BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/GR/KG/2021-22/12384-12388)

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND RULE 5 OF THE SECURITIES CONTRACTS (REGULATION)(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Noticee No.	Name of the Noticee	PAN
1	**Grishma Securities Pvt Ltd.**	AABCG1300K
2	**Shri Chandrika H Gandhi**	AAMPG4546M
3	**Shri Ketan C Shah**	AIWPS3413R
4	**Shri Chhabil C Shah**	AIXPS6956J
5	**Shri Mihir Ghelani**	AACPG79896K

In the matter of IPO of Tijaria Polypipes Ltd.

BACKGROUND OF THE CASE:

1. Tijaria Polypipes Limited (hereinafter referred to as "**Tijaria/TPL/the Company**") came out with an Initial Public Offering (hereinafter referred to as "**IPO**") of 1,00,00,000 equity shares of a face value of Rs 10/- each, issued at a premium of Rs 50/- per equity share, wherein it raised Rs 60/- Crores to fund its proposed expansion and diversification plans. The aforesaid IPO opened on September 27, 2011 and closed on September 29, 2011. TPL allotted 71,64,406 shares in the retail individual investors

category (constituting 71.64% of the total IPO shares) and 28,36,001 shares to the Qualified Institutional Buyers (hereinafter referred to as “QIBs”) (constituting 28.36% of the total IPO shares). The shares of TPL were listed on the Bombay Stock Exchange Limited (hereinafter referred to as “BSE”) and the National Stock Exchange of India Limited (hereinafter referred to as “NSE”).

2. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in respect of trading in the scrip of TPL, upon observing a steep fall in the share price on the first day of listing i.e. October 14, 2011 the price of TPL in NSE, fell from the highest price of Rs 67.75 per share to Rs 16.50 per share while in BSE, it fell from the highest price of Rs 67.80 per share to Rs 16.05 per share.Pursuant to certain adverse findings, SEBI vide order dated July 31, 2013 passed under Section 11(4) read with 11B of the SEBI Act read with Regulation 11(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”) had *inter alia* restrained Grishma Securities Pvt Ltd (“**Grishma” / “Noticee No.1**”) from buying, selling or otherwise dealing in securities, in its proprietary account, directly or indirectly, for a period of five years and other noticees from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of five years. Subsequently, the competent authority had approved the initiation of adjudication proceedings against the Noticees named above, for their alleged role in the purportedly fraudulent activities in the scrip of TPL on the day of the listing of the shares and possible violations of 12A (a), (b), (c) and (d) of the SEBI Act read with Regulations 3(a), (b), (c), (d), Regulations 4(1) and 4(2)(a), (d), (p) of the PFUTP Regulations, 2003 and section 23D of the Securities Contracts

Regulation Act, 1956 ("SCRA"), Regulations 26(xiii), (26(xvi) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("Broker Regulations"). And Clauses A(1)-A (4) of the code of Conduct prescribed under the Broker Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Securities and Exchange Board of India (hereinafter referred to as "**SEBI"**) appointed the Mr. D. Ravikumar as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"SEBI rules"**) and Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **"SC(R)A"**) and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **"SC(R)Rules"**) to inquire into and adjudge the following violations alleged to have been committed by the Noticee No.1 and its Directors namely Shri Chandrika H.Gandhi, Shri Ketan C. Shah and Shri Chhabil C.Shah and its CEO/ Compliance Officer Shri Mihir Ghelani (collectively referred to as "**Noticees"**) in respect of their dealings in the shares of Tijaria Polypipes Ltd.

- Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act;
- Section 23D of SCRA;
- Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations;
- Regulations 26(xiii) and 26(xvi) of Brokers Regulations**;**

- Clauses A(1), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers, Schedule II read with Regulation 7 of the Brokers Regulations.

Subsequently, vide Order dated December 14, 2015, Shri Suresh B. Menon was appointed as the Adjudicating Officer (**AO**) in the said matter. Thereafter, vide order dated April 9, 2019 (communicated on April 12, 2019), the undersigned has been appointed as the AO in the present case.

<u>FACTS OF THE CASE</u>

4. It was observed during the investigation of SEBI that an individual Shri Jivraj Zala (hereinafter referred to as "**Zala**") had traded through the Noticee No.1 in the scrip of TPL. It was further observed that Zala was a walk-in client having annual income below Rs.5 lakhs and had traded only in the scrip of TPL through the Noticee No.1. The investigation had observed that on the very first day of his trading, Zala had incurred a huge loss of Rs. 9,95,07,582 (comprising of Rs. 3,20,38,993 on BSE and Rs. 6,74,68,589 on NSE) by trading on the first day of listing of shares of TPL i.e. on October 14, 2011. The investigation had further observed that Zala had provided an exit to the QIBs at a premium to the issue price.

5. A perusal of the NSE client ledger of Zala maintained by the Noticee No.1, reflected that Rs.1,78,55,000 was received by it on October 13, 2011. It was further noted that the BSE client ledger of Zala maintained the Noticee No.1 reflected that Rs.1,87,00,000 was received it on October 13, 2011. Contrary to the same, the statement revealed that out of Rs. 1,78,55,000 shown to have been received by the

Noticee No.1 in the NSE client ledger of Zala on October 13, 2011, only Rs. 8,55,000 was actually received by it on October 15, 2011 and the balance Rs. 1,70,00,000 was received by the Noticee No.1 only on October 17, 2011. Similarly, the entire amount of Rs. 1,87,00,000 shown to have been received in the BSE client ledger of the client Zala on October 13, 2011, was actually received by the Noticee No.1 only on October 17, 2011 as per its bank statement. Thus, it was *prima facie* observed that the Noticees had manipulated the ledger of Zala to give an impression that some funds were available in the client account of Zala with the the Noticee No.1 on the day of trading. It was also *prima facie* observed that the Noticees had allowed Zala to trade on the first day of listing in the scrip of TPL incurring a huge loss of approximately Rs.9,95,07,582 without collecting any funds from him towards the margin amount payable to the Exchange.

6. It was further observed during the investigation that Rs. 5,97,24,951.64 received towards the margin requirement of Zala for his trading in the scrip of TPL on October 14, 2011 at NSE, were majorly transferred from the client account of one Shri Vimal Punjiram Patel. Thus, it was *prima facie* observed that the Noticees had used the funds from the client account of Shri Vimal Punjiram Patel to clear the shortfall in margin requirements for the losses incurred by Zala in the scrip of TPL on October 14, 2011.

7. Further, it is also observed from the investigation that, the Noticees had used the shares of Shasun Pharmaceuticals worth around Rs. 17.22 lacs and Rs 13.53 lacs of The Noticee No.1's clients Shri Vimal Punjiram Patel and Shri Priyesh Arvind Bhatt respectively as margin for Zala. The Noticees were also observed to have used 66,697

shares of DB Realty Ltd. received from one Shri Pramod K. Goenka worth Rs. 35,91,633.45 as margin. Therefore, it was also observed that the Noticees had used securities worth over Rs. 66 lacs of their three clients for meeting the margin requirement for the losses incurred by Zala at BSE. It was also observed that the Noticees had used shares worth Rs. 2.46 crores of Shri Vimal Punjiram Patel for meeting the margin shortfall for the losses incurred by Zala at NSE.

8. It was also observed that the Noticee No.1 had used funds from its own F&O account, current account as well as it had also received funds from Mr. Mihir Ghelani, CEO & Company Secretary of the Noticee No.1 Securities Pvt. Ltd (**Noticee No. 5** in the present proceedings) for meeting the margin requirements for the losses incurred by Zala in the scrip of TPL on October 14, 2011 at BSE. The details of the said transfer of funds is as follows:

Date	**Amount transferred to the Clearing corporation by the broker towards margin (in `)**	**Ultimate source of funds**	
		Amount (in `)	**Name of the Client Account from where funds were transferred**
14/10/2011	50,00,000	1,41,00,000	The Noticee No.1 Securities Pvt. Ltd.-NSE F&O Settlement A/c a/c no. 004010200405027 Axis Bank Ltd.

14/10/2011	50,00,000	1,00,00,000	The Noticee No.1 Securities Pvt. Ltd a/c no. 2321600000064 with DCB
14/10/2011	10,00,000	4,52,956 and 5,34,307	Pay out received
14/10/2011	35,86,814	2,00,00,000	Mihir Ghelani
	1,45,86,814		

9. It was further observed that as per the statement recorded before SEBI on May 21, 2012, Shri Mihir Ghelani had mentioned that he made payments of Rs. 2 Crores and Rs. 20 Lakhs to The Noticee No.1 Intermediaries Pvt. Ltd. towards ledger debit and margin call for the trading done by him in commodities at MCX. However, it was observed that the said money was transferred from the account of the Noticee No.1 Intermediaries Pvt. Ltd. to the Noticee No.1 which was ultimately used for meeting the margin requirements for the losses incurred by Zala in the scrip of TPL on October 14, 2011.

10. Further it was also observed from the investigations that the Noticee No.1 had executed synchronized trades on behalf of Zala, few of such trades are as following:

No	Name of the entity	Trade Volume	Order of the entity price and time	Order of the noticee on behalf of Zala, price and time	Exchange	Time Difference between the buy and sell order
1.	Salasar Stock Broking Ltd	91,603	Sell order of 1,00,000	Buy order of 1,00,000 shares at	BSE	4-7 seconds

			shares at Rs. 52 per share at 12:10:52	Rs. 52 per share at 12:10:56		
		1,92,384 **Total = 2,83,987**	Sell order of 2,82,000 shares at Rs. 50 per share at 13:28:13	Buy order of 2,00,000 shares at Rs. 50 per share at 13:28:20		
2.	Salasar Stock Broking Ltd	2,73,794	Sell order of 3,00,000 shares at Rs. 48 per share at 12:11:33	Buy order of 5,00,000 shares at Rs. 48 per share at 12:11:36	NSE	2-3 seconds

11. The investigations had also observed that Zala did not have the risk taking capacity to take over such heavy losses. Thus, it was prima facie observed that the Noticees were acting as the focal point for executing certain modus operandi meant to facilitate exit to the QIBs and also observed to have played a catalyst role in perpetuating the fraud that was being played on the genuine investors.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. Accordingly, a show cause notice ("**SCN**") dated August 30, 2013, was served upon the Noticees containing the allegations as already narrated in the preceding

paragraphs and thereby, had allegedly violated the provisions of of Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, Section 23D of SCRA, Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, Regulations 26(xiii), 26(xvi), Regulation 7 of the Stock Brokers Regulations read with Clauses A(1), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers of Schedule II, which was duly served upon the Noticees by September 3, 2013. Relevant Extract of the Investigation Report and the details of the synchronized trades executed by The Noticee No.1 on behalf of Zala were provided along with the SCN. Vide a letter dated September 13, 2013, the Noticees collectively responded to the SCN inter alia by asking for inspection of documents. The said inspection was allowed vide letter dated September 23, 2013 and the Noticees had taken the inspection thereafter.

13. Vide a letter dated December 24, 2013 (hereinafter referred to as the "**first reply**") the Noticees had replied to the SCN, relevant extracts of which are reproduced herein below:

"2. At the outset, it is submitted that the initiation of the present proceedings against the Noticees is unfair, arbitrary and in violation of due process of law and no further regulatory intervention is called for in the matter. On the same cause of action and on the basis of similar allegations (as in the present SCN), SEBI had passed an Ex-Parte Ad-Interim Order dated December 28, 2011 ("Ex-Parte Order") restraining the Noticees from buying, selling or dealing in any securities in any manner, whatsoever. The Ex-Parte Order effectively suspended the certificate of registration of The Noticee No.1 Securities and restrained the other Noticees from accessing the capital markets. The Ex-Parte Order was confirmed by a Confirmatory Order dated November 5, 2012 ("Confirmatory Order"). As a result, the Noticees have already suffered a restraint for two years.

