BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2020-21/7765]

UNDER SECTION 15-I OF 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 M/s Adamina Traders Private Limited (PAN: AAICA0681J)

In the matter of Trading Activities of Certain Entities in the Scrip of Secunderabad Healthcare Limited

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FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') in the wake of sharp price rise in the scrip of Secunderabad Healthcare Limited (hereinafter referred to as 'Secunderabad or SHL' or 'the Company'), conducted an investigation in the matter relating to the trading activities of certain entities in the scrip of SHL during the period November 1, 2011 to January 15, 2015 (hereinafter referred to as 'investigation period'/'period of investigation).

2. SEBI investigation into the trading activities in the shares of the company observed that price of the shares of SHL had increased from Rs. 6.02 on November 1, 2011 to Rs. 33.30 on February 26, 2013. Investigation observed several price rise and price fall patch during the investigation period. Investigation alleged that Adamina Traders Private Limited (hereinafter referred to as 'Adamina' or 'ATPL' or 'Noticee') contributed significantly to the positive LTP (Last Traded Price) in the scrip of the company. Therefore it was alleged that its trades were not that of a genuine buyer and that it had no bona fide intention to buy because despite having large disclosed quantity of sell

orders, it had repeatedly placed small quantity buy orders by either matching the price of the sell order or placing orders slightly higher than sell order rate which were already above LTP at the time of buy order entry, or by placing buy orders at prices above LTP which were subsequently matched by sell orders, thereby contributing to significant positive LTP. Investigation further alleged that from the above trading pattern that its intention was to mark the price higher and not merely to enter into buy transactions carried out. Therefore, investigation alleged that the Noticee has manipulated the price of the scrip and created a misleading appearance of trading in the scrip by such trades.

3. SEBI, therefore, initiated Adjudication proceedings against the Noticee for violating the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [hereinafter referred to as the SEBI (PFUTP) Regulations, 2003].

Appointment of Adjudicating Officer

4. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15HA of the SEBI Act, 1992 for the alleged violation of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the Noticee.

Show Cause Notice, Reply and Personal Hearing

5. The Noticee was issued a Show Cause Notice no. EAD/AO-PM/NK/1796/2018 dated January 18, 2018 (hereinafter referred to as 'SCN') under Rule 4(1) of the said Rules as to why an inquiry should not be held and penalty not be imposed under Section 15HA of the SEBI Act- 1992, for the alleged violation of the provisions of law.

6. It was alleged in the SCN that price of the scrip opened at Rs 12.05 on May 14, 2013 and closed at Rs 24.05 on October 24, 2013. The details of LTP contribution of top 10 net positive LTP contributing entities as buyers during the period is as under:

Buyer Name	All Trades			LTP diff > 0			LTP diff < 0			LTP diff = 0		% of +ve LTP to Tot Mkt+veLTP
	LTP impact in Rs.	QTY traded	No of trades	LTP impact in Rs.	QTY traded	No of trades	LTP impact in Rs.	QTY traded	No of trades	QTY traded	No of trades	
Adamina Traders Private Limited	21.77	864961	6519	130.31	131696	554	-108.54	56909	1844	676356	4121	68.34
Aristo Media and Entertainment Private Limited	8.40	206114	183	10.07	17187	24	-1.67	5509	9	183418	150	5.28
Parkway Properties Private Limited	2.92	146615	119	2.97	6675	10	-0.05	1052	5	138888	104	1.56
Pavitra Mall Management Company Private Limited	1.79	54305	113	1.82	60	5	-0.03	3820	3	50425	105	0.95
Venkateswara Capital Management Limited	1.72	377811	191	2.30	23875	6	-0.58	10000	1	343936	184	1.21
Mehta Harshit	1.35	30000	11	1.35	3200	2	0.00	0	0	26800	9	0.71
MohdZafarullah Khan	1.29	1	1	1.29	1	1	0.00	0	0	0	0	0.68
Priti Manish Shah	1.25	100	1	1.25	100	1	0.00	0	0	0	0	0.66
Rahul Parikh	1.10	500	10	1.10	50	1	0.00	0	0	450	9	0.58
Khengar Purshottam Gangani	1.05	200	2	1.05	200	2	0.00	0	0	0	0	0.55
Total By Top 10 Entities	**42.64**	**1680607**	**7150**	**153.51**	**183044**	**606**	**-110.87**	**77290**	**1862**	**1420273**	**4682**	**80.51**
Total By Market	**12.15**	**8119992**	**10398**	**190.68**	**325536**	**759**	**-178.53**	**337241**	**2252**	**7457215**	**7387**	**100.00**

It is seen from the above table that the total positive LTP contribution by the top 10 net positive LTP contributing entities was 80.51% of the total market positive LTP during the period. Out of this, Adamina Traders Private Limited contributed 68.34% of total market positive LTP. It was also observed that of the 606 buy trades of the top 10 entities contributing to positive LTP, the Noticee was a buyer in respect of 554 trades.

