BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14813

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

In respect of

Sharekhan Ltd.

PAN: AAECS5096H

In the matter of Sampada Chemicals Ltd.

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation in the scrip of Sampada Chemicals Ltd., (hereinafter referred to as "**Sampada**" / "**SCL**") for the period October 01, 2010 to March 21, 2011 (hereinafter referred to as "**Investigation Period**") to ascertain any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). The shares of SCL were listed on BSE Ltd. (BSE). It was observed that during the period from October 01, 2010 to November 24, 2010 (Patch 1), there was a huge increase in the share price of SCL. From November 25, 2010 to December 31, 2010 (Patch 2), there was a huge decrease in price through first trades and from January 03, 2011 to March 16, 2011 (Patch 3), there was a huge increase in the share price of SCL. Accordingly, trading analysis in the SCL scrip was done patch-wise, and consequent upon which, it was observed that during Patch 2 of the Investigation Period covering 26 trading days from November 25, 2010 to December 31, 2010, the traded volume of the scrip was

6,26,469 shares, which was 13.65% of the total traded volume of 45,89,967 shares of the Investigation Period. The price of the Sampada scrip during this patch decreased from Rs 489.90 to Rs 134.75 *i.e*., a decrease of Rs 355.15. On analysis of the new low price trades (hereinafter referred to as "**NLP**"), it was observed that in majority of the instances, Sharekhan Ltd. (hereinafter referred to as the "**Noticee**") appeared as buyer to the NLP trades.

2. The investigation revealed that the Noticee executed only 13 trades during Patch 2, in which the quantity traded was only 1 share per trade. Out of these 13 trades, 12 trades were first trades as a buy side counterparty and these first trades resulted in NLP during the Patch 2. The total contribution by the Noticee to the NLP during the period (*i.e.,* Patch-2) was (-) Rs 132.40. It was also observed that Jinesh Devendra Bhatt (hereinafter referred to as "**Jinesh**") and Tarunkumar Gurucharan Brahmbhatt (hereinafter referred to as "**Tarun**") contributed significantly to negative last traded price (hereinafter referred to as "**LTP**") of 13.99% and 6.24% respectively to the total market negative LTP during Patch 2. It was observed that Jinesh and Tarun contributed to NLP for (-) Rs 85.15 (23.97 % of total market NLP during Patch 2) through 7 trades and (-) Rs 39.30 (11.06% of total market NLP during Patch 2) through 4 trades, respectively, as sellers. The Noticee was the counterparty buyer to 8 first trades of Jinesh and Tarun, out of the 11 first trades executed by both of them and the quantity of shares placed was only 1 share per trade. It was observed that the Noticee by acting as counterparty buyer to 8 first trades of Jinesh and Tarun had contributed negative NLP of (-) Rs 87.20.

3. In view of the above, it is alleged that the Noticee has manipulated the price of SCL scrip by repeatedly acting as a buyer counterparty to NLP trades and has contributed to the negative LTP and NLP by repeatedly placing buy orders of small quantity mostly through the first trades. Accordingly, the Noticee is alleged to have violated regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (a) & (e) of the PFUTP Regulations.

B. APPOINTMENT OF ADJUDICATING OFFICER

4. Based on the findings of investigation, SEBI initiated adjudication proceedings against the Noticee and appointed the undersigned as the adjudicating officer *vide* order dated May 18, 2017 under section 19 read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire into and adjudge the alleged violation committed by the Noticee under section 15HA of SEBI Act.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

5. A show cause notice (hereinafter referred to as "**SCN**") bearing ref. no. EAD/ADJ/PM/AA/OW/29471/2017 dated November 24, 2017 was issued to the Noticee under rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of rule 4 of the SEBI Adjudication Rules and penalty be not imposed under section 15HA of the SEBI Act, for the violation alleged to have been committed by the Noticee. The Noticee *vide* letter dated December 15, 2017 sought extension of 2 weeks to furnish its reply, which was deemed to have been acceded. Further, the Noticee *vide* letter dated December 27, 2017 sought inspection of documents, which was acceded to. *Vide* email dated December 16, 2020, the Noticee was advised to carry out inspection of documents not later than December 31, 2020 and to furnish its reply by January 15, 2021. I note from the records that the Noticee had carried out inspection of documents on December 22, 2020 and thereafter additional documents as sought by the Noticee during the course of inspection were provided *vide* email dated January 05, 2021.

