	241.35	5	10800	4.7	65	1

24.2. Ms. Sangita Pramod Harlalka

It is noted from table no. 1 that the *Noticee* has contributed INR 16 (6.49%) of market positive LTP in the scrip in 6 trades by selling only 35 shares. She was the only seller on those 6 trading days. The order log summary of her trades is as under:

Table No. 3

Sell order date	Sell order time	Sell order rate	Sell order qty	Pending buy order qty at this rate	LTP	Shareholding before sell order	No. of Trades
11/10/2012	14:56:48	47.35	10	41861	0.9	90	1
20/11/2012	14:43:43	71.85	5	23800	3.4	85	1
12/12/2012	15:27:39	131.2	5	15901	2.55	80	1
18/12/2012	15:24:06	141.9	5	7851	2.75	75	1
27/12/2012	15:09:43	159.65	5	10151	3.1	70	1
01/01/2013	15:13:09	169.35	5	10654	3.3	65	1

24.3. Mr. Shailesh Lalman Ojha

It is noted from table no. 1 that the *Noticee* has contributed INR 15.3 (6.21%) of market positive LTP in the scrip by executing 4 sell trades for 18 shares. He was the only seller on those 4 trading days. The order log summary of his trades is as under:

Table No. 4

Sell order date	Sell order time	Sell order rate	Sell order qty	Pending buy order qty at this rate	LTP	Shareholding before sell order	No. of Trades
23/11/2012	14:19:04	79.15	5	23750	3.75	95	1
11/12/2012	15:26:05	128.65	5	21201	6.1	90	1
13/12/2012	15:28:32	133.8	4	17201	2.6	86	1
20/12/2012	15:24:26	147.55	4	10825	2.85	82	1

24.4. **Ms. Artiben S. Kansara and Ms. Manisha Jayesh Shah**

It is noted from table no. 1 that Ms. Artiben S. Kansara has contributed INR 7.84 (3.18%) of market positive LTP in the scrip in 8 trades for only 8 shares. All her positive LTP contributions were done through her first trades on those 8 trading days by selling only 1 share on such day. Further, Ms. Manisha Jayesh Shah has contributed INR 6.05 (2.45%) of market positive LTP in 15 trades executed over 15 trading days for only 19 shares. All positive LTP contributions by her were effected through her first trades on those 15 trading days by selling only 1 share on each of those 15 days. The order log summary of their trades is as under:

Table No. 5

Sell order date	Sell order time	Sell order rate	Sell order qty	Pending buy order qty at this rate	LTP	Shareholding before sell order	No. of Trades
Artiben S. Kansara							
16/08/2012	15:18:05	16.41	1	17400	0.78	1498#	1
17/08/2012	15:25:10	17.23	1	19500	0.82	1497	1
21/08/2012	14:55:22	18.09	1	21200	0.86	1496	1
24/08/2012	13:26:22	18.99	1	19600	0.9	1494#	1
27/08/2012	15:22:06	19.93	1	17200	0.94	1493	1
30/08/2012	15:22:30	23.05	1	19548	1.09	1492	1
31/08/2012	15:23:33	24.2	1	21000	1.15	1491	1
06/09/2012	15:14:29	27.95	1	33506	1.3	1490	1
Manisha Jayesh Shah							
24/05/2012	12:15:24	4.92	1	45200	0.23	1000	1
28/05/2012	14:58:39	5.16	1	63002	0.24	998	1
07/06/2012	15:16:18	5.68	1	56300	0.27	997	1
15/06/2012	15:08:37	6.25	1	52400	0.29	996	1
18/06/2012	15:17:21	6.56	1	48100	0.31	995	1
19/06/2012	15:16:29	6.88	5	58500	0.32	990	1
21/06/2012	14:43:08	7.22	1	55750	0.34	989	1
22/06/2012	15:13:29	7.58	1	55900	0.36	987*	1
26/06/2012	15:10:03	8.34	1	53197	0.39	984*	1
27/06/2012	15:11:20	8.75	1	53397	0.41	980*	1
28/06/2012	15:10:48	9.18	1	33000	0.43	975*	1

29/06/2012	15:10:59	9.63	1	47999	0.45	969*	1
01/08/2012	15:12:15	13.52	1	37500	0.64	968	1
03/08/2012	15:25:58	14.19	1	35100	0.67	967	1
08/08/2012	15:17:47	14.89	1	28100	0.7	966	1

Ms. Artiben S. Kansara executed 2 trades for 1 share each both on 16/06/2012 and 24/06/2012. However, she contributed to positive LTP in only first trades on each of these days.