7. It was further alleged from the positive LTP buy trades of Adamina Traders Private Limited that it had placed small quantity buy orders. Details of these trades along with their LTP contribution is given below:

Sl. No.	Description	No. of trades	LTP Contribution (Rs)	% of total market positive LTP
1	Trades where buy order quantity is 1 share	386	96.04	50.37
2	Trades where buy order quantity is 2 - 10 shares	29	6.23	3.27
3	Trades where buy order quantity is more than 10 shares	139	28.04	14.71
4	All buy trades which contributed to positive LTP	**554**	**130.31**	**68.34**

It is seen from the above table that out of 554 buy trades contributing to positive LTP of Rs 130.31, in respect of 386 trades (69.68%), the buy order quantity was 1 share and had contributed to positive LTP of Rs 96.04. Further, in respect of 415 (74.91%) trades (including the above 386 trades), the buy order quantity was in the range of 1-10 shares and had contributed to positive LTP of Rs 102.27, i.e., 53.64% (including Rs. 96.04 in respect of aforesaid 386 trades) of total market positive LTP during May 14, 2013 to October 24, 2013. It was also observed that of the above 554 positive LTP contributing trades that the disclosed quantity of sell orders were large (i.e. more than or equal to 100 shares), however, in respect of 176 trades, the buy order was placed for small quantity (i.e. less than or equal to 10 shares). The aforesaid 176 trades were executed over a period of 57 days out of total 80 trading days when Adamina had bought shares during the period May 14, 2013 to October 24, 2013 and resulted in LTP contribution of Rs 50.23 (26.34% of total market positive LTP). An illustration of the top 5 LTP contributing trades of such 176 trades is given below:

Batch Date	Buyer Name	Seller Name	Trade Time	Buy Order LMT	Sell Order LMT	Trade Price	LTP Diff	Buy Order LMP	Sell Order LMP	Trade Quantity	Sell Order Disclose Volume	Buy Order LMQ
16.07.2013	Adamina	Pratik Kantilal Shah	13:44:41.5377410	13:44:41.5222630	09:33:08.6836110	18.00	1.30	18.00	18.00	1	100	1

17.07.2013	Adamina	Mittal Kalpesh Tank	11:43:19.1292010	11:43:19.1186850	11:20:13.1246800	18.50	1.40	18.50	18.50	1	100	1
23.07.2013	Adamina	Jaya V Kadagad	15:14:31.8931630	15:14:31.8715030	11:04:55.4566600	17.30	1.60	17.30	17.30	1	300	1
26.07.2013	Adamina	Jihan Mercantile Private Limited	11:47:25.7312940	11:47:25.7042240	09:30:56.7460720	16.45	1.25	16.45	16.45	1	4000	1
26.07.2013	Adamina	Godavari Commercial Services Pvt Ltd	15:19:57.8514100	15:19:57.8108340	14:52:55.5603370	16.25	1.05	16.25	16.25	1	1000	1

8. As can be seen from the above illustration in respect of top 5 LTP trades, while the disclosed volume of the sell orders were large, buy orders were placed for small quantities, for which quantity the above trades were executed. These 5 trades for small quantity were executed on 4 days and contributed to significant positive LTP.

9. The SCN, EAD/AO-PM/NK/1796/2018 dated January 18, 2018 was sent to the Noticee at its address; D/46 - N -10, 2nd Floor, Amar Jyoti CHS Ltd., M G Complex, Sector -14, Vashi, Navi Mumbai – 400703, available on record with SEBI. The SCN was simultaneously sent to another address; 01, Laura Building No.13/21, 1st Dhobi Talao Lane, Mumbai – 400002, obtained from the RoC (Registrar of Companies) records available on the MCA (Ministry of Corporate Affairs) website. I find that the SCN returned undelivered from the first address and was delivered at the second address.