3. Further, SEBI also issued a Show Cause Notice dated November 30, 2012 under Sections 11 B and 11 (4) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and these proceedings culminated in an order dated July 31, 2013 ("Final Order") where the harsh, punitive and debilitating restraints imposed vide the Ex-Parte Order were continued against Grishma in respect of its stock broking business and Grishma has been restrained from undertaking any trades in its proprietary account for a period of five years. The individual Noticees have also been restrained from accessing the capital markets for a period of five years.

4. Further, as you are aware, proceedings under the SEBI (Intermediaries) Regulations, 2008 have been initiated against Grishma.

5. Therefore, it is respectfully submitted that subjecting the Noticees to adjudication proceedings for the same cause of action, when the Noticees have in any event suffered for nearly two years and have been barred from accessing the securities market for five years, besides being unwarranted is grossly disproportionate to the alleged violation.

6. Therefore, it is submitted that no further regulatory action or monetary penalty is warranted and the proceedings may be dropped without any adverse finding or order.

<u>Background</u>

7. The SCN relates to the initial public offering of Tijaria Polypipes Limited ("TPL") between September 27, 2011 and September 29, 2011, and trades in the shares of TPL on the first of day listing on October 14, 20 II on the BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE").

8. At the outset, it is submitted that Grishma, apart from merely acting as a broker, had no nexus whatsoever, with those traded in the shares of TPL.

<u>Inspection incomplete</u>

9. At the outset, the Noticees submit that full and complete inspection has not been provided and the principles of natural justice have not been observed in the conduct *of these proceedings. For instance, SEBI has not provided the Noticees with a complete copy of the investigation report and has provided only an extract of the same. The SCN merely annexes an extract of the findings contained in the Investigation report ("IR"). The Noticees submit that this reply is being submitted without prejudice to its right to seek full and complete inspection of all records and documents in SEB I 's possession in relation to the captioned matter.*

10. The Noticees respectfully submit that the allegations in the SCN are based on an incorrect appreciation of facts and certain allegations in the SCN are patently erroneous and are contrary to the record and documents furnished by SEBI itself.

Summary of the Key Allegations against the Noticee in the SCN:

11. The SCN makes the following allegations against the Noticee:

a) The Noticee No.1 manipulated the ledger of its client, Jivraj Zala ("Zala") to give an impression that some funds were available in the client account of Zala with the Noticee on October 14, 2011.

b) The Noticees allowed Zala to trade on the first day of listing in the scrip of TPL incurring a loss of Rs 9,95,07,582 without collecting adequate funds from Zala towards meeting margin requirements for such trades.

c) The Noticees funded Zala's margin requirements using funds and securities from third parties including its other clients, namely, Shri Vimal Punjiram Patel, ("Patel"), Shri Priyesh Arvind Bhatt ("Bhatt") and Shri Pramod Goenka ("Goenka").

d) Grishma used funds from its own Future and Options account ("F & O Account") and current account in addition to funds being received from Noticee No.4, Mr. Mihir Ghelani, CEO and Compliance Officer of Grishma for meeting Zala's margin requirements.

e) Grishma executed synchronized trades on behalf of Zala.

12. The SCN, on the basis of the above allegations states that the actions of the Noticees are in contravention of the provisions of Section 12A(a), 12A(b), 12A(c) and 1 2A(d) of the

Securities and Exchange Board of India Act, 1992 ("SEBI Act"), Section 23D of the Securities Contracts (Regulations) Act, 1956 ("SCRA") and Regulations 3(a), 3(b),3(c), 3(d),4(1),4(2)(a), 4(2)(d) and 4(2)(p) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ("PFUTP Regulations"), Regulations 26(xiii) and 26(xvi) and Regulation 7 of the of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, ("Stock Brokers Regulations") read with clauses A(I), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers of Schedule II.

113. The IR makes a number of other unsubstantiated allegations against the Noticees including that Lopa Saumil Bhavnagri was a contact person of the Noticee's Ahmedabad branch a charge that is entirely without basis. The SCN does not expressly refer to these and certain other allegations made in the IR and therefore it is assumed that these charges are not being pressed against the Noticees. In any event, the Noticee has answered these and other allegations made in the IR in its reply dated December 11, 2012 to the earlier Show Cause Notice dated November 30, 2012 and the contents of the same are repeated and reiterated as if the same were set out here in extenso. The Noticees crave leave to refer to and rely upon the records in the proceedings initiated against the Noticees under Sections 11 and 11B of the SEBI Act.

14. The Noticees will demonstrate with precision that none of the allegations in the SCN are tenable. The foundational charge i.e. that margin requirements of Zala was met from funds of third parties, is itself untenable and without basis. With regard to the allegation that The Noticee No.1 was the "focal point" in the purported fraud played on genuine investors, is in the realm of conjecture and surmise and is not borne out by any evidence on record. In light of the facts and circumstances in this Reply, the Noticees submit that no adverse order ought to be passed and the proceedings ought to be dropped forthwith.

<u>Noticees' Submissions</u>

15. The Noticees submit that Grishma has not undertaken any proprietary trades in the scrip of TPL and further, that it has been made a party to the proceedings merely on account of its association in the capacity of stock broke to certain individuals who traded in the shares of TPL on the first day of listing i.e. October 14, 2011. SEBI's sweeping conclusions, seen *in its Investigation Report ("IR"), selective portions of which have been annexed to the SCN, and in the SCN itself, that Zala and Patel are "fronts for Grishma " are untenable and unsupported by any evidence or material on record.*

16. The Noticees submit that the allegations in the SCN are incorrect and not sustainable based on the information placed on record for the following reasons:

a) The Noticees had indeed collected adequate funds from Zala for purposes of meeting margin requirements. The cheques towards margin issued by Zala were received, deposited, realized and accounted prior to the settlement of Zala's trades, in complete compliance with the norms applicable to collection and accounting of margins and accordingly, the allegation that the Noticees manipulated the client ledger is untenable;

b) SEBI's allegation that the Noticees used funds belonging to third parties for meeting Zala's margin requirements is contrary to the facts on record, apart from being based on the demonstrably erroneous premise that the Noticees allowed Zala to trade in the scrip of TPL without posting adequate margins;

c) The transactions alluded to in the SCN and IR as evidence to show that Grishma used the funds belonging to other clients and its CEO, Noticee No.4, Mihir Ghelani, have no nexus whatsoever with Zala's trades in TPL.

No manipulation in the client ledger of Zala

17. The SCN alleges that Grishma manipulated Zala 's client ledger on the basis that the date of receipt of funds is at variance w ith the bank statements of Grishma. The SCN incorrectly states that the ledger entries incorrectly record the date of receipt of funds, whereby the amounts are shown as having been received earlier than the date on which the funds were credited to Grishma's bank account. In fact, the ledger entries indicate the date of physical receipt of the cheque and not the date on which the underlying funds were credited in the account.

18. The recording of date of the receipt of the cheques is in accordance with the mercantile system of accounting. Further, this is also in accordance with circulars issued by SEBI. SEBl's circular dated August 27, 2003, permits collection of margin amounts by cheque.

SEBI Circular No. MRD/SE/Cir-33/2003/27/08 dated August 27, 2003 which inter-alia prohibits brokers from accepting cash "from clients whether against obligations or as margin for purchase of securities." and states that all payments received by brokers from clients "strictly by account payee crossed cheque. A copy of SEBI 's circular is annexed as "Annexure A". There is no obligation on in law which requires a stock broker receiving margin payments by cheque to record only the actual date of credit of funds in the client ledger as the date of receipt of margins. Such a requirement is not even envisaged by SEBI.

19. Moreover, even for transactions in the derivatives segment, where the regulatory restrictions on margins are admittedly more stringent than on the cash segment, brokers have been explicitly permitted to receive payments by cheques. Brokers are required to record the date of receipt of the cheques in the ledger either on the date of the trade i.e. Tor on a T+1 basis notwithstanding the fact that the cheques may get cleared only subsequently. Circulars issued by NSE and the BSE state that the collection of margin is adequate where:

> *"Cheques [are] received/recorded in the books of trading member on or before T day or T+1 day (excluding bank holiday, if any) and cleared subsequently."*

20. The Noticee further seeks to rely on SEBI 's circular dated February 23, 2005 which allows brokers to decide the mode of collection of margin money, thereby also allowing brokers to follow a practice of collecting margin money by means of a post-dated cheque. SEBI's circular No. MRD/DoP/SE/Ci r-07/2005 SEBI dated February 23, 2005 titled "Comprehensive Risk Management Framework for the Cash Segment", inter-alia states that:

> *"Members should have a prudent system of risk management to protect themselves from client default. Margins are likely to be an important element of such a system. The same shall be well documented and be made accessible to the clients and the Stock Exchange. However, the quantum of these margins and the form and mode of collection are left to the discretion of the members" (Emphasis Supplied).*

A copy of SEBI 's circular dated February 23, 2005 is annexed as Annexure B".

21. Admittedly, on October 13, 2011, a day prior to Zala 's trades in TPL shares, Grishma received 7 cheques for an amount of Rs. 3,65,55,500/ - (Three crores sixty-five lakhs fifty-five thousand only) and the date of receipt of the cheques was the date posted in the ledger. It is also not in dispute that these cheques were duly honoured. Accordingly, the question of manipulating the ledger to give a misleading impression of funds having being credited to Grishma 's bank account does not arise and the allegations in the SCN in this regard are baseless.

Margins were indeed collected from Zala

22. It is alleged in the SCN that the Noticees did not collect margin money i.e. the collateral collected in order to cover the risks associated with the trades, from Zala for the trades on October I 4, 2011. This allegation too is wholly untenable and unsustainable for the reasons set out below.

23. As stated above, on October 13, 2011 i.e. one day prior to Zala's trades in the shares of TPL, Grishma collected seven cheques, equivalent to Rs 3,65,55,000/-. The SCN incorrectly records that out of Rs.1,78,55,000/- in Zala's ledger shown to have been received on October 13, 2011, Rs 8,55,000/- was received on October 15, 2011 "and the balance Rs. 1,70,00,000 was received by the you only on October 17, 2011". This allegation is patently erroneous as is evident on a perusal of the Grishma's bank account statement held with YES Bank which shows that Rs 1 ,78,55,000/- was received from Zala on October 15, 2011 itself. Similarly, the entire amount of Rs. 1 ,87,00,000/- was received and credited in the bank account of Grishma on October 17, 2011 i.e. prior to the pay in date for the trades of October 14, 2011. Thus, on October 17, 2011, a sum of Rs. 3,65,55,000/- was collected by Grishma as margin, one day prior to pay in date of Zala's trades that were undertaken on October 14, 2011.