* Ms. Manisha Jayesh executed 2 trades for 1 share each on 22/06/2012, 3 trades for 1 share each on 26/06/2012, 4 trades for 1 share each on 27/06/2012, 5 trades for 1 share each on 28/06/2012 and 6 trades for 1 share each on 29/06/2012. However, she contributed to positive LTP in only first trades on each of these days.

25. The pattern that is revealed from the aforementioned trading behaviour of the *Noticees* is as follows:

25.1. The *Noticees* were placing sell orders in miniscule quantity (like 1 share in every trade) compared to their sizeable holding in the scrip.

25.2. Either the *Noticees* were the only seller in the market on those trading days or have executed the first trades in the scrip on those trading days.

25.3. There were large number of pending buy orders in the scrip, when the *Noticees* were placing the sell orders and yet they despite finding buyers at their desired prices indicated by them through their sell order, deliberately put in sell orders for miniscule quantities.

25.4. The sell orders that were placed by the *Noticees* for such miniscule quantities were not on one or two occasions but were of repetitive in nature as such orders were placed at frequent intervals.

25.5. The *Noticees* were among the top contributors of positive LTP during patch 1 of the investigation period.

25.6. No cogent reason has been furnished by any of the *Noticees* to justify their continued interest in an illiquid scrip which had no trading history prior to patch 1 of the investigation period and also had no major announcement regarding its performance during patch 1 of the investigation period.

26. *Noticees* have contended that there was no need to sell all the shares at one go since lot of buyers were available and the price of the scrip was also increasing every day.

In this regard, I have already noted in the preceding paragraphs that when the *Noticees* were trading in the scrip, there were days when there was no trading in the scrip at all. Even on the majority of days (80%) during patch 1 of the investigation period, when there was trading in the scrip, it was of only 1 trade. This finding coupled with the fact that the average daily volume in the scrip during patch 1 of the investigation period which lasted for a period of 11 months, was barely of 99 shares, would make a prudent investor, being in the position of the *Noticees*, holding shares of an illiquid scrip like Radford, sell his entire or substantial shareholding when he is getting a price in multiples of his purchase price more so when there are buyers willing and waiting to buy the same. Contrary to that, the *Noticees* in the present case, as noted in the above tables, have entered into only single trades for miniscule quantities on several days with each other trades establishing a new high price. It is not the case of the *Noticees* that on multiple occasions they had placed sell orders in significant quantity and their order was not executed for want of buying interest in the scrip. It is the seller (*Noticees*) who did not wish to sell beyond 1 share every time they traded, which in effect rather led to positive contribution to the LTP in the scrip in an artificial manner constraining me to think if the intent to sell the shares on those trading days was genuine or was dubiously camouflaged to facilitate price rise in an illiquid scrip.

27. Thus, from the trading details as mentioned above, it is observed that strangely all the above *Noticees* having sufficient shares in their account believed in selling only miniscule share/s. Some of them are seen to have placed 1st order during the relevant period, where others are seen as selling only 1 share during the entire day. AAs pointed out earlier, during the relevant period, there were continuous upward movement in the price of the scrip, though there were no corresponding upward rise in the volume of the scrip. Nonetheless, the *Noticees* herein believed in offloading shares in miniscule quantities even when there were good number of buy orders

pending in the system. Though there were rise in the price of the scrip on a daily basis and even as per their own submission, there were number of buyers/buy orders pending in the trading system during the period indicating that the scrip is rapidly gaining demands from the investors, however, strangely, none of the *Noticees* here is seen to be placing any buy order in the scrip, even though the price was rising and finally it reached a peak of INR 241.35 from INR 3.20 during the patch 1 of the investigation period. These undeniable facts render the contentions and the stand taken by the *Noticees* to be contradictory and superfluous. On the one hand they believed that the price of the scrip would rise further after seeing a lot of buy orders hence decided to sell only 1 share in each trade to maximise gains while on the other hand there was no prudence evident on their part to buy a single share of the said *Company* so as to further earn more profit as they believed that the price will rise further which in fact did rise upto a peak of INR 241.35. Thus the *Noticees* chose deliberately not to practice what they preached for reasons best known to them. Under the circumstances, the mere submission that *Noticees* have right and liberty to sell even 1 share at a time does not inspire even a shred of confidence in the aforesaid justification offered by them to support their stand to sell in miniscule quantities. On the contrary, the examination of the peculiar trading pattern followed by the *Noticees* in the backdrop of the chequered listing history read with lack of any cognisable corporate announcement during the relevant period far outweigh the above submission and tilt the preponderance of probability that the *Noticees* deliberately indulged in those sell trades of miniscule quantities over a stretched period thereby contributing to positive LTP and setting up new high price in the scrip with an ulterior motive and not in the ordinary course of trading in the scrip as a prudent seller.