10. The Noticee replied to the SCN vide letter dated December 10, 2018. The Noticee in its reply requested for the Investigation Report, complete trade log and order logs in the scrip for the period from November 1, 2011 to January 15, 2015. I note that the SCN contained the extract of trades and summary of trading activities of the Noticee. I note that the relevant documents relied upon in issuing the SCN was provided to the Noticee along with the SCN. It is pertinent here to refer to the Hon'ble SAT order in the matter of Shruti Vora Vs SEBI [Appeal (L) No. 28 of 2020) decided:

"18. we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the

documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.

19. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.

25. In view of the aforesaid, the request of the appellant for supply of the documents in possession of the authority is misconceived and cannot be accepted. Prima facie, the only object in making such demand is to obstruct the proceedings. We accordingly do not find any merit in the appeal and is dismissed with no order as to costs."

11. I also refer to the Hon'ble SAT order dated April 16, 2012 in Appeal no. 49 of 2012 in the matter of Rajesh N Jhaveri Vs SEBI wherein the Hon'ble Sat observed:

"*We also hold that the adjudicating officer was right in providing the appellant with the material relevant to the investigation and not the entire trade logs relating to the transactions in the scrip of the company. In any investigation procedure, justice can be rendered if the person is provided with the material relevant to him and which is proposed to be used against him for which he should be given reasonable opportunity of defence. In the present case, no useful purpose would have been served by providing the appellant with details of all the transactions concerning the scrip of the company*".

I also refer to the observations of the Hon'ble SAT in the matter of Mayrose Capfin Pvt. Ltd. Vs SEBI (Appeal No. 20 of 2012 decided on 30.03.2012) wherein the Hon'ble Tribunal has stated that:

"...no prejudice has been caused to the appellant on this count as the extract of the relevant trade logs and order logs pertaining to the appellant was made available which was enough for him to defend himself or to make proper representation against the proposed action."

12. Thereafter, an opportunity of personal hearing was granted to the Noticee on February 13, 2020 vide letter dated January 17, 2020 and also advised to submit reply to the SCN in the matter. I note that the Noticee neither submitted any reply to the SCN nor availed the opportunity of personal hearing granted to it. In view of the above, I find that the Noticee was given sufficient opportunity to explain its case before me. However, the Noticee did not avail the opportunities given to it. For the reasons mentioned above, I am of the opinion that the Noticee was provided with adequate opportunities of replying to the SCN and of being heard in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have perused the documents available on record. The issues that arise for consideration in the present case are:

   I. *Whether the Noticee, has indulged into manipulative trades and manipulated the price of the scrip with its trades and thereby violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.*

   II. *Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act, 1992?*

   III. *If so, what would be the monetary penalty, duly considering the factors mentioned in Section 15J of SEBI Act read with Rule 5(2) of the AO Rules?*

Issue I – *Whether the Noticee, has indulged into manipulative trades and manipulated the price of the scrip with its trades and there by violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?*

14. The first issue for consideration is whether the Noticee has indulged into manipulative trades and manipulated the price of the scrip with its trades and thereby violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

15. Before I proceed with the matter, it is pertinent to look at the relevant provisions alleged to have been violated by the Noticees, which are reproduced below:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly —

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices:

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

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

16. I note that the Noticee has not replied to the SCN and neither has it availed the opportunity of personal hearing granted to it. I find that the Noticee was provided with sufficient opportunities to explain its case before me but has not done so. Therefore, I am constrained to decide the matter based on the materials and documents put on record and made available before me.

17. The SCN alleged that the Noticee was instrumental in increasing the price of the scrip by deliberately matching the sell orders placed at prices higher than the LTP and also by entering buy orders at price higher than LTP. I note from the SCN that the Noticee had contributed 68.34% of total market positive LTP. The total positive market LTP in the scrip was Rs. 190.68 of which the Noticee contributed Rs. 130.31. I also find that the Noticee was a buyer in 248 trades out of 606 buy trades contributing to positive LTP placed by the top 10 traders in the scrip of the company. I also find that there were 554 buy trades entered into by the Noticee involving smaller quantities of shares which had contributed to a total positive LTP of Rs. 130.31 in the scrip of the company. Further, there were 386 buy trades (69.68%) where the buy quantity was 1 share and the positive LTP contribution was Rs. 96.04. Further, in respect of 415 (74.91%) trades

(including the above 386 trades), the buy order quantity was in the range of 1-10 shares and had contributed to positive LTP of Rs 102.27 i.e. 53.64% (including Rs. 96.04 in respect of aforesaid 386 trades) of total market positive LTP during May 14, 2013 to October 24, 2013.