24. Further, the SCN wrongly represents that the trades undertaken by Zala in the shares of TPL were the first trades executed by Grishma as a stock broker on behalf of Zala. The IR records that Zala "had traded only in the scrip of Tijaria through the broker prior to October 13, 2011." However, the factual position is that Zala first trades were executed on October 13, 2011 in the scrip of Jain irrigation and MVL Ltd. Grishma craves leave to refer to and rely on the contract notes issued to Zala in this regard. Zala incurred a profit of around Rs. 53,169.49 on account of his trades on October 13, 2011. Further, there was a credit *balance of Rs. 3,66,08,169.49 in the account of Zala as on October 13, 2011 which is before the trades of Zala on October 14, 2011.*

25. In this regard, a reference is also made to the BSE Circular dated November 4, 2003, which sets a permissible limit of 25 times of the Base Minimum and Additional Capital deposited with the Exchange by the member. A copy of the circular has been annexed hereto and marked as "Annexure C". Thus, before recording alleging that Grishma failed to collect adequate funds towards margin requirement for the trades executed by Zala on October 14, 2011, SEBI ought to have considered the permissible limit of exposure that Grishma as a stock broker is permitted to provide to Zala on October 14, 2011. On October 14, 2011, the maximum exposure limit at any given point of time was about 35 l akh shares of TPL. Considering an average rate of Rs. 60 per share, this limit translates into about Rs. 21 Crores. This exposure is much less than 10 times the value already collected from Zala as against the permissible limit of 25 times of the value in Zala's account. The SCN has erroneously recorded that "Zala did not have the risk taking capacity to take over such heavy losses" and such a conclusion is evidently made without due consideration to the facts and the legal position stated above.

26. Thus, it has been demonstrated there had indeed been no manipulation of the client ledger as Grishma's actions of recording the date of receipt of the cheque in the ledger was in accordance with the mercantile system of accounting. Further, Grishma had collected adequate funds from Zala towards the margin requirement for his trades in the shares of TPL, and consequently, the attendant allegations that the Noticees using funds and securities of third parties towards meeting the margin requirement of Zala do not stand. As is clearly set out in SEBI 's own circular of February 23, 2005, the quantum of margins, form and mode of collection are left to the discretion of brokers and accordingly, no fault can be found in the conduct of the Noticees. Grishma 's actions as a stock broker are in consonance with the objective behind margin collection, which is to ensure that margins can be utilized in the event of a default by the client. In light of the above, it is submitted the proceedings against the Noticees must be dropped.

Alleged use of funds received from Patel for Zala's trades

27. The SCN alleges that the amount of Rs 5,97,24,951.64 received towards the margin requirements of Zala for his trading in the scrip of TPL on October 14, 2011 at NSE, was "major/y transferred from the client account of one Shri Virnal Punjiram Patel".

28. The IR records that on October 14, 2011, out of Rs 2,70,00,000 transferred to the Clearing Corporation by the Noticee, a sum of R s 85,00,000 and Rs. 25,00,000 were transferred from the account of Patel and an amount of Rs 1,41,00,000, was from the Grishma's own F&O account, of which Rs. 1,14,00,000 was from trades undertaken by Patel in the F&O segment. The balance Rs.1,00,00,000 was allegedly obtained from the Grishma's account. This recording is erroneous and contrary to the material on record.

29. A perusal of Grishma's bank account with Axis Bank shows that the amount of Rs. 85,00,000/- and Rs. 25,00,000/- was received from Patel by way of two cheques dated October 5, 2011 and October 4, 2011. The same were deposited and credited in The Grishma's bank account on October 13, 2011. On the same day i.e. on October 13, 2011 based on the instructions of Patel the entire amount of Rs. 1,1 0,00,000/- was reversed and paid back to the client against his ledger credit. Therefore, the question of Grishma using this amount to make good Zala's margin obligations does not arise. A copy of The Grishm 's bank statements which were already provided to SEBI for the account Nos. 0040 I 0200394253- NSE F & 0 Client Account, 0040 I 0200394260- NSE Cash Segment Client Account) and 0040 I 0200394284- BSE Cash Segment Client Account are collectively annexed as "Annexure D".

30 Further, a perusal of Patel 's ledger account for all the three segment i.e. BSE Cash, NSE Cash and NSE Derivative Segment on October 1 3, 2011 at the end of the day and on the start of trading on October 14, 2011 confirms the debit balance of Rs 16,52,909.76. Copies of the said ledger account for the three segments are annexed as "Annexure E". Therefore, the question of utilizing any funds as a result of Patel's trades in the F&O segment is baseless and inconceivable in view of the huge outstanding debit position in the ledge account. The amount of Rs. 1,14,00,000 mentioned in the IR that the Noticee had obtained from Patel was in fact in Grishma's own F&O settlement account maintained with Axis Bank and not in the account of Patel. Subsequently, these funds were transferred to The Grishma's current account in Axis Bank and thereon to the settlement account of BSE and NSE Cash segment in Axis Bank for the purpose of payment of the margin requirement. It is to be noted that this is a normal practice amongst other brokers to use the amount lying in the pool account for making good the margin calls of the stock exchange. Therefore, the allegation that Grishma used Patel 's funds for the purpose of making good the margin requirement is untenable. A copy of Patel 's ledger account, Grishma's bank account with Axis Bank is collectively annexed as "Annexure F".

31. The IR records that out of the sum of Rs 2,00,00,000 transferred to the Clearing Corporation on October 17, 2011, Rs 50,00,000, Rs 76,00,000 and Rs 74,00,000 was obtained from Patel who in turn obtained these funds from Vanraj Kahor and the same was used for meeting the margin obligations of Zala. This is yet another erroneous allegation. It is submitted that while The Noticee No.1's bank account does show that an amount of Rs. 2,00,00,000/- was received from Patel on October I5, 2011, the same was reversed and repaid to Patel on October 1 7, 2011 itself and was not utilized to make good the margin requirements. A copy of Grishma's bank account statement for the account 0040 I 0200394260- NSE Cash Segment Client Account is annexed hereto and marked as "Annexure G"

Alleged use of securities of Patel, Bhatt and Goenka for Zala's trades

32. The IR records that out of the sum of Rs 2,53,97,640 which Grishma had brought as margin deposit on October 14, 2011 on the NSE in the form of securities, Rs. 2,46,00,000 was in the form of 1.5 lakh shares of Kwality Diary Limited ("Kwality") which was received by Grishma from Patel and the same was used clear the shortfall in margin. This allegation is incorrect and untenable.

33. It is submitted that the 1 .5 lakh shares of Kwality was transferred by Patel to Grishma in its margin specific demat account as margin for trades of Patel in the BSE Cash, NSF. Cash and NSE derivative segments. Grishma utilized these as margin in both the segments. Therefore, the allegation that Grishma used the securities of Patel to meet Zala's margin obligations is factually incorrect.

34. Further, the SCN alleges that securities worth Rs 66,00,000 of Patel, Goenka and Bhatt were used for meeting the margin shortfall for the losses incurred by Zala on the BSE. It is alleged that shares of Shasun Pharmaceuticals worth around Rs 17,22,00,000 and Rs. 13,53,00,000 of Grishma's clients Patel and Bhatt respectively and 66,697 shares of DB Realty Ltd received from Goenka worth Rs. 35,9 I ,633.45 were used toward s funding the margin requirement for Zala's trades on the BSE.

35. Grishma respectfully submits that the allegations are erroneous and contrived. The shares pledged were withdrawn pursuant to the instructions of Grishma's client to balance the exposure between cash and securities, which a broker is required to maintain, and this was not done with an intention to meet the margin requirement of Zala.

36. *Further, with regard to the finding in the IR that 28,000 shares of Shasun Pharmaceuticals were obtained from Patel and 22,000 shares of Shasun Pharmaceuticals were obtained from Bhatt for the purpose of meeting margin requirement of the Zala, it is respectfully submitted that there shares were received on April 29, 2011 to November 12, 201I, for balancing the exposure limit between cash and securities which a broker is required to maintain and in order to settle outstanding positions which these clients had in respect of their trades. The Noticees submit that these transactions had nothing whatsoever to do with Zala's trades in the TPL scrip.*

37. *Similarly, the 66,697 shares of DB Realty Ltd. received from Goenka were provided in order to clear outstand ing positions which Goenka had with Grishma in respect of his trades. "Annexure H". Thus it is evident and irrefutable that the Noticees did not use cash or securities from other clients towards meeting the margin requirements for Zala's trades.*

Alleged use of funds of The Noticee No.1 and Mihir Ghelani

38. *The SCN alleges that Grishma has used funds from its own F&O account, current account as well as funds received from its CEO, Mr Mihir Ghelani, for meeting margin requirements for the losses incurred by Zala in the scrip of TPL.*

39. *With reference to the allegation in the SCN that Mihir Ghelani, the CEO/Compliance Officer of Grishma transferred a sum of Rs. 2,20,00,000 (Rupees Two Crore and Twenty Lakhs) to Grishma's account and the same was used for meeting the margin requirements for the losses occurred by Zala in the scrip of Zala, the Noticees submits that the allegation is baseless. The bank account statement of Grishma shows that the sum of Rs. 2,20,00,000 was transferred by Grishma Intermediaries Private Limited. ("Grishma Intermediaries"). The said sum of Rs. 2,20,00,000 was paid by Mr. Mihir Ghelani to Grishma Intermediaries towards his margin dues for his trades in commodities towards his debit balance as also margin call for his trades in gold and silver futures in the MCX, arising out of his trades in gold and silver futures in the MCX.*

40. The Noticee submits that value of Mr Mihir Ghelani 's futures trades in gold and silver on October 14, 2011 and October 17, 2011 was Rs 96,63,060 and Rs 80,14,410, respectively. The aggregate value of Mr Mihir Ghelani 's trades on October 14, 2011 and October 17, 2011 was Rs 1 ,76,77,470. It is pertinent to note that October 15, 2011 and October 16, 2011 fell on Saturday and Sunday. The contract notes issued by Grishma Intermediaries to Mr Mihir Ghelani are annexed hereto and marked as "Annexure I."

41. Accordingly, the sum of 2,20,00,000 was paid in order to meet margin requirements arising out the aforesaid trades. This margin requirement is in consonance with circulars issued by MCX itself, stipulating the conditions, including applicable margins, for trading in gold and silver. The MCX has issued circulars stipulating the conditions for trading in gold and silver futures including the applicable margins. The MCX by way of circulars dated April 5, 20 II (MCX/T&S/112/2011) and September 4, 2010 (MCX/ T&S/315/2010) with reference to gold and silver futures inter alia provided that: (i) a delivery period margin of 25% may be applicable and (ii) any default in payment of margins would attract a penalty of 6.5% of the delivery order rate. Copies of the aforesaid circulars issued by the MCX are annexed as "Annexure J".

42. A 'delivery period margin ' is applicable where a contract enters the delivery period at the end of its life cycle. Such margin is applicable on all outstanding buy and sales side and continues up to the settlement of delivery obligation. Accordingly, on the basis of Mihir Ghelani 's outstanding sales posit ion, approximately 25% of the same was payable as a delivery period margin. The failure to pay the margin would attract a monetary penalty. In this regard, the regulations of the MCX inter alia state:

> *"The client shall pay applicable initial margins, withholding margins, special margins or such other margins as are considered necessary by the Member or the Exchange or as may be directed by FMC from time to time as applicable to the segment(s) in which the client trades. The Member is permitted in its sole and absolute discretion to collect additional margins (even though not required bv the Exchange or FMC) and the client shall be obliged to pav such margins within the stipulated time."(Emphasis Supplied).*

43. The MCX has also issued several circulars requiring members to collect adequate margins failing which the trading member would be subject to monetary penalties.

Therefore, the payment of Rs. 2,20,000,00 to Grishma Intermediaries was towards meeting margin obligations of Mihir Ghelani and the inference in SCN that the said amount was transferred to meet Zala's margin obligations of Zala is absurd and untenable. Accordingly, the question of providing any misleading information to SEBI cannot and does not arise. Therefore, the question of the Noticee contravening the provisions of Section 12A of the SEBI Act and the PFUTP Regulations is untenable.