6. Thereafter, since no reply was furnished by the Noticee, *vide* email dated February 10, 2021, the Noticee was given an opportunity of hearing on February 23, 2021. The authorized representative of the Noticee (hereinafter referred to as the "**AR**") *vide* email dated February 11, 2021 requested for rescheduling the hearing owing to pre-occupation of its legal counsel, which

was acceded to. In the meanwhile, the Noticee *vide* email dated March 12, 2021 submitted its reply. Further, the Noticee was given an opportunity of hearing on April 29, 2021, which was communicated *vide* email dated April 20, 2021. In view of Covid-19, the hearing was scheduled through videoconference on WebEx platform on April 29, 2021, which was attended by the AR of the Noticee. The AR reiterated the submissions made by the Noticee on March 12, 2021 and sought additional time of 7 days to make fresh submissions, which was acceded to. The AR *vide* email dated May 6, 2021 made additional submissions on behalf of the Noticee. The replies furnished by the Noticee on March 12, 2021 and May 06, 2021 are provided hereunder:

(a) Copies and inspection of all documents have not been provided and hence, inspection in the matter is incomplete. Considering the inordinate delay in the proceedings and the limited records available with the Noticee as on date, it is all the more crucial that that all documents on the basis of which the SCN has been issued should be provided to the Noticee. However, a copy of the order logs has not been provided to the Noticee and inspection of documents remains incomplete. As a result, the Noticee is unable to deal with the charges laid out in the SCN in a comprehensive manner.

(b) The SCN is vitiated by delay and laches and without prejudice to any other submission made in this reply, the allegations raised in the SCN ought to be dropped on this ground alone. While the trades in question were executed in December 2010 the SCN came to issued only in August 2017 after a lapse of almost 7 years. Even in terms of SEBI's own Circular dated December 9, 2009 in respect of preservation of records, the maximum period stipulated for a stockbroker to maintain and preserve books and records is five years.

(c) Furthermore, even after almost 7 years from the date of execution of the trades to issuing the SCN, post initiation of the proceedings and issuance of the SCN there has been a further unexplained delay of almost 3 years by SEBI in processing the Noticee's request for

inspection of documents. This delay has also gravely prejudiced the Noticee's right to file a settlement application in respect of the SCN without admitting or denying the allegations, after inspection of documents relied upon by SEBI to issue the SCN and after fully understanding the charge brought against it.

(d) In this regard, the Noticee would like place reliance on the judgment of the Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI Vs Bhavesh Pabari and the Orders of the Hon'ble SAT viz., Rakesh Kathotia & Ors., Vs SEBI, Ashok Shivlal Rupani & Anr., Vs SEBI, Kaushik Rajnikant Mehta v. SEBI (Appeal No.378 of 2020) and Anita Jajodia and Anr. v. SEB/ (Appeal No. 30 of 2021).

(e) It is submitted that the trades carried out by the Noticee were genuine trades and were not placed with a view to manipulate the price of the scrip of Sampada.

(f) At the relevant time i.e., during Patch II (i.e., between November 25, 2010 to December 31, 2010), as also mentioned in the SCN, the price of the scrip of Sampada was falling and decreased from Rs. 489.90 to Rs. 134.75 in a span of 26 trading days. As mentioned in the SCN, the Noticee traded only on 13 trading days during Patch II. The first trade executed by the Noticee during this time was on December 08, 2010. It is pertinent to note that as on December 08, 2010 the price of the scrip of Sampada had already fallen from Rs. 489.90 as on November 25,2010 to Rs. 321.55 on December 7,2010 i.e., a decrease of Rs. 168.35 which is in no way attributable to the Noticee. Therefore, there is no evidence to show that the fall in price between December 8,2010 to December 13,2010, when the Noticee traded in one share was attributable only to the Noticee.

(g) In this background, owing to the poor fundamentals of the scrip of Sampada illiquid nature of the scrip and unscrupulous market forces, etc., trades executed by any person, not limited to the Noticee, would

have resulted in a negative LTP and NLP in the scrip. Thus, the fall in price of the scrip of Sampada cannot be attributed solely to the trades executed by the Noticee, and the nature of the scrip and market conditions also has to be considered.

(h) An amount of Rs. 1,36,61,909.25 and Rs. 77,78,260.92 had been due to the Noticee from Jinesh Devendra Bhatt ("Jinesh") and Tarunkumar Gurucharan Bhatt ("Tarunkumar"), respectively. At this time, the Noticee was in possession of 1,31,851 and 45,226 shares of the Company, belonging to Jinesh and Tarunkumar, respectively.