28. Moreover, if the *Noticees* were ever positive about the bullish trend in the scrip of Radford, in such circumstances market prudence demands that the entities would

have normally waited for the price of the scrip to attain a respectable level at which selling the shares would fetch them the maximum return as per their expectations. However, in the instant matter, it has been noticed that all the above *Noticees* have chosen to sell on a continuous basis in miniscule quantities even when the price of the scrip had just started witnessing an upward trend without waiting for more rise which constrains me to observe that the above unusual pattern of trading in the scrip as seen in the trading behavior of the *Noticees* that too in a scrip which had extremely poor fundamentals was not a fair trade practice which was rather restored to most likely with an intent to manipulate the price of the scrip by distorting the normal market mechanism of dealing in securities. It is worth mentioning here that the bullish movement in the price of the scrip of Radford so anticipated by the seller - *Noticees* could not have been possible without the positive LTP contribution made by of the *Noticees* themselves, through their sustained sell trades of miniscule quantities on different dates during patch 1 of the investigation period. Thus, the very trading pattern of the *Noticees* speaks for itself the underneath effort made by the *Noticees* to manipulate the market. It is evidently discernible from their trading strategy that the impugned trades were not executed in the normal course of dealing in securities and for the reasons and observations made above, the *Noticees* can't be held as genuine sellers.

29. Furthermore, *Noticees* have not demonstrated that the unusual trading behavior exhibited by them in the scrip of Radford, is actually not unusual for them. When the *Noticees* were specifically asked to demonstrate if similar trading pattern / strategy has been adopted by them in any other scrip during the relevant period, Mr. Rajeev Garg submitted that he has not adopted such a trading strategy in any other scrip while Mr. Shailesh L Ojha and Ms. Sangita P Harlalka made general statements without substantiating them with specific illustrations.

30. I find nothing on record to even remotely suggest that the trading pattern followed by them in the scrip of Radford had nothing abnormal about it and that this was their normal trading strategy which they have adopted in other illiquid scrips as well or even in a liquid scrip. I note that all the *Noticees* have claimed to be small time traders which means that in the given facts and circumstances of the matter, they were expected to be extremely observant, prudent and careful while picking out a low profile scrip and then selling it, when it was witnessing a surge in price that too with low volumes. But this kind of market savviness as has been displayed by the *Noticees* in the scrip of Radford by deliberately selling in miniscule quantities on the face of the rising price of the scrip over a long period, by any of the *Noticees* in any other scrip, which makes it difficult for me to accept their contention that their trading behavior in the scrip of Radford was not unfair but in the ordinary course of dealing in securities. Therefore, I find that the trading behavior exhibited by the *Noticees* in the scrip of Radford is not reflective of a normal rational behavior of a seller and their contention that there was no need to sell the shares at one go when there were a lot of buyers and the price of the scrip was increasing, is devoid of any merit and rather smacks of a deviant market behavior and makes their stand untenable.
31. At this juncture, to further buttress my aforesaid objections to the contentions of the *Noticees* selling share in minuscule quantities, it will be apt to refer to the order of the Hon'ble SAT in the matter of *Mrs. Kalpana Dharmesh Chheda & Ors. vs. SEBI & Ors.* decided on February 25, 2020. In the said matter, the allegations against the appellants was that they have placed sell orders in single shares or in very small quantities at higher and higher prices during the relevant period, thereby significantly contributing to market positive LTP through their trades which has led to the violations of provisions of PFUTP Regulations. It was contended by the appellants that they as sellers cannot be charged with any violation for the price rise because they were placing sell orders only on the basis of buy orders available in the system. It was also contended that they were selling small quantities of shares in

most of the days as because they found that the share price was on an upward trend. Further, the appellants contended that they have no connection with the list of connected entities nor with the company or its Promoter. Rejecting the aforesaid contentions of the appellants, the Hon'ble SAT held as follows:

"9. We do not find much merit in the submissions made by the learned counsel for the appellants ...though generally it can be stated that selling at a price higher than the LTP particularly when buy orders are available in the system cannot be considered as manipulative in itself. However, looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. This behavior cannot be justified in terms of normal rational expectations of a seller. It is on record that the appellants were among the top two net sellers during the relevant period. Therefore, when the appellants were holding a large number of shares (Appellant No. 1 – 15045 shares and Appellant No. 2 – 1009 shares), their selling miniscule quantity of one share each on more than four dozen occasions is nothing but a strategy of manipulation and unfairly benefiting by off-loading the entire shareholding after raising the price to considerable levels."

32. Even in the matter of *Shri Lakhi Prasad Kheradi vs. SEBI* decided on June 21, 2018, where the allegation against the buyer was manipulating the price of the illiquid scrip *inter alia* by placing miniscule orders above the LTP (positive LTP of INR 87.25), the buyer had contended that no connection has been established between the buyer and the company or the counter parties and therefore SEBI was not justified in holding that the buyer had indulged in manipulative trades. Dismissing the above contention of the appellant, the Hon'ble SAT had upheld the findings of the AO order by taking

into account other immediate and proximate facts and circumstances surrounding the events on which the charges/allegations were founded.

33. In the instant matter also, the *Noticees* were found to have placed sell orders continuously in a pattern and manner that these orders consistently and primarily resulted in contributing to the price rise in the scrip of the *Company*. That the intent to raise price of the scrip artificially was hidden in those sell orders of miniscule quantities, is writ large on that particular strategy itself. The impugned order of the AO has overlooked the crucial aspect that out of the total positive LTP impact of INR 246.55 in the scrip during the relevant period, a positive impact of INR 148.14 was contributed by the *Noticees* themselves by executing trades in miniscule quantities and on most of those trading days such trades were the only trade or the first trades for the day. Even after presuming for a moment that the object of *Noticees* was to sell their shares, it really doesn't make any sense for a seller with common sense to keep on selling shares in such negligible quantities despite price of the said scrip of the *Company* was rising therein, giving a clear cut indication about the malicious intention of the *Noticees* behind executing those trades in such a peculiar manner, when the price of the scrip was going up and rose to approx. 7442.19%, during the same period. The above aspect of trading behaviour on an examination evidently suggest that trades executed by the *Noticees* were not being executed in the ordinary course of trading and instead such a trading practice can be said to be possessing sufficient elements of a fraudulent trade practice, so as to attract the mischief of provisions of regulations 3 and 4 of the PFUTP Regulations.
34. It is also observed that the impugned orders passed by the AO have failed to consider the alleged violations on the merit of the facts and instead, have disposed of the proceedings in a technical manner disregarding the substance of the case and by merely relying on the findings of the Hon'ble Tribunal in the matter of *Nishish M Shah (supra)*, which is factually distinguishable and not applicable to the facts of the

matter. Though the *Noticees* have contended that they are small time traders, the impugned order has not even attempted to examine as to whether the above submission has any tangible basis to rely upon or was made merely as a bald assertion without any support of facts or evidence. No endeavour appears to have been made to examine as to whether the facts of the *Nishith Shah (supra)* are squarely applicable to the facts of the present case, particularly, when the price of the scrip having no market fundamental to support it was rising astronomically and yet all of the above named *Noticees* preferred to execute only one (1) trade on each day and that too in minuscule quantity. Further, one cannot forget the fact is that the scrip was under suspension for 9 long years (approx.) thereby depriving the shareholders of any opportunity to exit from the scrip and yet when the trading in the scrip resumed and it witnessed a rapid and continuous rise in its price, the *Noticees*, instead of taking advantage of exiting the scrip quickly by booking profits (which was in any case an illiquid scrip), went on offloading their shares over the period and in the process they ended up contributing significantly to the LTP of the scrip of the *Company* and became parties responsible for the price rise than parties who genuinely wanted to sell their shares by taking advantage of the price rise.