44. Therefore, it is clear that the table indicating the "Ultimate source of funds" at page 4 of the SCN is entirely erroneous, a figment of SEBI's imagination and is not supported by any material on record. On the contrary, the bank account statements and other documentary evidence adduced demonstrate that none of these amounts were obtained from third parties including Patel or other clients or from Mihir Ghelani.

Noticee did not execute synchronized trades on behalf of Zala

45. The SCN alleges that Grishma executed synchronized trades on behalf of Zala and have provided instances of trades where purportedly, there was synchronized trading as buy orders were placed a few seconds after sell orders were placed at the same price. The Noticees submit that the trades it executed on behalf of Zala were based on Zala's instructions alone and the order price and order quantity were entirely based on these instructions. The Noticees submit that these allegations are baseless as the trades in the scrip of TPL were not proprietary trades but trades executed on behalf of the client wherein there was no contact or communication between the Noticees and the counterparty and further, the orders were matched in accordance with the order matching mechanism of the stock exchange. The Noticees submit that SEBI has adduced no evidence to establish that Grishma was aware of the fact that the trades were synchronized and such evidence is an essential pre-requisite for a charge of synchronized trade to be made.

46. In this regard, reliance is placed on the decision of the Hon 'ble Securities Appellate Tribunal in Networth Stock Braking Ltd. v. SEBI, (Appeal No. 5 of 2012), wherein it was stated that " Merely because a trade has matched both in regard to price and quantity and that the buy and sell orders were placed at the same time it cannot lead to the *conclusion that the broker had knowledge of fictitious trades being executed between the buyer and the seller."*

47. *Notably, there is not a whisper in the SCN or the IR that establishes any connection between the Noticees and the counterparties or any evidence as to the Noticees' knowledge of any circular or synchronized trading being undertaken by its own clients.*

48. *Lastly, it is submitted that any adverse order imposing a penalty for an alleged marg in non-collection issue, would be contrary to precedent and SEBI 's own stance in the matter. In the case of Geojit BNP Paribas Financial Services Limited and Networth Stock Braking Limited where a set of clients dealt in shares of RTS Power Corporation Limited and other securities without the broker collecting margins from the clients, despite the annual income shown by such clients being minuscule, SEBI took a positive view of the broker in fact paying from his pocket when the client defaulted, and ruled that the brokers could merely have been more careful in allowing huge exposure to the client. Copies of these orders are annexed as Annexure K.*

49. *In short, although in these cases the client actually defaulted and the broker paid from his pocket, an adjudicating officer of SEBI took a benign view of the matter. In the instant case, each of the cheques issued by Zala was indeed honoured unlike in the cases cited above where even the cheques dishonoured. There was no uncovered risk that was actually occasioned by the trading. There was in fact no occasion for The Noticee No.1 or the other Noticees to pay for the client's obligations from its pocket owing to any default by the client unlike in the two cases referred to above. Therefore, it is submitted in light of the above, no adverse order ought to be passed and the present proceedings ought to be dropped.*

Individual Noticees cannot be held liable

50. *Strictly without prejudice to the submissions above, it is submitted that the SCN does not identify precisely and specifically identify the role played by each one of the individual Noticees in the alleged violations by Grishma and has sought to make them liable merely on the grounds that they are directors of Grishma. It is respectfully submitted that in a catena of decisions, the Hon'ble Supreme Court has held that a director cannot ipso facto be held responsible for the alleged violations of a company merely because he is a director. The SCN does not even seek to connect the alleged violations of Grishma with the role played by each*

director and does it even aver that the individual Noticees were in charge and responsible for the day to day business of Grishma, a pre-requisite for any proceedings to be initiated against directors of a company. Therefore, it is submitted that on this ground alone, the proceedings against the individual Noticees ought to be dropped.

Conclusion

51. The SCN seeks to place the Noticees at the centre or the "focal point" in the fraud that was purportedly played on investors on October 14, 2011 without adducing any evidence to demonstrate what allegedly wrongful profits, if any, was made by Noticees on account of such trade or any consideration received by them for funding such trades. It is a matter of record that Zala suffered a loss of over Rs. 9 crores as a result of his trades in the shares of TPL on October 14, 20 II. Without prejudice to the Noticee's submissions above, there is a conspicuous silence in the findings of the SCN and IR as to why a broker would seek to fund such losses without any potential or actual ga in. The Noticees wish to underscore the fact that the only role it played in Zala's trades in the shares of TPL was in its capacity as a stock broker and in doing so, it has not violated any provisions of the law.

52. Accordingly, in light of the above submissions it is submitted that the allegations against the Noticee in the SCN are baseless and without substance and no adverse order at all is called for.

53. In any event and strictly without prejudice to the submissions above, Grishma has already been barred from trading in its proprietary account for a period of five years and the restraints in respect of its stock broking business have been continuing for two years, pursuant to the order dated July 31, 20 13 passed by the Whole Time Member of SEBI. Further, the individual Noticees have been barred from trading in the securities market for a period of five years. The Noticees have already been subject to irreparable, harm and injury and visiting them with further adverse consequences would be unfair, unjust and arbitrary.

54. Therefore and in light of the factors enumerated in Section 15J of the SEBI Act, no further adverse consequences need be visited on the Noticees and the adjudication proceedings may be dropped forthwith without any adverse order or finding.

55. The Noticees submit that an opportunity of a personal hearing may be granted m order to explain the matter in perspective.

14. Subsequently, vide a letter dated September 28, 2015, the Noticees were informed of the change in the AO in the present proceedings and the Noticees were asked to provide additional submissions if any, by October 5, 2015. This letter was responded to vide the letter of the Noticees dated October 19, 2015, wherein the Noticees reiterated that they have not been provided full inspection and also sought cross examination of any person whose statement has been recorded and relied upon in the present proceedings. The then AO vide letter dated July 12, 2016, responded to the demand for inspection of the Noticees by stating that inspection has already been availed by them on October 9, 2013 and November 18, 2013. Therefore, an opportunity of personal hearing was provided to the Noticees on August 5, 2016. Vide letter dated August 3, 2016, the Noticees again demanded that the documents demanded by them ought to be first provided following which they shall file their detailed reply and a hearing can only be attended subsequent to that. The then AO vide letter dated August 8, 2016, informed the Noticees that all documents that are to be relied upon in the present proceedings have already been provided to the Noticees and another opportunity of personal hearing was provided on September 2, 2016. Vide an email dated September 2, 2016, the then AO was informed by the Noticees that there was a death in the family of their Director and a rescheduling of the hearing was sought on that ground. The Noticees were accommodated and another opportunity of personal hearing was provided to them on September 23, 2016. The said hearing was again sought to be rescheduled vide an email dated September 23, 2016 on the ground of sudden medical emergency on the part of the appearing counsel for the

Noticees and the hearing was rescheduled on October 7, 2016. Again on the said date, i.e., October 7, 2016, another adjournment was sought on the ground of non-availability of the Counsel for the Noticees owing to a matter been listed before the Hon'ble SAT on the said date and the hearing was sought to be scheduled on a date between October 17-19, 2016. Accordingly, accommodation was granted to the Noticees and the hearing was scheduled on October 17, 2016. During the hearing on October 17, 2016, the authorised representative of the Noticees reiterated the contents of their first reply dated December 24, 2013. It was also submitted on behalf of the Noticees that their appeal against the order dated October 28, 2013 passed by the Hon'ble SAT was admitted by the Hon'ble Supreme Court, granting interim relief. It was undertaken by the Authorised representatives to provide a copy of such order granting interim relief to them along with their reply, which was undertaken to be submitted by November 4, 2016. Vide reply dated November 7, 2016, while largely reiterating the submissions made in their first reply, the Noticees added the following points:

a. *At the outset we state that the present proceedings which were contemplated way back on December 28, 2011 has been proceeded with recently against the Noticees despite the completion of the investigation in the matter purportedly two years prior to the present hearing of the matter. Not only has SEBI taken all possible action against the Noticees, but the present proceedings in yet another stream of action proposed by SEBI which perse is gravely prejudicial to the interest of the Noticees and does not in any manner serve any fruitful purpose.*

b. *Further, as explained during the personal hearing, right from December 28, 2011, SEBI was purportedly aware of the entire matter and had explained the role played by various entities in the Chart presented in the Ex-parte Order which forms the basis of all the subsequent proceedings against several entities. It may be seen that the name of the Noticees were not even mentioned in the said Chart. Please see page No.51 and 68 of the Ex-parte Order. No action has been taken by SEBI against any QIBs in the present* *matter who allegedly have been the beneficiary of the entire fraud allegedly played by several entities. If the "giving" of an exit is an offence according to SEBI, the persons "taking" the exit also ought to have been acted against. Not even a whisper of any action or a warning is mentioned in the Orders.*

c. *It is a recorded fact which SEBI has been categorical in observing that it was Tijaria Polypipes Limited ("TPL") which funded Zala's trades. The role of The Noticee No.1 Securities was restricted to acting as a broker and had no knowledge of any proposed foul play or alleged fraud by any entities in the market. There is no evidence on record to show that Grishma Securities had any links with TPL or that it was aware of the diversion of funds by TPL.*

d. *We respectfully submit that the edifice of the present proceedings against the Noticee is that the Noticee as a stock broker allegedly failed to collect the margin in advance and had there been a default by Zala, there would have been a massive breakdown on the exchanges. This hypothesis is the basis of the proceedings against the Noticees. Interestingly, when SEBI is aware of the widely prevalent market practice regarding the acceptance of cheque as margin and corresponding entry in the ledgers and books of account, no clarification or circular on the grey area is issued by SEBI till date. SEBI is also conscious and aware of this widely prevalent practice m the securities market and there is no gainsaying to the fact that there cannot be any stockbroker who has a different position in this regard. SEBI, however has chosen to select the Noticee knowing very well that the mercantile system of recording in the ledger is a widely accepted practice.*

15. Subsequent to the appointment of the undersigned as the AO in the present case, vide a letter dated October 26, 2020, an opportunity of personal hearing was provided to the Noticees on November 24, 2020. In response thereto, vide an email dated November 12, 2020, the Noticees sought a copy of the SCN dated August 30, 2013, which was duly provided vide a return email dated November 13, 2020. Thereafter, vide an email dated November 20, 2020, the Advocates for the Noticees sought an adjournment of the hearing on the ground that the Counsel for the Noticees was tested positive for COVID-19 and to reschedule the hearing on any date after December 5, 2020. Accordingly, the hearing was rescheduled on December 7, 2020, which was

intimated to the Noticees vide an email of even date. Therafter, vide an email dated December 5, 2020, the Advocates for the Noticee sought another adjournment on the ground that the Counsel for the Noticees had not fully recovered from COVID-19 and to reschedule the matter after two weeks. Vide an email dated December 7, 2020, the Noticees were provided the last and final opportunity of personal hearing on December 15, 2020. The said hearing was attended by the Advocates for the Noticees through webex online video conference. Submissions were made with regard to the charges in the SCN and additional submissions were sought to be made for which ten days therefrom were granted to the Noticees. Vide an undated reply (received on December 30, 2020) additional written submissions were made on behalf of the Noticees, relevant contents whereof are summarised herein below:

a) It has been alleged that the present case pertains to a certain transaction dated back to 2011. Pursuant to this, SEBI issued the captioned Show Cause Notice ("SCN") in 2013. There was no hearing granted to the Noticees till 2016 till a new AO was appointed. In the year 2016, the Noticees were given an opportunity of hearing in July 2016 and the Noticees had appeared before the AO and made additional submissions vide letter dated November 7, 2016. It was submitted that the present notice dated October 26, 2020 regarding the hearing on December 15, 2020 was issued after an inordinate delay of 7 years. SEBI has failed to provide any cogent reasons for such inordinate delay in concluding the proceedings and issuance of the present Notice fixing Hearing dated 26th October, 2020. Thus, there has been inordinate delay in issuing the present hearing notice, which vitiates the entire proceedings.

b) It has been alleged that there has been a multiplicity of the proceedings on the same cause of action against the Noticees inasmuch as separate proceedings under section 11/11B of the SEBI Act and under SEBI (Intermediaries Regulations) have been initiated. Therefore, the present proceedings under Chapter VI A of the SEBI Act is not tenable and the present proceedings have to be dropped on this reason.

c) It has been alleged that SEBI had issued a Notice of hearing on October 26, 2016 in the captioned SCN; thereby granting the Noticees, a 'final' opportunity of personal hearing on October 7, 2016. This hearing was attended by the advocates of the Noticees on October 17, 2016 and SEBI had provided time to file additional reply by November 4, 2016. In due compliance of the above, the Noticees filed the additional reply on November 7, 2016. However, despite conclusion of the hearing of the captioned SCN on October 17, 2016, the Noticee received another Notice of hearing dated October 26, 2020 whereby the learned AO had scheduled a hearing on December 15, 2020. This notice of hearing dated October 26, 2020 was issued after a period 7 years from the date of SCN. Moreover, this notice for another round of hearing under the captioned SCN is issued after a period of 4 years from the date of last hearing without citing any reason whatsoever. Therefore, it was alleged that vide the hearing notice dated October 26, 2020, a concluded proceeding has been reopened.

d) Additionally, the points submitted in their first reply was reiterated by the Noticees.