(i) The Noticee indeed recovered these amounts from the clients through sale of the Company's shares on the market by December 2010: As can be seen from the Ledger for Tarunkumar (account code 234638), the debit balance of Rs. 77,78,260.92 (against entry dated December 03, 2010) was subsequently recovered, as evidenced by the credit balance of Rs. 17,809.58 (against entry dated January 04, 2011). Tarunkumar sold shares of the Company between December 28, 2010 and December 31, 2010 and repaid the amount due. Similarly, as can be seen from the Ledger for Jinesh (account code 234639), the debit balance of Rs. 1,36,61,909.25 (against entry dated December 06, 2010) was subsequently recovered, as evidenced by the credit balance of Rs. 78,731.71 (against entry dated January 04, 2011). Jinesh sold shares of the Company between December 24, 2010 and December 31, 2010 and repaid the amount due. Since the entire amount was recovered through the sale of shares, there was no occasion for the Noticee to take any other steps or initiate legal proceedings towards recovery of dues.

(j) Since monies were due from the aforesaid clients, the said clients informed the Noticee that they would be selling the shares of Sampada so as to return the amounts which were due to the Noticee. Since the Noticee was keen to recover the amounts due to it, the Noticee entered buy orders to test the market and to ascertain if the shares held by the

clients were indeed getting sold so as to return the amounts due to the Noticee.

(k) *There is no connection established or even alleged between the Noticee and any of the other individuals / entities who are found to be involved in the price manipulation in the scrip of the Company by trading in Patch I or in Patch II. Typically, in other cases of price manipulation, it would invariably be seen that such a common facet would be seen. There is not even any other parallel connection between the Noticee and Jinesh and Tarunkumar other than having a broker-client relationship.*

(l) *The Noticee's contribution to the overall market volume during the 13 days when the Noticee's trades were executed was 0.09% of the market volume. Even in an illiquid scrip like the Company, for price manipulation, a higher contribution to market volume would be required. Except for one day where only two shares were traded and the Noticee's purchase of one share may seem like 50% of the market, it is evident that the volumes traded by the Noticee were too minuscule to cause a price or volume manipulation.*

(m) *The SCN stresses on the fact that the Noticee was both buy side and sell side broker in 8 of the trades executed by the Noticee. It is submitted that nothing turns on this fact since, as is evident from the trade logs, Tarunkumar and Jinesh have sold their holding not only through the Noticee but also through other brokers such as Religare Securities Ltd., MTL Share & Stock Brokers Ltd. It is pertinent to note that the scrip of Sampada was illiquid and accordingly, there was no illegal profit/ avoidance of loss that the Noticee could hope to attain by buying 1 share. Since monies were due from the aforesaid clients, the Noticee would not have gained anything by manipulating the price of the scrip downwards. Accordingly, it is illogical and unreasonable to ascribe any market manipulation to the trades executed by the Noticee* *or that the trades executed by the Noticee were aimed at depressing the price of the shares of Sampada by contributing to the NLP.*

(n) It is only coincidental that the Noticee's trades resulted in a negative LTP and NLP in the scrip of Sampada, since the Noticee's buy order was the first trade executed on 8 days. On each day that the Noticee has traded, there were other buyers in the scrip of Sampada whose trades would've resulted in the price of the scrip being reduced. It is also relevant to note that it is with the benefit of hindsight that the Noticee's trades are viewed as being suspect owing to the other unscrupulous market forces at work at the relevant time. If scrutinized on a standalone basis as on date of execution of the trades, no negative inference can be drawn from the trades executed by the Noticee.

(o) It is submitted that the Noticee's trades are being viewed from the same lens as that of the fraudulent trades carried out by Chetan Dogra and related entities, which were executed with the intention to manipulate the price and volume in the scrip of Sampada. It ought to be considered that the Noticee is only a victim of circumstances, as explained hereinabove, and the contribution of its trades to negative LTP and NLP in Sampada was a direct result of the market manipulation being carried on by Chetan Dogra and related entities. It is submitted that the Noticee has no direct connection with Sampada and is also not involved in the affairs of Chetan Dogra and related entities in any way and has in fact, not indulged in any market manipulation or violation of PFUTP Regulations, as alleged in the SCN.

(p) Moreover, had the Noticee/ any person in the Noticee's position been trading in the scrip of Sampada for illegal profits/ avoidance of loss, attempts would have been made to manipulate the price of the scrip upwards and not depress the price of the scrip. Decrease in the price of the scrip was contrary to the Noticee's interest and hence no negative inference can be drawn from the Noticee's trades.