35. The impugned orders have also not taken into consideration the way the *Noticees* have been taking turns to place their LTP contributing sell orders on different trading days. As a consequence, despite having not been alleged to be connected with each other, their trading style, evidently smacks of a manipulative trading pattern whereby the above *Noticees* appear to have traded in one scrip in an unfair and fraudulent manner taking turns, on different trading days to offer one share only without coming together in the market on any given day, which very glaringly suggest the reason for their trades for not being considered as genuine and fair. Such a trading pattern followed by the *Noticees* successfully inflated the price of the scrip by trading in the scrip one at a time and only once on a given trading day, which

strongly manifests the *malafide* intent of the *Noticees* and also refutes the explanations provided by the *Noticees*. The above noted peculiar trading pattern demonstrated by the *Noticees* rather exposes the wicked design in the minds of the *Noticees* who have discretionally utilised their respective possessions of the scrip of the *Company* in small quantities by trading one at a time and once in a day in very small quantities of shares befitting to the pre-conceived design so as to inflate the price of the scrip over a long period of time. The impugned order has grossly failed to appreciate these facts which becomes very evident from the trading details submitted by *Noticees* which reveals that on majority of occasions the trades have been executed by the *Noticees* above LTP and in every such successive LTP contributing trade, barely 1 share has been offered in the sell order so placed for execution. The *Noticees* have also failed to submit any evidence which could have established that the above discussed unusual trading pattern followed by them was not unique to the scrip of the *Company* but was being followed by them consistently as a matter of trading strategy regularly employed by them in a number of other scrips by way of placing sell order for miniscule quantities even though the system may have large number of pending buy orders or by furnishing examples of other scrips where they had sold shares in miniscule quantity by executing only one trade in a day. Under the circumstances, lack of consideration of the above stated factors and a host of crucial factual aspects of the matter renders the impugned orders of the AO erroneous in so far as they have been passed without appreciating the whole gamut of facts, the peculiarities and the deviant trading pattern noticed in the trades of the *Noticees* and hence these orders of AO cannot be considered to have been passed keeping the best interest and integrity of the securities market, thereby warranting invocation of power vested under Section 15-I (3) of the SEBI Act.

36. Based on the aforesaid discussion and also following the findings of Hon'ble SAT in the above cited two cases (*Mrs. Kalpana Dharmesh Chheda & Ors. iand Shri Lakhi*

Prasad Kheradi), I find that before arriving at a conclusion of price manipulation done by the *Noticees*, the explanation furnished by them has to be seen in the light of all the facts and circumstances of the matter and only after assigning cumulative weightage to all the probabilities and possible scenarios that emerge out of those facts and circumstances either in favour of the allegation or against it, without insisting on placing reliance on only one facet or the other pertaining to the matter.

37. The *Noticees* have submitted that no action has been taken against the buyers in the present matter. In this regards, it is noted that in quasi-judicial proceedings, the decision / findings of the quasi-judicial authority is limited to the extent of deciding on the allegations charged against the *Noticees* mentioned in the SCN. Therefore, the considerations by a quasi-judicial authority is confined to the facts / allegation / *Noticees* mentioned in the SCN. Based on evidences presented in the SCN and the materials submitted by the *Noticees*, the quasi-judicial authority has to adjudge the allegations levelled against the respective *Noticee* as sustainable or not independent of what or whom the SCN has excluded which according to the *Noticees* should not have been excluded. Thus, *Noticees* are required to present their own case by rebutting the allegations made *qua* them in the SCN with supporting evidence. It is not open to them to take a defence stating that action can be initiated against them only when every person involved in the matter / transaction is also charged. In the present matter, the allegation against the seller – *Noticees* is that inspite of having substantial quantity of shares and huge buy demand available in the market, they were placing sell orders in miniscule quantities on multiple occasions and thereby were contributing to the market positive LTP in the scrip. Such is not the case of buyers and hence the buyers are not placed on the same footing as that of the seller – *Noticees* and have therefore been treated differently than the seller – *Noticees*. Here, it will be apt to refer to the order of Hon'ble SAT in the matter of *Systematix Shares &*

Stocks India Limited vs. SEBI dated April 23, 2012 wherein the Hon'ble SAT has held as follows:

"It is true that the Board has taken action selectively against a few entities involved in the alleged wrong doing. According to the appellant the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone is also discriminatory. We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."

In view of the aforesaid discussions and the in light of the above observation made by the Hon'ble SAT, I do not find merit in the contention of the *Noticees* that the charges against them should be dropped for the mere reason that buyers have not been charged in the present matter.