16. Considering the facts narrated above, I am of the view that replies/ written submissions in response to the SCN have already been filed and opportunities of personal hearing have been provided and availed, principles of natural justice have been complied with.

17. For the purposes of the present proceedings, I shall take into consideration the submissions made by the Noticee during the proceedings during the present adjudication proceedings and also the submissions made on behalf of the Noticee before the Hon'ble Securities Appellate Tribunal ("**SAT**") in Appeal No. 151 of 2013 (decided on September 19, 2016), in so far as they relate to the present case as brought out in the SCN.

FINDINGS AND OBSERVATIONS

18. I have perused the SCN and the reply/ written submissions of the Noticees. Before dealing with the merits of the present case, I find that certain preliminary issues raised by the Noticees, need to be settled, which are placed herein below:

i. Can the present adjudication proceedings be continued during the pendency of the Civil Appeal No. 8121 of 2014 before the Hon'ble Supreme Court of India, filed by the Noticees under section 15Z of SEBI Act, 1992, challenging the order of the Hon'ble SAT dated October 28, 2013?

ii. Does the present adjudication proceeding stand vitiated by the "*inordinate delay*" in issuing the hearing notice dated October 26, 2020, inasmuch as the same "reopens concluded proceedings" as claimed by the Noticees?

iii. Does the present adjudication proceeding stand vitiated as it deals with the same cause of action that has already been the subject matter of another separate proceeding under section 11/11B of the SEBI Act?

19. With respect to the issue at point (i) in the immediately preceding paragraph, I have perused all the orders of the Hon'ble Supreme Court in the said Civil Appeal No. 8121 of 2014, as available on the website of the Hon'ble Supreme Court. I find that in none of the orders till date, did the Hon'ble Supreme Court order any stay on the impugned order of the Hon'ble SAT dated October 28, 2013, nor has stayed any of the proceedings of SEBI. On the contrary, vide order dated August 10, 2018, the Hon'ble Supreme Court has ordered as reproduced herein below:

> *"I.A. No. 97165 of 2018 <u>(Application for stay) is dismissed</u>.*
> *<u>However, the SEBI proceedings may culminate in an order which shall not be enforced without prior leave to this Court."</u>* [emphasis supplied]

In view of the aforesaid order of the Hon'ble Apex Court, I hold that there is no bar on the continuation of the present adjudication proceedings.

20. With respect to the issue at point (ii) in paragraph no. 18 of this order, I note that pursuant to the change of the AO in the present proceedings and subsequent to the appointment of the undersigned as the AO, an opportunity of personal hearing was provided to the Noticees vide the notice of hearing dated October 26, 2020, in compliance with Rule 4 (3)-(5) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. Since the Noticees were not heard by the undersigned, an opportunity of personal hearing was provided to the Noticees in order to comply with the principles of natural justice which *inter alia* lays down that an adjudicating authority must himself first hear an entity prior to passing of any order with respect to such entity. Also, I note that the Noticees have not been able to demonstrate that any prejudice has been caused to them due to the second hearing provided to them on December 15, 2020 in addition to the hearing provided earlier by the then AO. On the contrary, the Noticees were provided an additional opportunity to present their case before the AO through the hearing held on December 15, 2020. In the absence of any prejudice caused due to the second hearing provided on December 15, 2020, I see no reasons as to how the same has vitiated the present proceedings as alleged or at all. In this context, I refer to the judgment of the Hon'ble SAT in *Pooja Vinay Jain Vs SEBI* [SAT Appeal No. 152 of 2019], wherein it has inter alia been held as under:

> *"11. On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under :-*

"7. In Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR 6 (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

12. The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon *the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.*

13. In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time."

In view of what has been stated herein above, I hold that the grant of another hearing to the Noticees on December 15, 2020, in no way has caused any prejudice to the interests of the Noticees and on the contrary it had provided an additional opportunity to the Noticees to present their case. Therefore, the grant of the said hearing (followed by another opportunity to make additional written submissions) subsequent to a hearing already provided to the Noticees on October 17, 2016, by the then AO, has in no possible manner vitiated or prejudiced the present proceedings.

21. With respect to the issue at point (iii) in paragraph no. 18 of this order, I note that it is an established law that for a single cause of action, proceedings under both Chapter VI A of the SEBI Act as well as under the sections 11, 11B of the SEBI Act can be evoked by SEBI, as the these are two separate proceedings resulting in two different consequences for an entity. While the directions which may be passed in a proceeding under section 11/11B of the SEBI Act are preventive and/or restitutive in nature, a

proceeding under chapter VI A of the SEBI Act (adjudication proceeding) is penal (civil) in nature as it results into monetary penalties if the charge(s) against an entity stand established. At this juncture, I rely on judgement of the Hon'ble High Court of Bombay in the case of *SEBI Vs. Cabot International Capital Corporation* (2004) wherein it was observed that:

> *"the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceeding. The penalty leviable under this Chapter or under these sections is penalty in cases of default or failure of statutory obligation or in other words, breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the regulations, there is not element of criminal offence or punishment as contemplated under criminal proceedings."*

Further, in *Dushyant N. Dalal vs SEBI* [SAT Appeal No. 184 of 2011], the Hon'ble SAT had *inter alia* held that:

> *"19. <u>The Board has been authorized to conduct multiple proceedings in respect of a wrong doing in a parallel manner.</u> But each proceeding is independent by itself and a competent authority has to come to a well reasoned out conclusion after proper application of mind to the facts and legal issues."*

I therefore hold that there is no legal infirmity on the part of the SEBI in carrying out the present adjudication proceedings for a cause of action in which another separate proceeding under sections 11/11B of the SEBI Act has already been initiated and/or concluded.

22. I now proceed to deal with the merits of the case. In this regard, I note that the primary charge against the Noticees is that they had enabled Zala to trade in the scrip of TPL

way more than his financial capacities permitted. The Noticees had allowed to trade Zala on the very first day of opening of the IPO of TPL in question on October 14, 2011 and he had suffered a loss of Rs. 9.95 crore. It was further alleged that no margin money was collected in advance by the Noticees from Zala, thereby exposing the whole system of securities trading on the stock exchanges, to a grave risk. The Noticees did not hold any fund or security of Zala by way of margin. It was observed that 18 post- dated cheques, stated to have been received by the Noticees on October 13, 2011, were realized only between October 15 and 24, 2011. In case of any default or dishonor of the cheque, the Noticee No.1 was not covered in any way for the enormous risk arising out of such trades by Zala. It was further alleged that even circular dated February 23, 2005, provides that obtaining of margins is an important element of Risk Management System. Similarly, the said circular also prohibits a broker from using the securities or funds of a client for the purpose of some other client, an act alleged to have been committed by the Noticees.

23. The Noticees have *inter alia* submitted that the cheques amounting to Rs.3.65 Crores towards margin amount, were received from Zala on October 13, 2011 and the date of receipt of cheques from Zala was recorded in the client ledger as per the extant mercantile practices. Further, it was argued that this is also in accordance with circulars issued by SEBI. SEBI's Circular dated August 27, 2003, permits collection of margin amounts by cheque. The cheques were deposited on October 15, 2011 and duly honored, prior to the settlement of Zala 's trades as reflected in The Noticee No.1's bank statement. There is no obligation in law which requires a stock broker receiving margin payments by cheque to record only the actual date of credit of funds in the

client ledger as the date of receipt of margins. Such a requirement is not even envisaged by SEBI. Therefore, the charge that The Noticee No.1 falsified its client ledger by recording therein the date of physical receipt of the cheques and not the date on which the underlying funds were credited in its account, is baseless. The Noticee has further sought to rely on SEBI 's circular dated February 23, 2005 which allows brokers to decide the mode of collection of margin money, thereby also allowing brokers to follow a practice of collecting margin money by means of a postdated cheque. The entire premise of the Noticees' submissions in this regard appears to be that the entire sum of Rs. 3,65,55,000/- was collected by the Noticee No.1 as margin, one day prior to pay in date of Zala's trades that were undertaken on October 14, 2011.

24. On a perusal of the aforesaid Circular of SEBI dated February 23, 2005, I note that while elaborating and streamlining a Comprehensive Risk Management Framework for the cash market, the SEBI circular lays greater importance on advance collection of margin by introducing a more stringent margining structure. In the said Circular explicit exemption from the "upfront" payment of margins is provided only to the institutional investors under Clause 7. This explicit provisions for exemption of margin requirements would also mean that classes of investors other than those mentioned under such exemption, need to comply with the margin requirements prior to entering into their trades. It is not the case of the Noticees that Zala did ever fall under the said exemptions. From a reading of the aforesaid Circular dated February 23, 2005, I note that the Noticee No.1 was required to pay margin amount viz. VAR, Extreme Loss Margin and Mark to Market (MTM) Margin towards the loss incurred by Zala in the scrip of TPL, on the first day of its listing. Further, nowhere does the said Circular

empower/ allow any broker to allow its client(s) to trade without first collecting the margin money. In fact, the very objective of the said Circular was strengthening of Risk Management System *inter alia* through timely collection of margin. It is admitted that when Zala had traded in the scrip of TPL on October 14, 2011, the Noticee No.1 was not holding funds or securities of Zala by way of margin. According to the Noticee No. 1, Zala had provided on October 13, 2011, 18 post-dated cheques, which were realized on October 15, 17, 19, 20, 21, 22 and 24, 2011. It cannot be disputed that had these cheques been dishonoured, the Noticee No.1 would have had no margin with it to cover for the significant risk that could have been caused by the trades of Zala. Admittedly, Zala was a walk-in client. From the point of view of reasonableness, it is indeed surprising that a walk-in client with an annual income below 5 Lakhs, trading through the Noticee No.1 only from October 14, 2011 (irrespective of whether TPL was the first scrip in which Zala had traded through the Noticee No.1, it is an admitted fact that it had traded for the first time on October 14, 2011, through the Noticee No.1) was allowed to trade to such an extent so as to incur a loss nearing to Rs. 10 Crore without collection of the margin money *prior* to the huge trades that Zala was allowed to enter into. It is not disputed by the Noticees that they had recorded the date of receipt of the post-dated cheques from Zala as the date of receipt of the margin funds. Thus to any person, the client ledger of Zala maintained by the Noticee No.1 would have given the false impression that the margin funds were *actually* received by the latter a day prior to the date of the trades entered into by Zala. Therefore, it was only a book entry that was made in the ledger maintained by the Noticee No.1 without the actual receipt of necessary funds from its client, Zala. I therefore conclude that margin amount was not available with the Noticee No. 1 prior to and for the trades entered into by Zala in the scrip of TPL on October 14, 2011, in violation of the aforesaid Circular of SEBI dated February 23, 2005, the Brokers Regulations and the SEBI Act. In view of the aforesaid, I find that the charge of manipulation of client ledger and non-collection of adequate margins from a walk-in client prior to the entering of trades by said client, stands established against the Noticees.