(q) *It is a settled principle of the law on evidence that when appreciating evidence, the conclusions that can be drawn are that a fact stands "proved"; or a fact stands "disproved"; or that the fact stands "not proved". The facts and circumstances of the instant case inexorably leads to only one reasonable conclusion – that the allegation that the Noticee has indulged in downward price manipulation through the 13 trades are "not proved". The charge of price manipulation against the Noticee, does not stand established and cannot be sustained. In the facts and circumstances, it is humbly submitted that the Ld. AO ought to arrive at the only logical and reasonable finding, which would be a fair exercise of the Ld. AO's discretion, i.e., that the case against the Noticee stands not proved, and as a consequence, the present proceedings ought to be disposed of without any adverse findings or imposition of any monetary penalty.*

D. CONSIDERATION OF ISSUES AND FINDINGS

7. I have taken into consideration the facts and material available on record. After perusal of the material available on record, I have the following issues for consideration, *viz.,*

    (I) Whether the Noticee has violated the provisions of regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the PFUTP Regulations?

    (II) Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?

    (III) If so, what would be the monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act?

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE-I: Whether the Noticee has violated the provisions of regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the PFUTP Regulations?

9. Before moving forward, it is pertinent to refer to the relevant provisions of PFUTP Regulations which reads as under:

Regulation 3 of PFUTP Regulations: - Prohibition of certain dealings in securities

3. 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 thereunder;

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

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

Regulation 4 of PFUTP Regulations: - 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;

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

10. It has been alleged that the Noticee had manipulated the price of Sampada scrip by contributing to negative LTP and NLP through repeated first trades. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances and the motive, thereafter, automatically falls in line.

11. Before going into the merits of the case, I would like to deal with the primary contentions raised by the Noticee with regard to (i) delay in initiation of the instant proceedings; (ii) delay in providing inspection of documents; and (iii) incomplete inspection of documents.

12. The Noticee has contended that there has been extraordinary inordinate delay in the issuance of SCN, which has caused prejudiced and, on this ground, the SCN ought to be dropped. I note that the investigation in the instant matter was initiated based on an alert generated by BSE in the scrip of Urja Global Ltd., Sampada Chemicals Ltd., and IFL Promoters Ltd., wherein it was observed that certain Chetan Dogra Group entities had transacted in the scrips to support price/volume during the period from October 01, 2010 to March 21, 2011. Therefore, the investigation was done in three scrips as mentioned above, which involved voluminous collection of data, summoning various entities, analysis of trading pattern, examination of demat statements, bank statements, analysing trade and order logs, ascertaining connection based on KYC documents *etc*. Pursuant to the conclusion of the investigation, the undersigned was appointed as the adjudicating officer in May 2017, and the SCN in was issued in November 2017. Thus, it can be seen that there is no delay in initiation of the instant proceedings given the voluminous processes involved in the matter, wherein three scrips were taken together for investigation. Therefore, I find no merit in the contention raised by the Noticee that there was a delay in issuing the SCN, and consequently, find no reason to squash the SCN on this ground.

13. In this context, I find it relevant to refer to the order passed by Hon'ble Securities Appellate Tribunal (SAT) in the case of ***Metex Marketing Pvt. Ltd. vs. SEBI*** (order dated June 04, 2019) wherein the Hon'ble SAT has held that:

"*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

14. Further, I deem it appropriate to refer to the observations made by Hon'ble SAT in the matter of ***Vaman Madhav Apte & Ors. vs. SEBI*** (order dated March 04, 2016), wherein it held that:

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

15. It is no doubt true that no period of limitation is prescribed in the SEBI Act or the regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Hon'ble Supreme Court in ***Government of India vs. Citedal Fine Pharmaceuticals, Madras and Others***, [AIR (1989) SC 1771], has 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 Hon'ble Supreme Court in ***Bhavnagar University vs. 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. Further, the Hon'ble Supreme Court recently in the case of ***Adjudicating Officer, SEBI vs. Bhavesh Pabari*** (2019) SCC Online SC 294 has held that:

"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."

16. In the light of the aforesaid dictum of the Hon'ble Supreme Court and Hon'ble SAT and from the facts and circumstances of the case narrated above, it cannot be said that there was an inordinate and unnecessary delay in the matter as contended by the Noticee. Therefore, in the absence of any prejudice, the proceedings cannot be quashed simply on the ground of delay in launching the same, which is not found in this case.