18. I find from material available on record that in respect of the above 554 positive LTP contributing trades that the disclosed quantity of sell orders were large (i.e. more than or equal to 100 shares). However, in respect of 176 trades, the buy order was placed for small quantity (i.e. less than or equal to 10 shares). The aforesaid 176 trades were executed over a period of 57 days out of total 80 trading days when Adamina had bought shares during the period May 14, 2013 to October 24, 2013 and resulted in LTP contribution of Rs 50.23 (26.34% of total market positive LTP) as discussed in paragraph 7 and 8 above.

19. I find from the material / documents available on record that the Noticee has repeatedly entered into such trades (176 nos.) on several days (57 days) and contributed to significant positive LTP of Rs 50.23 (26.34% of total market positive LTP). In view of the same I am of the considered view that the trades of the Noticee were not that of a genuine buyer and that it had no bona fide intention to buy because despite having large disclosed quantity of sell orders, it had repeatedly placed small quantity buy orders by either matching the price of the sell order or placing orders slightly higher than sell order rate which were already above LTP at the time of buy order entry, or by placing buy orders at prices above LTP which were subsequently matched by sell orders, thereby contributing to significant positive LTP.

20. It is pertinent here to refer to the Judgment of Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 with respect to the connection and interconnection of the Noticees. The Hon'ble Supreme Court of India in the matter of **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 held that: *"22. 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 there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion. ……. 26. It has been vehemently argued before us that on a screen based trading the identity of the 2nd party be it the client or the broker is not known to the first party/client or broker. According to us, knowledge of who the 2nd party/ client or the broker is, is not relevant at all. While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed there under is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. The failure of the brokers/sub-brokers to alert themselves to this minimum requirement and their persistence in trading in the *particular scrip either over a long period of time or in respect of huge volumes thereof, in our considered view, would not only disclose negligence and lack of due care and caution but would also demonstrate a deliberate intention to indulge in trading beyond the forbidden limits thereby attracting the provisions of the FUTP Regulations. The difference between violation of the Code of Conduct Regulations and the FUTP Regulations would depend on the extent of the persistence on the part of the broker in indulging with transactions of the kind that has occurred in the present cases. Up to an extent such conduct on the part of the brokers/sub-brokers can be attributed to negligence occasioned by lack of due care and caution. Beyond the same, persistent trading would show a deliberate intention to play the market. The dividing line has to be drawn on the basis of the volume of the transactions and the period of time that the same were indulged in. In the present cases it is clear from all these surrounding facts and circumstances that there has been transgressions by the respondents beyond the permissible dividing line between negligence and deliberate intention*."

21. I note that the Noticee has not replied to the show cause notice (SCN) issued to them. Further, it has also not responded to the opportunity of personal hearing granted. Therefore, in absence of any replies/response from the Noticee, I am of the view that the Noticee has accepted the charges levelled in the SCN and has nothing to say in its defence. Further, as evident from the Noticee's trading pattern I am of the considered view that the Noticee's intention was to mark the price higher and not merely to enter into the buy transactions.

22. The Hon'ble SAT in the matter of **Bhavesh Patel and Others versus SEBI** in the matter of S J Corporation Limited in Appeal No. 456 of 2015 decided on 25 April 2018 reaffirmed the rationale cited in the matter of **Securities and Exchange Board of India vs. Rakhi Trading Private Ltd.** (Civil Appeal No. 1969 of 2011 decided on February 08, 2018) and **Securities and Exchange Board of India Versus Kishore R. Ajmera** in Civil Appeal No. 2818 of 2008 decided on February 23, 2016 and observed that: *"….. 44. Learned Counsel Shri. Gaurav Joshi relied on the following judgments of the Supreme Court (a) Securities and Exchange Board of India vs. Rakhi Trading Private*

Ltd. (Civil Appeal No. 1969 of 2011 decided on February 08, 2018); (b) Securities and Exchange Board of India vs Shri Kanaiyalal Baldevbhai Patel, 2017 SCC On Line SC 1148 decided on September 20, 2017 and (c) Securities and Exchange Board of India vs. Kishore R. Ajmera, (2016) 6 Supreme Court Cases 368 decided on February 23, 2016 and submitted that in deciding on PFUTP violation, totality of facts and preponderance of probabilities have to be resorted to as full evidence may not be forthcoming and manipulative, fraudulent schemes also include deliberately making losses as held in Rakhi Trading (supra). …..

50. Argument made by each of the appellant individually that each of them played only a small trade in isolation or as per normal course of their business or some of them did not trade at all or some small loan has been given etc. stand no merit when totality of the picture is looked at. All of them together enabled launching this major fraud by using a dormant, low capital base and low public float company. In this context, we also find that the argument that many of the appellants did not off-load either full or major chunk of their holding even in Phase-III or thereafter also has no merit since with the still limited liquidity of about 1100 shares per day there was an inbuilt absorptive limitation for the market and thereafter the ad-interim restraint order of the WTM of SEBI came on their way on February 5, 2010. As held by the Hon'ble Supreme Court in several orders such as SEBI vs Rakhi Trading (supra), SEBI vs. Shri Kanaiyalal Baldevbhai (supra) and SEBI vs. Kishore R. Ajmera (supra) complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In Rakhi Trading (supra) it is held that in some cases parties may even incur willful losses in the market to achieve some objectives."

23. I note that Noticee failed to furnish any reply to the SCN and also did not avail the opportunity of personal hearing before me despite service of the SCN and hearing notice. In this regard, I would like to refer to the order of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Classic Credit Ltd. vs. SEBI*, (Appeal No. 68/2003, order dated December 08, 2006), wherein it,*inter-alia*, held – *"the appellants did not file*

any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".

24. Similarly, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs. SEBI* (Appeal No. 68 of 2013, order dated February 11, 2014), has also inter alia, observed that:"...*As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

25. In the light of the above facts, and drawing support from the various judicial pronouncements mentioned above, it is established that the Noticee has manipulated the price of the scrip and created a misleading appearance of trading in the scrip by such trades and therefore has violated of the provisions of Regulations 3(a), 3(b), 3(c), 3(d) and Regulation 4(1), 4(2)(a) and 4(2)(e) of SEBI (PFUTP) Regulations, 2003.

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

26. The aforesaid violations on the part of Noticee makes the Noticee liable for penalty under Sections 15 HA of the SEBI Act 1992 which reads as follows:

15HA. 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.

27. As regards the Noticee it is clear that they are liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India Order in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** has also held

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

ISSUEIII*: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act?*

28. 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.]

29. I find that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, accrued/made by the Noticee and the losses, if any, caused/suffered by the investors due to such manipulative trades of the Noticee. From the documents available on record, it is noted that the Noticee has entered into a number of transactions repeatedly and therefore the violations is treated as repetitive in nature. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter **of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014** :-

"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.

ORDER

30. I gather from material available on record, another proceeding under section 11 of the SEBI Act, 1992 was also initiated, wherein similar charges were levelled in respect of the Noticee. I note from the material available on record that Whole Time Member (WTM) SEBI, has passed an order in the said matter as follows " *I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B read with section 19 of the Securities and Exchange Board of India Act, 1992, hereby restrain the Noticee, Adamina Traders Pvt. Ltd. (PAN: AAICA0681J) from accessing the securities market and further prohibit it from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of three years, from the date of this order. During the period of restraint, the existing holding, including units of mutual funds of the Noticee shall remain frozen".*

31. For the aforesaid reasons and after taking into consideration the nature and gravity of charges established, the facts and circumstances of the case as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakh Only) on the Noticee; Adamina Traders Private Limited under section 15HA of SEBI Act, 1992 for the violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 which will be commensurate with the violations committed by the Noticee.

32. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the following way:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html; OR
b. By way of Demand Draft in favour of *"SEBI - Penalties Remittable to Government of India",* payable at Mumbai; OR

33. The Noticee shall forward the said Demand Draft in the format as given in table below shall be sent to "The Division Chief, Enforcement Department -DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (likepenalties/disgorgement/recovery/Settlement amount andlegal charges along with order details)	
Penalty	

34. In the event of failure to pay the said amount of penalty within 45 days from June 1, 2020, recovery proceedings may be initiated under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

35. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: May 27, 2020 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**