38. based on the foregoing discussions, I note that a number of factual details and the factors which had material implication for deciding the case were not considered by the AO while passing the orders. The same are as follows:

- 38.1. The unimpressive and chequered listing history of the *Company*.
- 38.2. Poor financial results and very weak market fundamentals of the *Company*.
- 38.3. Absence of any major corporate announcements by the *Company* to ignite any positive market sentiment about the scrip.
- 38.4. Overall trades in the scrip, in terms of number of trading days and number of days on which only a single trade was executed in the scrip including the average negligible volume in the scrip, as discussed in the beginning of this order.
- 38.5. Exponential rise in the price of the scrip within a span of 11 months after a 9 year suspension of trading in the scrip.
- 38.6. Volume of trade effected by the *Noticees* vis-à-vis their holding in the scrip.

- 38.7. The particulars of the buy order pre-existing in the market and *Noticees* miniscule sell orders.
- 38.8. Positive LTP contribution by the *Noticees*.
- 38.9. Lack of cogent reason furnished by the *Noticees* for their unusual interest in dealing in the scrip of Radford.
- 38.10. Unusual and abnormal way of trading pattern followed by the *Noticees*, as discussed above.

Therefore, in the given facts and circumstances of the case, the cumulative weightage of the aforesaid factors, in my view, far outweigh the factor of absence of connection between the seller - *Noticees* and buyers and /or the Promoters/Directors of the *Company* i.e., a ground on which the AO has solely relied upon to discharge the *Noticees* from the allegations made in the SCN and it leads to a conclusion that the conduct of the *Noticees* cannot be brushed aside as a normal and lawful market practice. Moreover, by placing miniscule sell orders over the LTP on multiple occasions, has the potential of giving the wrong impression about the actual price of the scrip and may draw the innocent / gullible investors to the scrip who would get influenced by the increase in the price of the scrip on a daily basis. The manipulative trades executed by the *Noticees* not only adversely affects the price discovery system but also has an adverse impact on the integrity of the market and on the investors' confidence in the securities market. Hence, the conduct of the *Noticees* as displayed by them through their trading in the scrip of Radford cannot be said to be in the interest of the securities market. Thus, the answer to the question that I had begun with i.e., whether the AO has erred by solely placing reliance on the absence of any connection between the seller - *Noticees* and buyers and /or the Promoters/Directors of the *Company*, which is not in the interests of the securities market, is found to be in the affirmative.

- 39. Furthermore, in my view there is one more reason why the impugned orders should be considered as erroneous and are liable to be revised under Section 15I (3) of the

SEBI Act. The AO while passing the orders has drawn guidance from the Hon'ble SAT's order in the matter of *M/s Nishith M. Shah HUF* which in my view is incorrect, as the facts and circumstances of the said matter are factually and materially distinguishable and not squarely similar to the facts of the present case. The scrip of Shree Shaleen Textiles Ltd. which was the impugned scrip in the matter of *M/s Nishith M. Shah HUF*, was a scrip in which trading was not suspended till or after the relevant period. Thus, the company through its disclosures was able to keep the investors abreast of the various developments in the said company on a continuous basis and the investors also by tracking the price-volume in the scrip, were able to gauge the performance of the company. On the other hand, the scrip of Radford was suspended for almost 9 years. So not only the scrip of Radford was a low profile scrip, it was suspended from trading for a substantial period of time. Therefore, neither the *Company* was able to disclose to the public at large about the developments in the *Company* nor the investors were able to gauge the performance of the *Company* based on its price-volume data. Thus, whether or not the trading in a scrip of company has been suspended, becomes a material metric in determining along with other attending circumstances, manipulation in a particular scrip that happens after resumption of trading in the scrip post a long period of suspension. Further, though there was a significant increase in the price of the scrip of Shree Shaleen Textiles Ltd. during the relevant period, it was not the case there that during pre-relevant period, the price in the scrip was in lower denominations. The price of the scrip was already in the range of INR 52.50 to INR 77.30 for a period of approximately 7 months, whereas the scrip of Radford even after the suspension was revoked did not trade for 2 months (except on 1 day) prior to the investigation period and then there was an exponential increase in the price of the scrip starting from INR 3.20 to INR 241.35 within 11 months. Thus, the trading and movement in the price of the scrip, also puts the aforesaid 2 scrips on a radically two different footing. Hence, the guidance derived by the AO from the matter of *M/s Nishith M. Shah HUF* was factually incorrect

due to lack of appreciation of the aforesaid distinguishing factors as the facts and circumstances of the present matter are not similar to the matter of *M/s Nishith M. Shah HUF*.