17. Further, I note that the Noticee in its reply has relied upon a circular issued by SEBI dated December 09, 2009 with regard to retention of records by a stockbroker in its defence, which mandates preservation of records for 5 years. It is pertinent to note that the Noticee has not been charged for the alleged violations in its capacity of a stockbroker, rather it has been charged as a client who had traded in the SCL scrip. Furthermore, the investigation found that the impugned trades were executed by the Noticee in its capacity as a stockbroker in the proprietary account. Therefore, the reliance placed by the Noticee in its defence is misconceived since the Noticee has been charged in the capacity of a client executing trades in its proprietary account.

18. I note from the records before me that the Noticee had sought inspection of certain documents. In compliance with the principles of natural justice, inspection of documents which were relied upon and relevant for the instant proceedings were provided to the Noticee. I note that the following documents were made available to the Noticee along with the SCN during the course of inspection.

(a) Trade log of Sampada contained in CD;
(b) Extracts of trades of Noticee as a client on buy side which resulted in NLP; and
(c) Integrated trade log.

19. In this regard, a reference to the observations made by the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Monarch Networth Capital Limited*** [(2016) 6 SCC 368], is relevant wherein, the Hon'ble Supreme Court, while dealing with the issue of principles of natural justice, has, *inter alia*, held that*:* *"...In so far as the plea of violation of principles of natural justice, as raised on behalf of the respondent in C.A.No.282/2014 (Monarch Networth Capital Ltd.) is concerned, we do not think the same to be justified in any manner. The relevant extracts of the trade log which have been perused by us, in view of the clear picture disclosed with regard to the particulars of the offending transactions, must be held to be sufficient compliance of the requirement of furnishing adverse materials to the affected party."*

20. Furthermore, the Hon'ble SAT in the matter of ***Shruti Vora vs. SEBI*** (order dated February 12, 2020) has, *inter alia*, held that *"only the documents which have been relied upon need to be provided to Noticee. It has also been held that in the absence of any law specifically imposing or casting duty to provide all the documents which are in the possession though have not been relied upon, it would not be justified on the part of the Noticees to ask for those documents which are not having a role in attributing the allegation made on the Noticees and therefore, denial of all such documents would not ipso facto result in breach of Principle of Nature Justice".*

21. The Hon'ble SAT in the matter of ***Anant R Sathe vs. SEBI***, Appeal No. 150 of 2020, (order dated July 17, 2020) has reaffirmed the principle elucidated in the ***Shruti Vora*** *case (supra)* and ruled that *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

22. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided to the Noticee, I am of the opinion that principles of natural justice have been duly complied with in the current proceedings. I find that the Noticee has not explained as to how its interest is getting prejudiced by not having extracts of the investigation report when the charges/allegations along with documents in support of the show cause have been clearly spelt out in the SCN and the detailed facts on the basis of which those charges have been framed are already contained in the SCN and the documents provided *vide* email dated January 5, 2021. Therefore, I do not find that the interest of the Noticee has been prejudiced in any manner.

23. The Noticee in its reply has contended that there has been delay in providing an opportunity of inspection of documents and the same has prejudiced it from filing a settlement application. I note from the records that at no point of time during the pendency of the instant proceedings, the Noticee had represented that it intends to file a settlement application for settling the current proceedings. Thus, the submissions made by the Noticee regarding filing settlement application pending inspection of documents appears to be an afterthought, which does not find any merit. While there was a delay in providing an opportunity of inspection of documents to the Noticee, I find that it does not vitiate the proceedings against the Noticee in view of the fact that the Noticee has been provided with sufficient opportunities to represent its case in compliance with the principles of natural justice. Therefore, the submissions made by the Noticee in this regard are devoid of any merit.

24. I note that during Patch 2 of the Investigation Period of 26 trading days from November 25, 2010 to December 31, 2010, there was a huge decrease in the price of the scrip of Sampada. During this patch, the traded volume of the scrip was 6,26,469 shares, which was 13.65% of the total traded volume of 45,89,967 shares of the Investigation Period. The price of Sampada scrip during this patch decreased from Rs 489.90 to Rs 134.75 *i.e.,* decrease of Rs 355.15.

25. I note that the Noticee executed 13 trades during Patch 2 of the Investigation Period in which the quantity traded was only 1 share per trade. The details of the 13 trades executed by the Noticee are furnished hereunder:

TRADE_DATE	CLIENTNAME	CP_CLIENTNAME	TRADE_RATE	LTP_RATE	TRADED_QTY	ORDER_QTY	CP_ORDER_QTY
08-12-2010	SHAREKHAN LIMITED	JINESH DEVENDRA BHATT	305.5	-16.05	1	1	14959
09-12-2010	SHAREKHAN LIMITED	JINESH D BHATT	290.25	-15.25	1	1	20000
10-12-2010	SHAREKHAN LIMITED	TARUNKUMAR G BRAHMBHATT	275.75	-14.5	1	1	15000
13-12-2010	SHAREKHAN LIMITED	SHRENI MARKETING PRIVATE LIMITED	262	-13.75	1	1	3500
13-12-2010	SHAREKHAN LIMITED	SHRENI MARKETING PRIVATE LIMITED	262	0	1	1	3500
20-12-2010	SHAREKHAN LIMITED	ZIKRA MEHMOOD SHAIKH	213.55	-11.2	1	1	1000
21-12-2010	SHAREKHAN LIMITED	PRARTHANA T BRAHMBHATT	202.9	-10.65	1	1	33180
23-12-2010	SHAREKHAN LIMITED	ZIKRA MEHMOOD SHAIKH	183.2	-9.6	1	1	680
24-12-2010	SHAREKHAN LIMITED	JINESH D BHATT	174.05	-9.15	1	1	77900
27-12-2010	SHAREKHAN LIMITED	TARUNKUMAR G BRAHMBHATT	165.35	-8.7	1	1	81580
28-12-2010	SHAREKHAN LIMITED	TARUNKUMAR G BRAHMBHATT	157.1	-8.25	1	1	85860
29-12-2010	SHAREKHAN LIMITED	TARUNKUMAR G BRAHMBHATT	149.25	-7.85	1	1	44326
30-12-2010	SHAREKHAN LIMITED	JINESH D BHATT	141.8	-7.45	1	1	95133

26. It is noted from the above table that out of these 13 trades, the Noticee was the buy side counterparty to 12 of the first trades and each of these first trades resulted in NLP during the patch. The total contribution by Noticee to the NLP during the period was (-) Rs 132.40.

27. Further, it is noted that the Noticee (as a client) was the counterparty to 8 first trades of Jinesh and Tarun (out of 11 first trades executed by both the entities) and the quantity of shares placed was 1 share only. The details of the transactions carried out by the Noticee with these 2 entities are furnished hereunder:

Order book table of the Noticee with Jinesh

Date	Sell Order No.	CP	Buy Order Time	Sell order time	Trade Price (Quantity)	Buy Order Qty	Sell Order Qty	Buy Order Price	Sell Order Price	NLP Contribution in ₹
08/12/2010	21000069005959	SHARE KHAN LIMITED	09:16:44	09:15:00	305.50 (1)	1	14959	305.50	305.50	-16.05
09/12/2010	13000064000274	SHARE KHAN LIMITED	09:18:27	09:15:00	290.25 (1)	1	20000	290.25	290.25	-15.25
24/12/2010	16000059003425	SHARE KHAN LIMITED	09:18:45	09:15:00	174.05 (1)	1	77900	174.05	174.05	-9.15
30/12/2010	15000063005339	SHARE KHAN LIMITED	09:23:18	09:15:00	141.80 (1)	1	95133	141.80	141.80	-7.45

Order book table of the Noticee with Tarun

Date	Sell Order No.	CP	Buy Order Time	Sell order time	Trade Price (Quantity)	Buy Order Qty	Sell Order Qty	Buy Order Price	Sell Order Price	NLP Contribution in Rs
10/12/2010	14000075000052	SHARE KHAN LIMITED	09:16:51	09:15:00	275.75 (1)	1	15000	275.75	275.75	-14.50
27/12/2010	21000071000086	SHARE KHAN LIMITED	09:19:12	09:15:00	165.35 (1)	1	81580	165.35	165.35	-8.70
28/12/2010	14000070004259	SHARE KHAN LIMITED	09:32:34	09:15:00	157.10 (1)	1	85860	157.10	157.10	-8.25
29/12/2010	15000063004237	SHARE KHAN LIMITED	09:18:13	09:15:00	149.25 (1)	1	44326	149.25	149.25	-7.85

28. I note that the Noticee was consistently placing buy order in 1 quantity, whereas the corresponding sell order quantity was in the range of 14,954 shares to 95,133 shares with total of 4,34,758 shares being already available in the system. I note from the above table that each time the buy order was placed by Noticee after the sell order was placed, and the available sell quantity was more than the buy quantity placed by Noticee. It is pertinent to note that the Noticee appeared as a broker on both buy and sell side in

respect of the aforementioned 8 trades and that most of the trades of the Noticee resulted into the only trades of the day.