25. I now proceed to examine where the funds for the pay-in obligations of Zala was received by the Noticees. In this regard, I note that the SCN at length has alleged that the sources of such funds were persons/ entities other than Zala, ie., the client himself. The Noticees have not disputed the receipt of such funds. However, they have argued that the said funds were received for purposes other than for meeting the obligations of Zala, as alleged in the SCN. The arguments of the Noticees have been reproduced in details in the preceding paragraphs in this order. I also note that the facts and figures supporting the allegation of utilization of funds from different sources to meet the trading obligations of Zala have already been provided to the Noticee along with the SCN in the form of excerpts from the Investigation report relevant to the present issue.

26. I note that the source of funds used by The Noticee No.1 for depositing the margin amount with NSE and BSE towards trading done on behalf of its clients on October 14, 2011, was investigated. For the same, information was sought from NSE, BSE and the respective Clearing Corporations, viz. National Securities Clearing Corporation Ltd. (hereinafter referred to as "**NSCCL**") and Indian Clearing Corporation Ltd. (hereinafter referred to as "**ICCL**"). On a scrutiny of the aforesaid relevant excerpts from the investigation report *inter alia* containing the information provided by BSE,

NSE and their respective clearing Corporations and the submissions of the Noticees in this regard, I note the following:

NSE

a. On October 14, 2011, the client level margin requirement of The Noticee No.1 for the trading done on behalf of its clients in the cash segment of NSE was as follows:

Client name	**VAR & Extreme Loss Margin (in**	**Mark to Market margin (in Rs.)**	**Total Margin requirement (in Rs.)**
Shri Chetan Dave	0.00	40,05,681.70	40,05,681.70
Shri Jivrai Zala	2,87,44,575.20	6,07,00,091.50	8,94,44,666.50
Total			**9,34,50,348.20**

Therefore, the total margin requirement of the Noticee No.1 for trades on behalf of its clients on NSE on October 14, 2011, was RS. 9,34,50,348.20 (out of which Rs. 8,94,44,666.50 was for the trades undertaken by Zala). As on October 13, 2011, in addition to the base minimum capital of Rs. 1 Crore in cash and Rs. 25 Lakhs as Bank Guarantee, only Rs. 7,63,000 was available with NSE towards margin deposit in the form of cash given by the Noticee No.1. The additional margin deposits brought in by The Noticee No.1 as on October 14, 2011, during market hours was as follows:

1	**Cash Deposits**	2,77,63,000.00
2	**Bank Guarantee**	75,00,000.00
3	**Securities**	2,53,97,639.59
	Total	**6,06,60,639.59**

b. Till the end of trading day of October 14, 2011, total margin provided by The Noticee No.1 (excluding the base minimum capital of Rs. 10 Lakhs, which is required to be maintained at all times) was Rs. 7,21,60,639.59. The break-up of the same is given below:

Sr. No.	Particulars	Amount in (Rs.)
1	**Cash Deposits**	2,77,63,000
2	**Bank Guarantee**	1,00,00,000 {25,00,000 + 75,00,000)
3	**Base Minimum Capital**	90,00,000 (1,00,00,000 -10,00,000)
4	**Securities**	2,53,97,639.59
	Total	**7,21,60,639.59**

c. At the end of the trading day on October 14, 2011, the Noticee No.1 had a margin shortfall of Rs. 2,12,89,708.81. NSE received Rs.1.2 Crores at 06:01 p.m. and Rs.7.24 Lakhs at 6:31 p.m. from the Noticee No.1, after market hours on October 14, 2011. There was a shortfall of margin by Rs. 85,64,757.17, due to the trading done by the Noticee No.1 on October 14, 2011 (Settlement No. N 2011196), which was required to be brought in prior to the start of trading on October 17, 2011 (Settlement No. N 2011197), to prevent deactivation of the trading terminals of the Noticee No.1.

b) NSE had informed that Rs. 2 Crores was received by NSCCL from the Noticee No. 1 before the start of the market hours on October 17, 2011. Also, another Rs. 4.5 Crores was received by NSCCL from the Noticee No. 1 at 04:05p.m. i.e. after the start of trading on October 17, 2011, but before the close of trading on October 17, 2011. The funds of Rs. 2 Crores received by NSCCL before the start of the market hours on October 17, 2011, were taken by NSCCL towards clearing the outstanding margin of the Noticee No.1 with respect to the trading done by him in Settlement No. N 2011196. Thereafter, the Noticee No. 1 was allowed to continue trading.

c) The following Table shows the funds transferred to NSCCL by The Noticee No.1 - Current Account (Axis Bank) and the ultimate source of these funds that were earmarked by NSCCL as margin towards Settlement No. N2011196 were from:

Date	**Amount transferred to the Clearing corporation by the broker towards margin (in Rs.)**	**Ultimate source of funds for amount**	
		Amount (in Rs.)	**Name of the Client Account from where funds were transferred**
14/10/2011	2,70,00,000	85,00,000	**Vimal P Patel**
		25,00,000	**Vimal P Patel**

		1,41,00,000	**The Noticee No.1 F&O A/c and around Rs. 1.14 Crore was from the trades of Shri Vimal Patel in F&O segment**
		1,00,00,000	**The Noticee No.1 Securities Pvt. Ltd,**
14/10/2011	7,24,951.64	20,00,000	**Mihir Ghelani**
14/10/2011	1,20,00,000	2,00,00,000	**Mihir Ghelani**
17/10/2011	2,00,00,000	50,00,000	**Vimal P Patel**
		76,00,000	**Vimal P Patel**
		74,00,000	**Vimal P Patel**
	5,97,24,951.64		

d) It is shown from the above that the funds amounting to Rs. 5,97,24,951.64 (provided by the Noticee No.1 towards margin requirement of Zala for his trading in the scrip of TPL on the first day of listing i.e. October 14, 2011), were majorly transferred from the client account of Patel (client of the Noticee No.1) and also partly from Ghelani, the CEO/Compliance Officer of the Noticee No.1. Further, the primary source for the Rs.4.5 Crore transferred from the Noticee No.1's NSE Settlement Account to NSCCL's account on October 17, 2011, were as follows:

Date		Ultimate source of funds

	Amount transferred to the clearing corporation by the broker towards margin (in Rs.)	Amount (in Rs.)	Name of the client account from where funds were transferred
17/10/2011	4,50,00,000	8,60,000	Jivraj Zala
		44,00,000	Jivraj Zala
		70,00,000	Jivraj Zala
		50,00,000	Jivraj Zala
		50,00,000	Jivraj Zala
		1,00,00,000	Jivraj Zala
		1,00,00,000	Jivraj Zala

e) The amount of Rs. 4.5 Crores that was transferred on October 17, 2011 to NSCCL by The Noticee No.1 after the start of market hours, were the funds largely transferred from the bank account of Zala to the Client Account of the Noticee No.1 on October 17, 2011. A perusal of the bank account of Zala with Yes Bank revealed that as on October 14, 2011, the balance in his bank account throughout the day was Rs. 30,000, and it was only on October 15, 2011 that funds of Rs. 1,17,55,000 was received in his Yes Bank account.

f) The bank account of Zala was with Yes Bank whereas the NSE clearing account of the Noticee No.1 was in Axis Bank. Besides, the bank account of The Noticee No.1's other clients viz. Vimal Punjiram Patel ("**Vimal"/ "Patel**") and Shri Vanraj

Kahor ("**Kahor**"), were with Axis Bank itself. It is pertinent to note that Kahor had transferred Rs. 77.50 Lakhs, Rs.75 Lakhs and Rs. 47.50 Lakhs from his bank account to the bank account of Patel on October 15, 2011 and Patel, in turn, transferred Rs. 76 Lakhs, Rs. 74 Lakhs and Rs. 50 Lakhs to his NSE Client Account on the same date. These funds, in turn, *inter alia* formed part of the Rs. 2 Crores that were transferred on October 17, 2011 by the Noticee No.1 to the Clearing Corporation, to tide over the shortfall in margin before the opening of trading hours on October 17, 2011. In this context, the Noticees while admitting the receipt of Rs. 2 Crore from Patel on October 15, 2011, they have submitted that the said amount was reversed and repaid to Patel on October 17, 2011 itself and was not utilized to make good the margin requirements. In this regard, I note that the amount was required to meet margin requirements for the trades of Zala before the opening of trading hours on October 17, 2011 and could have been repaid after such requirement was met with. Further, the reasons for which a hefty amount of Rs. 2 Crore was transferred by Patel to the Noticee No. 1 on October 15, 2011 and the reason for repaying it on October 17, 2011 to Patel, has not been explained by the Noticees in their replies. There is no evidence submitted by the Noticees to support the argument that the funds of Rs. 2 Crore received from and repaid to Patel were for any bona fide transactional needs of Patel during the period October 15- October 17, 2011.

g) Further, Rs. 2,53,97,640 was brought by the Noticee No.1 towards margin deposit on October 14, 2011, in NSE, in the form of securities pledged in favour of NSCCL. The break- up of the margin brought by The Noticee No.1 in the form of securities is as follows:

SYMBOL	Quantitv	Net Value* ( )
BHARTIARTL	500	1,71,078.8
GTOFFSHORE	500	52,604.2
KWALITY	150000	2,46,84,543
PRESTIGE	2500	2,33,690.2
RELIANCE	190	1,45,946.3
TVSMOTOR	2000	1,09,777.2
TOTAL		2,53,97,640

h) From the above, out of Rs. 2.53 Crores margin deposited by the Noticee No.1 with NSCCL in the form of securities, Rs. 2.46 Crores was in the form of 1.5 Lakhs shares of Kwality Dairy Ltd **("Kwality**"). It was observed that the said shares had come from the demat account of the Noticee No.1 (A/c no. IN30133020879906 held with NSDL). A perusal of the said demat account of the Noticee No.1 revealed that on October 13, 2011, 1.5 Lakhs shares of Kwality Dairy Ltd. were pledged towards margin requirement. On the same day, the said account of the Noticee No.1 had received the same 1.5 Lakhs shares of Kwality Dairy Ltd. from demat A/ c no. 1202910000002459 with CDSL, which was also found to be in the name of the Noticee No.1. A perusal of the said demat account of the Noticee No.1 with CDSL revealed that the Noticee No.1 had received the said 1.5 Lakhs shares of Kwality Dairy Ltd. ("**Kwality**") from Patel in the form of off-market credit. No contradictory factual position in this context was provided by the Noticees with adequate supporting evidence. The

Noticees in this regard has submitted that 1.5 lakh shares of Kwality was transferred by Patel to the Noticee No.1 in its margin specific demat account as margin for trades of Patel in the BSE Cash, NSE Cash and NSE derivative segments and these were utilized as margin in both the segments. I find that this submission has not been backed with any supporting evidence of utilisation of these securities for the margin obligations of Patel.

i) In view of the above, I find that funds and securities of Patel were used by the Noticee No. 1 to tide over the margin shortfall for trading done by Zala on October 14, 2011. I find that the Noticee No.1 also used shares worth 2.46 Crores of Patel for meeting the margin shortfall of Zala in the scrip of TPL on October 14, 2011 i.e. the first day of listing.

BSE: As per the information provided by BSE, it is noted that-

a) The client level margin requirement of the Noticee No.1 for the trading done by it on October 14, 2011, in cash segment of BSE, is given below:

Client name	VAR & Extreme loss Margin (in Rs.)	Mark to Market Margin (in Rs.)	Total Margin requirement in Rs.)
Shri Chelan Dave	8,93,670	36,64,242	4557912
Shri Jivrai Zala	0	3,20,38,992	3,20,38,992

G001	12816	0	12816
Vimal Patel	30,20,464	8,580	3029044
	39,26,950	**3,57,11,814**	**3,96,38,764**

b) Therefore, the total margin requirement of the Noticee No.1 for its trades on October 14, 2011 was Rs. 3.96 Crores, out of which the MTM margin was Rs. 3.57 Crores. The margin requirement for the trades of Zala was Rs. 3.2 Crores, which was for the trades in the scrip of TPL. The margin deposits brought in by the Noticee No.1 as on October 13, 2011, during market hours as given by BSE is provided below:

Sr. No.	**Particulars**	**Amount (in Rs.)**
1	Cash Deposits	1,25,000
2	Bank Guarantee	2,15,00,000
3	Securities	1,27,48,297
	Total	**3,43,73,297**

c) The total deposits in the form of cash deposits and bank guarantee of Rs. 2,16,25,000, are only eligible as margin for market to market losses and not the margin in the form of securities. Therefore, there was a margin requirement of Rs.1,40,86,814 for MTM losses on October 14, 2011. The Noticee No.1 had deposited an amount of Rs. 1,10,00,000 on October 14, 2011 towards margin. A perusal of the amounts paid by the Noticee No.1 to ICCL (clearing corporation of BSE) on October 14, 2011 reveals the following:

Date	Amount transferred to the clearing corporation by the broker towards margin (in Rs.)	Ultimate source of funds for amounts transferred to the clearing corporation	
		Amount (in Rs.)	**Name of the client account from where funds were transferred**
14/10/2011	50,00,000	1,41,00,000	The Noticee No.1 Securities Pvt. Ltd. - NSE F&O Settlement A/ c No. 004010200405027 Axis Bank Ltd.
	50,00,000	1,00,00,000	The Noticee No.1 Securities Pvt. Ltd A/c no. 2321600000064 with DCB
	10,00,000	4,52,956 and 5,34,307	Pay out received
	3586814	2,00,00,000	Mihir Ghelani
	1,45,86,814		

d) For the margin of 1,45,86,814 brought in on October 14, 2011, the Noticee No.1 provided the funds from its own F&O A/ c, current account and also the funds received from Ghelani. From the above table, it is seen that for the 50 Lakhs transferred to ICCL, the credit was received from the Noticee No.1 - NSE F&O Settlement A/ c. A perusal of the NSE F&O Settlement A/ c of the Noticee No.1 (A/ c no. 004010200405027 with Axis Bank Ltd.) revealed that prior to the transfer of Rs. 1,41,00,000 from the said account which was used for meeting the settlement obligation on BSE and NSE, the said account received the following credits:

Sr. No.	Particulars	Amount in (in Rs.)	Description
1	11/10/2011	**81,14,149.70**	**IL&FS Securities Services Ltd.- NSE Derivatives CL**
2	12/10/2011	**1,61,662.00**	**IL&FS Securities Services Ltd.- NSE Derivatives CL**
3	13/10/2011	**58,41,037.35**	**IL&FS Securities Services Ltd.- NSE Derivatives CL**
		1,40,16,849.05	

e) During the course of the investigation, NSE was advised to provide the trading details of the Noticee No.1 in the F&O segment for the said trades. As per the details provided by NSE, the trades by the Noticee No.1 in the NSE F&O segment was in its own account as well for Patel. The break-up of the client wise pay out was obtained from IL&FS Securities Services Ltd. and the same revealed that the pay outs were primarily for the trades of Patel in the F&O segment as detailed below:

Sr. No.	Particulars	Amount of pay out (in Rs.)	MTM pay out of Vimal Patel (in Rs.)	Date of trade
1	11/10/2011	81,14_149.70	69,81,015.00	10/10/2011
2	12/10/2011	1,61,662.00	6,31,776.25	11/10/2011
3	13/10/2011	58,41,037.35	51,25,147.50	12/10/2011
		1,41,16,849.05	**1,27,37,938.75**	

In this context, I find that the reply of the Noticee No.1 that Patel had a debit balance in the F&O segment to be unacceptable as I observe that he was receiving pay-outs from the Noticee No.1 for his trades in the segment.

f) From the above, it is observed that out of 1.41 Crores used for the meeting the margin requirement of Zala, around Rs. 1.27 Crores was for the trades of Patel in the F&O segment on NSE.

g) With regard to the aforesaid securities worth Rs.1,27,48,297 provided as margin (with hair cut), as per the details provided by BSE, the following shares were pledged for the margin on October 13, 2011:

Sr. No.	Name of the securities	No. of shares pledged
1	DB Realty Ltd.	1,37,459
2	Elgi Equipments Ltd.	40,000

3	Shasun Pharmaceuticals Ltd.	50,000

h) As per the details provided by BSE, the shares were pledged from the demat A/ c no. 1202910000002459 of the Noticee No.1. The following table shows the receipt of the said shares in the aforesaid account of the Noticee No.1:

Sr. No.	Particulars	Name of the scrip	No. of shares	Name of the entity from whom received
1	07/10/2011	DB REALTY LIMITED-EQ	66,697	Pramod K. Goenka
2	13/10/2011	DB REALTY LIMITED-EQ	70,462	IL&FS SeClll'ities Services Ltd
3	13/10/2011	SHASUN PHARMA	50,000	IL&FS Securities Services Limited
4	13/10/2011	ELGI EQUIPMENTS	40,000	IL&FS Securities Services Limited

i) IL&FS Securities Services Ltd., the clearing member of the Noticee No.1 in the F&O segment, informed SEBI that the abovementioned shares were returned to The Noticee No.1 as it had made a request vide letter dated October 12, 2011, for IL&FS Securities Services Ltd. to withdraw the abovementioned shares placed by it, as collateral on the Derivatives segment of NSE. The shares so withdrawn were pledged with the clearing corporation of BSE on

October 13, 2011. The timing of withdrawal of shares pledged with IL&FS is very important as it shows pre-planning on the part of the Noticee No.1 in respect of trading by Zala in the scrip of TPL on the listing day, knowing well that the trading will result in losses, which will require additional margins to be provided to the clearing corporations, the Noticee No.1 withdrew the shares pledged by it with its Clearing member in the F&O segment and pledged the said shares with BSE for additional margins. In this regard, the Noticees have submitted that the aforesaid pledged shares were withdrawn pursuant to the instructions of the Noticee No.1's client to balance the exposure between cash and securities, which a broker is required to maintain, and this was not done with an intention to meet the margin requirement of Zala. The Noticees have not submitted any evidence in support of these submissions and therefore, in the absence of any evidence as to the instructions received from the clients for withdrawal of pledged shares, it clearly appears to be a bald statement which cannot be accepted. Further, the timing of the of withdrawal of shares pledged with IL&FS also lends credence to the inference that the said move was clearly made in order to accommodate for the additional margin with BSE.

j) It was noted that the 50,000 shares of Shsaun Pharmaceuticals returned by IL&FS Securities Services Ltd. to the Noticee No. 1 on October 13, 2011, were earlier given by the Noticee No.1 to IL&FS Securities Services Ltd. on September 08, 2011 as margin for its trades in the F&O segment. Out of the said 50,000 shares, 28,000 shares had come from the demat account of Patel and 22,000 shares had come from the demat account of one Shri Priyesh Arvind Bhatt (hereinafter referred to as "**Bhatt**"). The closing price of Shasun Pharmaceuticals on October 12, 2011 was Rs. 61.50 per share. Thus, the Noticee No.1 had used the shares of Shasun Pharmaceuticals worth around Rs. 17.22 Lakhs and Rs.13.53 Lakhs of its clients Patel and Bhatt respectively as margin (totaling to Rs. 30.75 Lakhs) for Zala. With respect to the receipt of these shares from Patel and Bhatt, the Noticees have submitted that the same were received between April 29, 2011 to November 12, 2011, for balancing the exposure limit between cash and securities which a broker is required to maintain and in order to settle outstanding positions which these clients had in respect of their trades. The Noticees have not provided any documents to demonstrate what were the outstanding positions that Patel and Bhatt had on October 13, 2011, with respect to their own trades, whose settlement required the said 50,000 shares.

k) Also, the Noticee No.1 used 66,697 shares of DB Realty Ltd. received from one Shri Pramod K. Goenka (hereinafter referred to as "Goenka") whose value was Rs. 35,91,633.45 taking into consideration closing price of the scrip on October 12, 2011 was Rs. 53.85 per share. According to the Noticees, the said shares were received from Goenka in order to clear the outstanding positions which Goenka had with the Noticee No.1 in respect of his trades in the scrip of ABG Shipyard Limited. In this regard, I note that the Noticees have annexed a copy of a contract note having a bill date of October 14, 2011 showing the shares bought and sold by the Noticee No. 1 on behalf of Goenka. The said note stated that the "*Balance amount due to us Rs. 98,841.00*". The value of the shares of DB Realty Ltd was Rs. 35,91,633.45 as already stated above. Therefore, I fail to see any relevance/relation of the said contract note to the receipt of the aforesaid shares of DB Realty Limited from Goenka.

In view of the above, I find that the Noticee No.1 had *inter alia* used the funds and securities of its 3 clients viz. Patel, Bhatt and Goenka, for meeting the margin requirement of Zala.

27. It is noted that Ghelani had made payments of Rs. 2 Crores and Rs. 20 Lakhs to The Noticee No.1 Intermediaries Pvt. Ltd. (hereinafter referred to as "**Grishma Intermediaries**"). The aforesaid amount was transferred from the account of Grishma Intermediaries to the account of the Noticee No. 1 which was ultimately used for meeting the margin requirements for the losses incurred by Zala in the scrip of TPL on October 14, 2011. In the statement dated May 21, 2012 recorded before SEBI and the letter to SEBI dated August 21, 2012, Ghelani had mentioned that he made the payments to the Noticee No.1 Intermediaries towards the ledger debit and margin call for his trading in commodities. Ghelani was advised to provide documents in support of his contention. Ghelani, vide email dated May 24, 2012, forwarded his ledger statement with the Noticee No.1 Intermediaries in MCX, to SEBI. As per the aforesaid ledger statement, the Noticee No.1 Intermediaries received 2.2 Crores from Ghelani on October 14, 2011. I note that as on October 13, 2011, there was a debit balance of Rs. 64,55,007.18 in the account of Ghelani. After the payments of 2.2 Crores received from Ghelani, the account had a credit balance of 1.55 Crores as on

October 14, 2011. Therefore, I find that the payments totaling 2.2 Crores made by Ghelani was not for clearing the debit balance as after the said payments, his account had a credit balance of over Rs.1.55 Crores. In order to ascertain whether Ghelani had any margin call requirement as claimed by him on October 14, 2011, the trading details of Ghelani in MCX was sought for. The Forwards Market Commission (hereinafter referred to as "FMC"), in reply to SEBI's request to MCX regarding the trade details of Ghelani, vide letter dated June 1, 2012, had forwarded the trade details of Ghelani for the period from October 1, 2011 to November 15, 2011. It was observed that during the aforesaid period, Ghelani started trading only from October 17, 2011 and did not execute any trade before that. Ghelani had traded in gold on October 17 and 18, 2011. From the aforesaid, it is clearly evident that Ghelani did not have a margin call requirement on October 14, 2011, as claimed by him in his statement recorded before SEBI. Also, a perusal of the bank account of Ghelani shows that he had transferred Rs. 2 Crores to the bank account of the Noticee No.1 Intermediaries, Client Account on October 14, 2011 and the same was transferred to the account of the Noticee No.1 Intermediaries. It may be noted that money was not transferred from the account of the Noticee No.1 Intermediaries to MCX on the said date but was instead transferred to the account of the Noticee No.1 Intermediaries and was then further routed to the account of the Noticee No.1 - Current Account and the same was subsequently transferred for meeting the margin requirement of Zala. This contradicts the very fact that Ghelani had a ledger debit and margin call from MCX and the amount was transferred for the same. Therefore, it can be inferred that the payments of Rs. 2.2 Crores made by Ghelani was primarily for meeting the margin requirement of Zala for his trading in the scrip of TPL on October 14, 2011. Therefore, I find that the Noticee

No.1 had utilized the funds from its Compliance Officer/CEO, Ghelani to make margin payments to the exchange on account of the shortfall in margin towards the trades done by Zala in the scrip of TPL on the first day of its listing. I note that the failure by the Noticee No.1 to segregate its own funds from that of its client's and the subsequent usage of such funds to facilitate Zala's trades constitutes a serious violation of the Brokers Regulations and SEBI Act. In view of the factual position as narrated herein above, I find that if the funds and securities of the Noticee No.1's clients i.e. Patel, Bhatt and Goenka alongwith that of Ghelani had not been used, there would have definitely been a margin shortfall due to the huge loss-making trades executed by Zala. In view of the same, I find that the charge of utilization of its own money and also other clients' money and shares for meeting margin requirements of Zala, stands established against the Noticees.

28. The modus operandi of the Noticees in enabling Zala to take huge exposure in the scrip of TPL raises another important question. It can be seen from the elaborate replies of the Noticees that they seek to submit that their conduct vis-à-vis the trading done by Zala was not out of the normal business practice. Allowing a walk-in client with miniscule networth/ income to take exposure way more than such networth/ income permits, that too without first obtaining the requisite margin funds prior to entering into trades on his behalf, does not reflect commercial prudence and appears to be unreasonable on the face of it. The Noticee has not submitted that the same 'practice' as followed in the case of Zala, has been followed with respect to any other client of the Noticee No. 1 as well. Indeed, it is inexplicable as to why a market intermediary would take such a high volume of almost unmitigated risk for its client.

29. I note that the Noticees have relied upon SEBI's orders in the cases of *Geojit BNP Paribas Finance and Securities Ltd*. and *Networth Stock Broking Ltd*. I find that the said cases are distinguishable from the present case. In both cases, the only allegation was that the broker had failed to exercise due care and diligence while permitting his clients to trade. It was observed in both orders that the brokers permitted the clients to trade only after their cheques were cleared and exposure was given only after they had sufficient credit balances. Further, the brokers had given the same level of exposure to all clients who were registered with them during the same period. All of these factors clearly distinguish these cases from the present one.

30. The Noticees have also submitted that the Noticees No. 2-5 cannot be individually held liable for any act of the Noticee No. 1 merely because they were Directors of the Noticee No. 1 at the relevant point in time. I cannot accept this argument tendered on behalf of the Noticees No. 2-5. In this regard, I note that the individual role of Shri Mihir Ghelani, i.e., the Noticee No. 5, in enabling the trades of Zala, by providing for the margin monies for the latter's tardes, has already been established in the preceding paragraphs in this order. The remaining Noticees No. 2-4 were Directors of the Noticee No.1 at the relevant time when the fraud was perpetrated by the Noticee No. 1 by allowing its client Zala to trade heavily without obtaining margin funds from him and thereafter enabling/ providing for such margin funds by pooling in securities and monies of itself and that of other clients. It has nowhere been submitted by the Noticees No. 2-5 that they were independent Directors and/or where not in charge of the running of the Noticee No.1. therefore, I note that Noticees No. 2-4, being the Directors of the Noticee No.1, are deemed to be in charge and responsible for the

conduct of business and management of the Noticee No.1 and their duties and responsibilities are expected to be of high order, which also includes compliance with the statutory requirements. As the whole time Directors of the Noticee No.1, the Noticees No. 2-4 were responsible for all the acts and omissions of the company. Further, the individual role played by the Noticee No. 5 has already been established, who is an “officer in default” as per the Companies Act, 1956, being the CEO and Compliance Officer of the Noticee No.1. In this context, I note that Hon’ble Supreme Court of India in the matter of *N Narayanan vs Adjudicating Officer, SEBI* (AIR 2013 SC 3191) had held that:

> *“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”*

Further, Hon’ble Securities Appellate Tribunal (SAT) in its order dated October 05, 2012 in the matter of *Shri N. Narayanan Vs. SEBI* made the following observations:

"...The role of a whole time director is very significant and material in running day to day affairs of a company. His role and responsibility are equivalent to that of a managing director in as much as he is expected to spend his whole time in the management of the company. This implies a high level of accountability and knowledge of the overall functioning of the company..."

In view of the above observations, I am of the view that it was the duty as well as the responsibility of the Noticees No. 2-5 to ensure that the acts of enabling the heavy trades of Zala ought not to have been done by the Noticee No.1 without obtaining margin funds from him and also not by pooling in funds and securities of other clients to provide for the margin funds of Zala.

31. With respect to the allegation of executing synchronized trades on behalf of Zala, I would tend to agree with the submissions of the Noticees in this regard. No relationship has been established between the counter party client or the counter party broker with the Noticees. Further, the Noticee No. 1 as a broker had not placed such trades in its proprietary account, but that on behalf of and presumably on the instruction of its client, i.e. Zala. It has not been brought out in the investigation that the decision to enter such trades was taken by the Noticee No.1. Further, it has not been brought out in the SCN as to what percentage of the total trades executed by the Noticee on behalf of its client Zala, were synchronized. Therefore, I hold that any charge of manipulation through synchronization for such trades as brought out in the SCN, cannot be established against the Noticees.

32. The actions of the Noticees as described above, have led to the violation of Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, 2003. Additionally, the Noticee No.1 has also violated Section 23D of SCRA and Regulations 26(xiii), 26(xvi), Regulation 7 of the Stock Brokers Regulations read with Clauses A(1), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers of Schedule II. The text of the said provisions is reproduced below:

- **SEBI Act**

"**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;

- **SCRA**

Penalty for failure to segregate securities or moneys of client or clients.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.

- **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;...

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 fraud and may include all or any of the following, namely:—

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

...

d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

…

(p) an intermediary predating or otherwise falsifying records such as contract notes."

- **Stock Brokers Regulations**

" Liability for monetary penalty.

26. A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—

…

(xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

…

(xvi) Failure to exercise due skill, care and diligence.

Stock brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

Schedule II- Code of Conduct for Stock Brokers,

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the

market beyond reasonable levels not commensurate with his financial soundness."

33. The aforesaid violations of the said provisions if proved makes the Noticees liable for penalty under Sections 15HA and 15HB of the SEBI, Act and Section 23D of the SC(R)A. The text of the said provisions as it stood at the relevant point in time is reproduced below:

- **SEBI Act**

Penalty for fraudulent and unfair trade practices.

> ***15HA.*** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

The penalty amount was amended as "*which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher*", by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014 and the present provision reads as follows:

> ***15HA.*** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

As per the dates of defaults, Section 15HA of the SEBI Act, as it stood prior to its amendment, is applicable for the violation of the PFUTP Regulations, 2003 and section 12A of the SEBI Act. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in *T. Barai vs. Henry Ah Hoe and Ors*. (07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of the SEBI Act is being applied.

Penalty for contravention where no separate penalty has been provided.

> ***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

- **SC(R)A**

Penalty for failure to segregate securities or moneys of client or clients.

> ***23D.*** *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.*

34. While determining the quantum of penalty under Section 15HA and 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

> ***Factors to be taken into account by the adjudicating officer.***
>
> *15J. While adjudging quantum of penalty under section 15-I, 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 of an adjudicating officer 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.

35. The records available before me does not quantify the gains made/ losses incurred by the Noticees due to their conduct as detailed in the preceding paragraphs. The conduct of the Noticee No.1 (Noticees No. 2-5 being the persons in charge of the management of the Noticee No. 1 at the relevant point in time), being an intermediary registered with SEBI, is found to be lacking in its professional standards in allowing a client with miniscule networth to take huge exposure without obtaining margin funds prior to allowing such client to enter into trades and thereafter pooling of funds and securities from other clients to provide for the margin of the said client and subsequently making false, misleading submissions in this regard before the SEBI and in the present adjudication proceedings, cannot be viewed lightly. The conduct of the Noticees could have seriously affected the settlement mechanism of the securities market had the margin funds not being arranged prior to the settlement of such trades. This would have been severely detrimental to the integrity of the securities market. A person acting as a securities market intermediary is expected to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. Since the conduct of the Noticees is not in the interest of investors in the securities market, necessary action has to be taken against them, else it may lead to

loss of investor’s trust in the securities market. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of the investors and protect the integrity of the securities market.

ORDER

36. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules and section 23I of the SCRA read with Rule 5 of the SCRA Adjudication Rules, I hereby impose the following penalties on the Noticees:

Sr. No.	Name of the Noticee	Legal provisions violated	Penalty
1	**Grishma Securities Private Limited**	Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, 2003. Additionally, the Noticee No.1 has also violated Section 23D of SCRA and Regulations 26(xiii), 26(xvi), Regulation 7 of the Stock	**Rs. 20,00,000/- (Rupees Twenty lakhs only)**

		Brokers Regulations read with Clauses A(1), A(2), A(3) and A(4) of the Code of Conduct for Stock Brokers of Schedule II	
2	**Shri Chandrika H Gandhi**	Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, 2003.	**Rs. 10,00,000/- (Rupees Ten lakhs only)**
3	**Shri Ketan C Shah**	Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, 2003.	**Rs. 10,00,000/- (Rupees Ten lakhs only)**
4	**Shri Chhabil C Shah**	Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and	**Rs. 10,00,000/- (Rupees Ten lakhs only)**

		4(2)(p) of the PFUTP Regulations, 2003.	
5	**Shri Mihir Ghelani**	Section 12A(a), 12A(b), 12A(c) and 12A(d) of the SEBI Act, read with Regulations 3(a), 3(b), 3(c), 4(1), 4(2)(a), 4(2)(d) and 4(2)(p) of the PFUTP Regulations, 2003.	**Rs. 20,00,000/- (Rupees Twenty lakhs only)**

37. I am of the view that the aforesaid penalties are commensurate with the violations on the part of the Noticees.

38. In terms of the order dated August 10, 2018, of the Hon'ble Supreme Court in the Civil Appeal No. 8121 of 2014, this order shall not be enforced with respect to any of the Noticees without prior leave of the Hon'ble Supreme Court.

39. The Noticee shall remit / pay the said amount of penalty individually within 45 days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or 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 AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

40. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-2, SEBI, SEBI Bhavan 2, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051".

41. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity

b) Name of the case / matter

c) Purpose of Payment – Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 30, 2021 **G. RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**