40. Looking from another perspective, the matter of *Mrs. Kalpana Dharmesh Chheda & Ors.* which was decided by the Hon'ble SAT subsequent to passing appellate order in the matter of *M/s Nishith M. Shah HUF*, was one such matter in which the absence of connection between the seller and the buyer and / or Promoter / Director of the company was not held to be fatal to the allegation of price manipulation as levelled in the SCN. In the matter of *Mrs. Kalpana Dharmesh Chheda & Ors.*, various other attending factors viz., trading pattern of the entities, shareholding of the entity vis-à-vis buy demand, considerable financial benefit derived by the entities etc. were cumulatively given more weightage over the absence of connection between buyers and sellers and their impugned trading activity was held to fall in the realm of violations of PFUTP Regulations. Similarly, in the matter of *Shri Lakhi Prasad Kheradi* which was decided prior to the decision in *M/s Nishith M. Shah HUF*, it is held that all the immediate and proximate facts and circumstances of the matter have to be considered before arriving at a conclusion. Moreover, the definition of fraud under PFUTP Regulations does envisage unilateral commission of fraud by a person. The definition of fraud under regulation 2(1)(c) of PFUTP Regulations lists out various acts / omissions by a person such as known misrepresentation, active concealment, reckless and careless representation, deceptive behavior, false statement, etc. which do not presuppose establishment of connection of the person committing the same with another. Further, regulations 3 and 4 of the PFUTP Regulations also use phrases such as no person shall use or employ, no person shall indulge, etc. and do not, at all places, stipulate the requirement of a connection between two parties to a transaction that has to be necessarily in existence in order to establish a violation under PFUTP Regulations. Therefore, the impugned orders have erred by solely relying on the fact that there was no connection between the buyer and seller / the

Company / Promoter / Director at the expense of so many other immediate and attending circumstances of the matter as discussed at length in the foregoing paragraphs of this order.

41. Based on the aforesaid discussion, following are my findings:

41.1. That it is necessary to appreciate all the facts and circumstances of the matter in all dimensions and from all perspectives so as to evaluate on the basis of preponderance of probability which alternative possibility / conclusion is to be drawn as per the preponderance of such facts and evidence; the one favouring the *Noticee* or the one against the *Noticee*.

41.2. The AO in the peculiar facts of the matter has erred by placing sole reliance only on the lack of connection between the seller – *Noticees* and the buyer / *Company / Promoter / Director*, disregarding all other attending facts, factors and evidence including circumstantial evidence.

41.3. Upon consideration of the submissions of the *Noticees* and all the attending circumstances of the matter, I am of the opinion that the trading behaviour exhibited by the *Noticees* in the scrip of Radford is not the one which is exhibited by a prudent and a rational seller in the stock market and by indulging in such trades, the *Noticees* have manipulated the price of the scrip of Radford during patch 1 of the investigation period.

42. In view of the aforesaid findings, i am constrained to further conclude that the *Noticees* have violated the provisions of regulations 3 (a), (b), (c) and (d) and 4 (1), (2) (a) and (e) of PFUTP Regulations and Sections 12A (a), (b) and (c) of SEBI Act. It has already been stated in preceding paragraphs that manipulation of the price of the scrip in an illiquid scrip not only compromising the price discovery system thereby impacting the integrity of the market but also dents the confidence of the investor in the securities market and therefore, it is not in the interests of the securities market. Thus, the actions on the part of the *Noticees* as discussed above cannot be viewed

lightly and I am convinced that the case merits imposition of penalty as prescribed under Section 15HA of the SEBI Act.

43. It will be relevant here to note the findings of the Hon'ble Madras High Court in the matter of *Bhavani Mills Limited vs. State of Tamil Nadu* decided on October 3, 1991, wherein it was held as under:

"In the instant case we are satisfied that the word "enhance" is wide enough to enhance the penalty from zero to something. ...We are satisfied that the word "enhance" is sufficient enough to enable the Tribunal to impose penalty which was not imposed by the appellate authority".