29. The contribution of the Noticee (as a client) as buy side counterparty to NLP trades is as under:

	Total NLP Contribution			**NLP Contribution through first trades**		
	No. of Trades	**In Rs.**	**% of total Market NLP (Rs 355.15)**	**No. of Trades**	**In Rs.**	**% of total Market NLP (Rs 355.15)**
With Jinesh	8	-87.20	24.55	8	-87.20	24.55
With other entities	4	-45.20	12.73	4	-45.20	12.73
Total	**12**	**-132.40**	**37.28**	**12**	**-132.40**	**37.28**

30. From this trading pattern adopted by the Noticee, it can be concluded that the Noticee had no *bonafide* intention to buy the shares, because when sufficient sell orders were available, the Noticee bought only 1 share per transaction, which resulted in creation of negative LTP and thus created false and misleading appearance of trading in the securities market and amounted to manipulation of the price of Sampada scrip.

31. The Noticee in its reply has contended that owing to poor fundamentals of the scrip of Sampada, the scrip was illiquid and in view of unscrupulous market forces, *etc.,* the trades executed by any person, not limited to the Noticee, would have resulted in a negative LTP and NLP in the scrip. While the submission made by the Noticee seems to be inspiring, however, it is surprising to note that there is no reason for the Noticee to place buy orders of only 1 share on different days despite holding adequate number of shares of two of its clients, which had contributed to negative LTP and hammered the share price. Therefore, the contention raised by the Noticee in this regard is devoid of any merit.

32. Further, it is pertinent to note that when two of the Noticee's clients owe money to it out of the business transactions relating to trading in securities market, it fails to impress me that the Noticee in the capacity of a stockbroker, instead of taking appropriate action as per the extant rules prescribed by the stock exchanged and SEBI, allowed its clients further exposure. I do not find

any record to prove that the Noticee had taken adequate steps to recover the money from its clients. The Noticee's claim that it intends to test the market by releasing 1 share does not inspire any confidence since the Noticee being a stockbroker, who is an expert in analysing the market conditions, ought not to have abused the stock exchange mechanism by releasing 1 share on the pretext of testing the market. If the contention of the Noticee is to be believed, then there is no rationale for the Noticee to continuously place buy order for 1 share consistently. The Noticee further claimed that in order to secure the funds owed to it by the two clients, it had resorted to buying the shares from the said two clients. I note that the Noticee instead of exploring the options available to it as a stockbroker, resorted to purchasing the shares from the two clients despite knowing that the scrip is illiquid and the price of the scrip is falling. I am of the view that if the Noticee was to receive the money, becoming a buyer to the shares sold by these 2 entities, albeit in minuscule quantity, lacks any economic rationale. Thus, I find the submissions made by the Noticee in this regard lacks merit.

33. I am of the view that placing orders and executing trades on a frequent basis and contributing majorly to the price fall in the scrip even at the cost of sustaining personal loss would not be viewed as trades executed prudently in the normal course of trading in securities market. Resorting to such trades by the Noticee was bound to create misleading appearances and false perceptions in the mind of innocent investors about the trades in the said scrip leading to generation of artificial volume in the scrip as well as distorting informed decision making by genuine investors. The trades executed by the Noticee by no standard can be held as genuine trades executed in the normal course of trading in securities and the same was with a motive to create artificial volume and to hammer down the price of the scrip

34. The Noticee in its submission has stated that since there is no allegation of connection/collusion with counterparties of its trades, except that of stockbroker and client, the allegation of price manipulation cannot be established against it. It is necessary to examine trading patterns of parties with respect to their strategy and rationale for such dealings. As stated

above, the Noticee has bought only 1 share per day inspite of having sufficient sell orders as well as holding with it. This behaviour of the Noticee is devoid of any logic or rational behaviour.

35. In this regard, in ***SEBI vs. Kishore R Ajmera*** decided on February 23, 2016 are relevant, the Hon'ble Supreme Court while deciding the matter under the SEBI Act and the PFUTP Regulations where there was no direct evidence forthcoming, held that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

36. Taking support of the aforesaid dictum of the Hon'ble Apex Court in ***Kishore R Ajmera*** *(supra)*, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of attending circumstances an inference will have to be drawn.

37. In the instant matter, the Noticee has repeatedly bought shares in 1 quantity at frequent intervals. If the Noticee was a genuine buyer, then it had the opportunity to buy shares in more than 1 quantity on multiple occasions but

still the Noticee chose not to buy shares in more than 1 at a time and continued to execute the buy trades consistently.

38. In this context, I would like to refer to the order of Hon'ble SAT in the matter of ***Shri Lakhi Prasad Kheradi vs. SEBI*** (decided on June 21, 2018), wherein the Hon'ble SAT while addressing the issue as to whether the entity had contributed to 9.17% of the market NHP within a span of two weeks has held that:

"…Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades…"

39. In this connection, I would also like to refer to the decision of the Hon'ble SAT in ***Saumil Bhavnagari vs. SEBI*** (order dated March 21, 2014), wherein it held that: *"… but by purchasing shares at the higher price in LTP in most of the trades, the Noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the Noticee's trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible investors. By purchasing at a higher price in most of his trades, the Noticee had given the wrong impression about the price of the scrip in the market. It is an accepted state of affairs that in cases of manipulation of the volume and / or price of particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant."*

40. I note that the Noticee has contended that its contribution to the overall market volume during the 13 days when the Noticee's trades were executed was 0.09% of the market volume and that even in an illiquid scrip like of the Company, for price manipulation, a higher contribution to market volume would be required.

41. In relation to the above, it is a matter of record that the Noticee out of the 13 trades executed during the Patch 2 of the Investigation Period, with its' 12 trades, which were first trades had contributed to negative LTP of – Rs 132.40 and in respect of the 8 trades carried out by the two of its clients the contribution to negative LTP was –Rs 87.20. In absolute terms, the contribution of the Noticee to negative LTP in respect of 12 trades was 37.28% of the total market LTP and in respect of the 8 trades with two of its clients was 24.55%, which is not minuscule by any means, but is substantial.

42. At this juncture, I would like to rely on the order passed by the Hon'ble SAT in the matter of ***Giriraj Kumar Gupta HUF vs. SEBI*** (order dated February 25, 2020), wherein the Hon'ble SAT had *inter alia*, held that *"Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument that each entity's trade is miniscule and only on a few days alone etc., is not sufficient to rebut the findings in the impugned order".*

43. Further, it is pertinent to refer to the order of Hon'ble SAT in the matter of ***Tanuj Khandelwal vs. SEBI*** (order dated January 4, 2021), wherein the Hon'ble SAT noted that "*We find that except on three occasions the appellant only sold one share at a time on a daily basis. This trading pattern created misleading appearance with intention to manipulate the market if not the price. Thus, even if there is no connection with the buyer the trading pattern shows a concerted effort to manipulate the market and therefore, we are of the opinion that the appellant was not acting as a genuine seller. We also find that the appellant had no bonafide intention to sell because inspite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons."*

44. The Noticee has placed reliance on the orders of Hon'ble Apex Court and Hon'ble SAT in its defence and having perused the same, I note that the

instant case is distinguishable in view of the above findings and does not help the Noticee in any manner.

45. From the aforementioned findings and from the ratio laid out by the Hon'ble Supreme Court and Hon'ble SAT, I conclude that the trades executed trades by the Noticee in the scrip of Sampada contributed to negative LTP, new low price through first trades during the Investigation Period resulting in price fall. By executing these trades, the Noticee influenced the price of the scrip of Sampada during Patch 2 of the Investigation Period and also helped in creating artificial volume and thereby led to false appearance of trading in scrip of Sampada. Therefore, I conclude that the Noticee has violated the provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations.

ISSUE – II: Does the violations, if any, attract monetary penalty under section 15HA of SEBI Act?

46. Pursuant to the detailed analysis brought out above, it is established that the Noticee has manipulated the price of the Sampada scrip and created a misleading appearance of trading in the scrip to induce innocent investors in the securities market thereby contravening the provisions of regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a), and 4 (2) (e) of the PFUTP Regulations. Therefore, the Noticee is liable for monetary penalty under section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"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".

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

47. While determining the quantum of monetary penalty under section 15HA of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15I of SEBI Act, 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.

48. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default.

49. I am of the view that the people who indulge in manipulative, fraudulent and deceptive transactions, or abet in carrying out such transactions, which are fraudulent and deceptive in nature, should be suitably penalized for such acts of omissions and commissions.

E. ORDER

50. In view of the foregoing, after taking into consideration all the facts and circumstances and in exercise of power conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five Lakhs only) on the Noticee *i.e.,* Sharekhan Ltd., under section 15HA of the SEBI Act for violation of the

provisions of regulations 3 (a), (b), (c), (d), 4 (1), (2) (a) and (e) of the PFUTP Regulations.

51. The said penalty imposed on the Noticee, as mentioned above is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

52. The Noticee shall remit / pay the said amount of penalty within 45 days from the date 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 through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

53. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

54. In terms of rule 6 of the SEBI Adjudication Rule, copies of this order are sent to the Noticee and SEBI.

Date: January 28, 2022 **PRASANTA MAHAPATRA**
Place: Mumbai **ADJUDICATING OFFICER**