44. Given the aforesaid facts and circumstances, the AO has certainly committed an error by extending the benefit of observations made by Hon'ble SAT in *M/s Nishith M. Shah HUF* (supra) order to the *Noticees* without ever getting into the factual details or appreciating the case on merit. It is therefore clear to me that the impugned orders passed by the AO have failed in appreciating the facts of the matter while arriving at such a finding and further have committed a grave error by seeking reliance on an order of the Tribunal, which is factually different and not squarely applicable to the instant matter. Under the circumstances, when the *Noticees's* claims are found to have no support of any tangible evidence and no justifications have been advanced to substantiate the rationale behind the unusual trading strategy followed by them, I see no reason to uphold the findings recorded in the impugned orders of the AO. Having considered the materials on record and the submissions put forth in justification of the impugned trades executed by the *Noticees* in which they were found to be placing a substantial number of trades above the LTP on a continuous basis and on every occasion ended up selling only miniscule number of share that too even after seeing that pending buy orders were available for large quantities in the system, by no stretch of imagination it can be held that they were engaging in acts of fair trade practice in the normal course of dealing in securities. On the contrary, as

the facts of the matter clearly indicate, the trades of the *Noticees* cannot be held to be trades executed by a prudent person in the normal course of trading. The numbers of trades and the unusual pattern of trading as adopted and followed by them are sufficient in themselves to hold that these trades were executed in an unfair manner and have caused artificial contribution to the price rise of the scrip of the *Company*, having no market fundamental to support such price rise. Therefore, in my view, the impugned order of the AO has committed grave error of judgment by granting the present *Noticees* benefit of the ratio of the case of *M/s Nishith M. Shah HUF* (supra). Considering the aforesaid deliberations and my observations, the impugned order passed by the AO deserve to be recalled as the same may set out a wrong precedent for such entities to continue with their abovementioned mischief unabashedly thereby artificially affecting price of scrips on the stock exchange platforms by deliberately transacting (buying or selling shares) in minuscule quantities over number of trades, and as a consequences adversely affecting the integrity of the securities market, through such mischievous trades that are inimical to the interest of the investors of the securities market. Therefore, I find it necessary to set aside the impugned Order passed by the AO and hold the *Noticees* guilty of violation of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations by executing the aforesaid trades in the scrip of Radford.

45. The AO based on the erroneous appreciation of facts and circumstances of the present matter as pointed out above had exonerated the *Noticees*. However, taking into account my considered observations on the trading activity / behaviour of the *Noticees* in the scrip of Radford, which has been alluded at length in the preceding paragraphs, that were replete with manipulative intent during patch 1 of the investigation period, the findings in the impugned orders deserve examination afresh as the same are not in the interest of securities market.

46. Before imposition of penalty, the adjudicating officer has to take into account the factors enumerated in Section 15J of the SEBI Act while imposing penalties under Chapter VIA of the SEBI Act. Since the present proceedings are the extension of adjudication proceedings, therefore, it is incumbent upon me to take into account the factors enumerated under Section 15J of the SEBI Act, which provides as follows:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:

—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default; (c) the repetitive nature of the default.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

47. I note that the materials available on record do not indicate the amount of disproportionate gains or unfair advantage in monetary terms, made as a result of the aforesaid violations and fraudulent trades. Further, I find that the allegations made in the SCN do not indicate the amount of specific loss caused to the investors or group of investors as a result of the aforesaid manipulative trades by the *Noticees*. Moreover, there is no allegation of repetitive nature of the default made in the SCN by the aforesaid *Noticees*.

Order

48. In view of the above, I, in exercise of powers under Section 15-I (3) of the SEBI Act read with Section 19 of the SEBI Act, after taking into consideration all the facts and circumstances of the case and having found the AO Orders as erroneous to the extent they are detrimental to the interests of securities market, hereby impose the following monetary penalty upon the *Noticees* under Section 15HA of the SEBI Act:

Sl. No.	Name of the Noticee	Penalty Amount (INR)
1	Shailesh Lalman Ojha	50,000/-
2	Sangita Pramod Harlalka	50,000/-
3	Rajeev Garg	1,00,000/-
4	Artiben S Kansara	50,000/-
5	Manisha Jayesh Shah	50,000/-

49. The aforesaid *Noticees* are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said *Noticees* may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, Investigation Department, ID-9, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id: - tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of payee	
Date of payment	
Amount paid	
Transaction no.	
Bank details in which payment is made	
Payment is made for	

50. The Order shall come into force with the immediate effect.

51. A copy of this order shall be sent to the *Noticees*.

-Sd-

DATE: December 29, 2022

PLACE: MUMBAI

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA