
BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 15-I (3) of the Securities and Exchange Board of India Act, 1992

In respect of –

Sr. no.	Noticee	PAN
1.	Sushma Agarwal	AKFPS7584C

In the matter of Winsome Yarns Ltd.

Background –

1. An investigation was undertaken by SEBI into the trading activities of certain entities in the scrip of Winsome Yarns Ltd. (hereinafter referred to as “**Winsome**”/ “**Company**”) in order to determine if any price manipulation in the said scrip has taken place and, if yes, then to ascertain whether the activities that caused the price movement was attributable to any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and/or Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) during the period of September 30, 2010 to February 28, 2015 (hereinafter referred to as “**Investigation Period**”).
2. Upon completion of the abovementioned investigation, it was found by SEBI that one Sushma Agarwal (hereinafter referred to as ‘**Noticee**’) had indulged in

trades which didn't fall in the category of fair and normal trade and that those trades had caused/resulted in manipulation in the price of the scrip of the *Company* on the BSE Limited (hereinafter referred to as '**BSE**') and the National Stock Exchange of India Limited (hereinafter referred to as '**NSE**'). Further, the acts of trading in the scrip of the *Company* contained elements of creating a misleading appearance of trading in the scrip of Winsome.

3. In terms of such findings of the abovementioned investigation, adjudication proceedings were initiated against the *Noticee*, upon completion of which the Learned Adjudicating Officer (hereinafter referred to as '**AO**') passed an order dated February 24, 2020 (hereinafter referred to as '**AO Order**'). By the said *AO Order*, the AO had disposed of the proceeding by recording that acts of indulging in those impugned trades by the *Noticee* are not sufficient enough to establish the charges of indulging in fraudulent and unfair trades practices by her, primarily by relying upon the findings made by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in its order dated January 16, 2020 in the matter of *Nishith M Shah HUF vs. SEBI*. The learned AO, while discharging the *Noticee* from the charges, held that for want of any connection being brought out on record between the buyers and sellers, it is difficult to accept that Sushma Agarwal had manipulated the price of the scrip of *Winsome* and had created a misleading appearance of trading in the said scrip.
4. Pursuant to passing of the above Order by the AO thereby discharging the *Noticee*, SEBI decided to review the aforementioned *AO Order* in terms of provisions of Section 15-I(3) of the SEBI Act. Consequently, a Show Cause Notice dated April 23, 2020 was issued to the *Noticee* alleging that the *AO Order* is erroneous and not in the interest of securities market in as much as the matter was not decided on the merits of the case. It was also alleged that the *AO order* suffers from manifest error as it has overlooked and not gone into the fact that the *Noticee* has significantly contributed to rise in the price of the scrip and has

created misleading appearance of trading in the scrip by way of indulging in 353 manipulative trades, thereby violating the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations. The said SCN was delivered to the *Noticee* on June 04, 2020 and a proof of such delivery is available on record.

5. Pursuant to the receipt of the aforesaid SCN, vide email dated October 06, 2020, the *Noticee* submitted her reply to the said SCN wherein she made reference to and relied upon her earlier submissions dated November 28, 2018. I find that in the aforementioned two letters, the *Noticee* has contended the following:

- 5.1. That she is a matric passed housewife without any higher education and is facing financial constraints and was not competent enough to analyse the stock market.
- 5.2. That she was a very small investor and had invested in many scrips in small quantity so as to restrict her gain or loss in a day. However, due to loss incurred in such trading, she had stopped investing in securities market.
- 5.3. During the whole investigation period, she had only purchased shares and did not sell any substantial share.
- 5.4. That she has no relation or connection either directly or indirectly with any of the directors or promoters or officers or employees of the *Company* nor she has connection or relation with any of the share operator or broker or their agents.
- 5.5. That the variation in price by just 1 paisa or 2 paisa in most of those trades was due to volatility of price in the market.
- 5.6. That buying of 1 share out of quantity of tens of thousands doesn't make any significant or material change in price behavior as number of shares transacted in a day is available on exchange system and every person can find out the same. In such a scenario, buying of one share is a drop in the ocean.

6. Subsequent to receipt of the aforesaid email reply from the *Noticee*, in compliances with the principles of natural justice, an opportunity of personal hearing was granted to the *Noticee* on October 13, 2021 during which the Authorized Representative of the *Noticee* appeared through video conferencing and reiterated the aforementioned submissions earlier made through her written replies. Certain queries were raised during the course of personal hearing which were subsequently also sent to the *Noticee*. In reply to that, the *Noticee* has submitted her trading details during the relevant time. Further, she had sought time to submit her Income Tax returns. However, the *Noticee* has failed to submit her Income Tax returns for the relevant period till now.

Consideration of Issues and Submission

7. Before proceeding to deal with the allegations as recorded above against the *Noticee*, I find it appropriate that for the purposes of easy reference, relevant provisions of the applicable sections, Regulations, guidelines, etc. which have allegedly been contravened as per the SCN, are reproduced hereunder:

SEBI Act –

Section 15-I Power to adjudicate

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

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

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

PFUTP Regulations, 2003

Regulation 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.*

Regulation 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;*

8. I have carefully considered the allegations made against the *Noticee* in the SCN, her reply and submissions made before the AO as well as before me during personal hearing and the materials available on record. I note that the allegation levelled against the *Noticee* is that she, through her trades, had significantly contributed to rise in the price of the scrip of the *Company* and had also created misleading appearance of trading in the said scrip by indulging in 353 trades

during the Investigation Period; which were allegedly executed in violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations.

9. I note that where an order passed by the adjudicating officer is erroneous to the extent that it is not in the interests of securities market, it is open for the Board to invoke and exercise power vested under Section 15 I(3) of the SSBI Act. . Therefore, the issue to be decided in the present matter is the following:

Issue– Whether the Adjudicating Officer, by departing from the established principles of law and by ignoring material facts and not considering the matter on its own merit has passed the Order dated February 24, 2020 erroneously, by relying on *Nishith M Shah HUF* (supra) to the extent that it is not in the interests of the securities market?

10. I note that the investigation period was divided in different patches out of which the first patch that is relevant for the instant proceeding had started from September 30, 2010 and ended on May 18, 2011. During this period, the scrip price opened at INR 2.41 and closed at INR 4.87 on BSE. Therefore, on the net basis, the price of the scrip of the *Company* rose by INR 2.46 on BSE during Patch 1. Similarly, the price of the scrip of the *Company* opened at INR 2.25 and closed at INR 4.90 on NSE during the same period. Therefore, on a net basis, the price of the scrip of the *Company* rose by INR 2.65 on NSE during the same patch.
11. I find from the material available on record that the *Notinee* has executed 194 trades on BSE and 202 trades on NSE during Patch 1 through which, she has purchased the shares of the *Company*. By way of these 194 trades executed on BSE, the *Notinee* has contributed a total of INR 15.38 to positive LTP on BSE, which amounted to 16.30% of total market positive LTP of the scrip of the *Company* on BSE during the aforementioned period. Out of these 194 trades, a total of 172 trades on BSE were found to be such trades which contributed in creation of the abovementioned positive LTP. It was also observed that out of these 172 positive LTP contributing trades, in 167 trades, the buy orders were

placed by the *Noticee* after corresponding sell orders were placed on the trading system and in 166 out of the 172 positive LTP contributing trades, each such buy orders placed by the *Noticee* was for 1 share only even though sell orders for higher quantities were available in the system for matching. Similarly, out of the 202 trades executed on NSE, a total of 181 trades of the *Noticee* contributed to creation of positive LTP of INR 16.15 which amounts to 15.26% of total market positive LTP witnessed in the scrip during the said period. Here also, it has been observed that out of 181 positive LTP contributing trades, in 176 trades, each of the buy orders was placed after the sell orders were placed in the system and further in 180 out of the 181 positive LTP contributing trades, every such buy order placed by the *Noticee* was for a quantity of 1 share only even though sell orders for higher quantities were already available in the stock exchange system. An analysis of LTP contribution made by the *Noticee* on both BSE and NSE during the relevant period is summarized for convenience and easy references herein below:

	All trades			LTP Diff >0			LTP Diff <0			LTP Diff =0		% of +ve LTP to Total Mkt +ve LTP
Exchange	LTP Impact (Rs.)	Sum of quantity	No of trades	LTP impact (Rs.)	Sum of quantity	No of trades	LTP impact (Rs.)	Sum of quantity	No of trades	Sum of quantity	No of trades	
BSE	14.31	313	194	15.38	281	172	-1.07	26	16	6	6	16.30
NSE	15.55	213	202	16.15	183	181	-0.60	19	10	11	11	15.26

12. As observed above, that out of the 172 and 181 positive LTP contributing trades executed on BSE and NSE respectively, in majority instances of such trades (167 trades on BSE and 176 trades on NSE), the buy orders were placed by the *Noticee* only after the respective corresponding sell orders were placed by the sellers in the exchange trading system. In this regards, it has been asserted in the SCN that the impugned order passed by the AO, while deciding the proceeding in favour of the *Noticee*, has erred in not appreciating the facts of the matter and while

applying the relevant provisions of law on the facts pertaining to the afore noted impugned trades, has completely omitted to observe and appreciate such a continuous trading behavior displayed by the *Noticee* over a long period of more than 7 months, and has exonerated the *Noticee* from the charges of manipulating the price and creating misleading appearance of trading in the scrip of the *Company* by grossly overlooking the above noted abnormal trading practices adopted by the *Noticee*. Therefore, the show cause notice (SCN) has been rightly issued stating therein that the impugned order of the AO has failed in deciding the matter on its own merit and has disposed of the matter erroneously *inter alia*, by merely relying on the order of the Hon'ble Tribunal in the matter of Nishith M Shah (*supra*) which is not in the interest of securities market.

13. Having gone through the records and submissions advanced by the *Noticee* both before me and during the earlier proceedings, it is observed that the *Noticee* has primarily sought to defend her trades *inter alia* on the ground that she is a matriculate and does not understand the nitty gritty of the securities market. She has further claimed that her trading was influenced by her financials as she was not interested in taking long risk. The AO after considering the submissions of the *Noticee*, while seeking reliance of the above mentioned order of the Hon'ble Tribunal has observed as under;

“17. Hon'ble SAT has noted that the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a sine qua non. Further, Hon'ble SAT has observed that trading in small quantities in scrips is by itself is neither illegal nor manipulative nor violative of Regulation 3 and 4 of the PFUTP Regulations unless collusion with others is found. As noted earlier, no connection between the Noticee and counterparties have been brought out in the investigation report, even though the Noticee has done her trades in small quantities. Further, no connection has been brought out between the Noticee and the promoters/ directors of the Company. Therefore, no causal connection has been established. In view of the foregoing and the guidance I derive from the above

referred order of Hon'ble SAT, I find that it is difficult to accept that the Noticee manipulated the price in the scrip of WYL and created a misleading appearance of trading in the scrip for the want of establishing connection as detailed above. In view of the same, I am of the view that this is not a fit case for imposition of monetary penalty on the Noticee."

14. I note that the impugned order of the AO has disposed of the proceedings by placing reliance on the above cited findings made by the Hon'ble Tribunal holding that in the absence of any connection with the counter party to the trade or with the promoter/director of the company, trading in miniscule quantity would not *ipso facto* be treated as violating Regulations 3 and 4 of the PFUTP Regulations. However, I find that the impugned order of the AO, while discharging the *Noticee* from the charges levelled against her, has erred in seeking reliance on the findings of the Hon'ble Tribunal without examining if the said findings, recorded in the context of the facts of another matter before the Hon'ble SAT, would at all be applicable to the facts of the instant proceeding or not.

15. Before analyzing the observations of Hon'ble SAT in Nishith M Shah (*supra*) and the facts in context of which such observations were made, I find it relevant to refer to the judgment of Hon'ble Supreme Court of India in the matter of Union of India vs. Dhanwanti Devi [(1996)6 SCC 44], wherein the Apex Court observed that:

"9. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found..."

Similarly, in the judgment of The Regional Manager vs. Pawan Kumar Dubey [(1976)3 SCC 334], Hon'ble Supreme Court of India made the following observations:

*“7. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. **One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.**”*

(emphasis supplied)

The aforementioned observations made in both these judgments were again affirmed by Hon’ble Supreme Court of India in its recent judgment dated May 05, 2022 in the matter of Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation (Civil Appeal 3657/2022).

16. In this regard, I note that in the Nishith M Shah (supra), the Hon’ble Tribunal has held that selling shares by placing sell orders in miniscule quantity where the trading system has pending buy orders would not be illegal, when the record does not find any connection with the counter party i.e. buyer of the trades. This finding was made in context of a seller selling minuscule quantity of shares at a price higher than the LTP, which in normal circumstances would be natural for any seller to try to sell at a higher price. The aforesaid findings were also made by the Hon’ble SAT on account of the fact that investigation in the said matter, had found nothing adverse against the buyer entities who had placed buy orders unusually above LTP. In contrast to the aforesaid facts, in the present matter, it is noted that it is the buyer (*Noticee*) who has been noticed to have been matching the pending sell orders above the LTP and the same practice was followed on a continuous basis. This is highly unusual for a buyer to incessantly purchase shares at a higher price whereas any prudent buyer would always want to purchase shares at lowest possible prices. The impugned order has failed to take into consideration this well-established principle of trading, that a buyer always desires to buy at the lowest and a seller intends to sell at the highest. Under the

circumstances, by taking recourse to the findings held by the Hon'ble Tribunal in the matter of Nishith M Shah (supra) without any regards to the peculiarities and distinct facts of the instant matter is misplaced and any such reliance in the aforesaid findings by the Hon'ble SAT in a mechanical manner without appreciation of mind, would not be in the interest of law governing the securities market.

17. As observed above, despite being a buyer, who would always want to buy at a minimum possible price in the course of his/her normal trading activities, the *Noticee* has frequently placed buy orders above the LTP and has continuously purchased shares at higher prices by going against the universally accepted norm that befits the trading behavior of a buyer in course of her trading. As a result, the above noted trading pattern followed by the *Noticee* is verified with the submissions/arguments advanced by the *Noticee*, the same is found to be contradictory. The *Noticee* on the one hand contends to be financially not literate enough to know the nuances of trading in securities market whereas, at the same time, she is found to have entered into multiple trades in F&O segment in the option contracts of Nifty during the relevant time. She has also been found to be buying shares of the *Company* on a continuous basis during the relevant period in miniscule possible quantities and every time when she buys, her buy orders eagerly followed the pending sell orders in the system. Thus, the impugned order of the AO has not taken into consideration the facts of the matter in proper perspective and, without seeking any additional evidence in support of her submissions, the AO seems to be convinced with the explanations of the *Noticee* to justify her trades by portraying that she was having financial constraints and was engaged in trading in small quantity so as to restrict her gain or loss in a day. However, contrary to such a claim and, strangely enough, it has been noticed that the *Noticee* has continuously bought the shares of the *Company* during the relevant period and has not placed any sell orders during the said period and this fact has

been completely overlooked in the impugned order of the AO. It has also been seen that the *Noticee* has willingly purchased shares at a higher price, and resultantly has contributed significantly to the price rise of the scrip of the *Company* and yet, surprisingly has not bothered to capitalize on the same by selling her shares at increased price so as to insulate her investment. In view of the above, considering the sheer number of trades executed by the *Noticee* in the scrip of the *Company* during the period and the frequency with which the same was executed at prices higher than the LTP, it strongly suggests that she was not seriously interested in buying the shares of the *Company* in the normal course of her trading and rather, it is apparent from her trading behavior that she was engaged in trading in the scrip of the *Company* in such abnormal manner with some specific motive of distorting the market equilibrium. Under the circumstances, disposing of the proceedings by AO by merely recording that in the absence of any connection with the counter party, it is difficult to accept that the *Noticee* manipulated the price in the scrip of the *Company* and created a misleading appearance of trading in the scrip, is erroneous both in facts and in law and is not in the interest of securities market. The aforesaid observations made by me while recording that the impugned order of the AO is erroneous and bad in law also finds affirmation in the order of the Hon'ble SAT dated 15.11.2021 in the matter of Admina Trades Private Limited vs SEBI, wherein following has been held

“9. Thus, in the instant case, the pattern of trading, namely, placing buy orders in small quantities which led to increase in the price of the scrip was clearly fraudulent and manipulation of the price of the scrip which was violative of Regulations 3 and 4 of the PFUTP Regulations. Thus, the finding given by the WTM does not suffer from any error of law. The decision of this Tribunal in the case of M/s Nishith M. Shah is, thus, not applicable in the facts and circumstances of the present case and is clearly distinguishable.”

18. The Hon'ble Tribunal has further held in the Admina Trader (Supra) that *“We are unable to accept this argument as we find from the trading pattern of the appellant that on*

most occasions the appellant was placing buy orders of miniscule quantity ranging from 1 to 10
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shares above LTP though large orders were pending in the system. The WTM has categorically found that out of 176 trades, in a large numbers trades, only one share was purchased. These miniscule trades of one share per day led to increase price of the scrip by Rs. 50.23 which amounted to 26.34% of the total market positive LTP.”

19. In fact, soon after passing the Nishith M Shah Order, the Hon’ble SAT, have even in the matter of Mrs. Kalpana Dharmesh Chheda vs. SEBI vide their Order dated February 25, 2020 held the following:

“9. We do not find much merit in the submissions made by the learned counsel for the appellants though generally it can be stated that selling at a price higher than the LTP particularly when buy orders are available in the system cannot be considered as manipulative in itself. However, looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. This behavior cannot be justified in terms of normal rational expectations of a seller.”

20. In the instant matter also the *Noticee* was found to have placed buy orders continuously in a pattern and manner that these orders matched with the pending sale orders, consequently, these buy orders went on contributing to the price rise in the scrip of the *Company*. The impugned order of the AO has overlooked the crucial aspect that in 166 out of the 172 positive LTP contributing trades on BSE and in 180 out of the 181 positive LTP contributing trades on NSE, each such buy order placed by *Noticee* was only for 1 share even though the pending sell orders were available in the system for much larger quantities and in all such instances of placement of buy orders, which in total come to 346 orders, the *Noticee* has bought only 1 share at a time in every such buy order that again always

above the LTP. As a consequence, the contribution to LTP in the scrip by the afore cited trades of the *Noticee* was around 16.30 % on BSE and 15.26% on NSE, which by any standard cannot be measured as miniscule as contended by the *Noticee*. Even after presuming that the intention of *Noticee* was to purchase 346 shares only, it really doesn't make any sense for a prudent buyer of shares since she didn't purchase any shares at the start of patch 1 of Investigation Period and later on kept on purchasing shares despite continuously increasing price of the said scrip of the *Company* in a manner which suggests as if she was deliberately attempting to averaging up her purchase price (as opposed to general trading strategy of averaging down wherein an investor keeps on purchasing shares in falling market to reduce his/her cost of purchase of shares). This gives a clear cut inkling about the dubious intention of the *Noticee* behind executing trades in such a peculiar manner when the price of the scrip was going up and almost doubled up during the same period. The above aspect of trading behavior on an examination evidently suggest that trades executed by the *Noticee* were not being executed in the ordinary course of trading and instead such a trading practice can be said to possess sufficient elements of fraudulent trade practice so as to fall within the mischief of provisions of Regulation 3 and 4 of the PFUTP Regulations.

21. It is also observed that the impugned order passed by the AO has also failed to consider the alleged violations on merit of the facts and instead, has disposed of the proceedings by merely relying on the findings of the Hon'ble Tribunal in the matter of Nishish M Shah (*supra*), which is factually distinguishable and not applicable to the facts of the matter. Though the *Noticee* has contended that she used to trade in small quantities due to her financial conditions, the impugned order of the AO has not even attempted to examine as to whether the above submission of the *Noticee* has any tangible basis to rely upon or was made merely as a bald assertions without any support of facts or evidence. This error in the

impugned order becomes very evident in light of trading details submitted by the *Noticee* in F&O segment wherein she entered into option contracts of Nifty (both call and put options), expiring in August and September 2013, where the value of her buy trades was no less than INR 3,63,860.10. Further, though the *Noticee* claims to be not well conversant with the market while, at the same time, trading in F&O segment, yet her trades were found to intentionally executed on majority of occasions at above LTP and in every such successive trade, she was found to be placing minuscule buy orders of one share only even though the sell orders already available in the system were offering her opportunities to buy more quantity of the said scrip of the *Company*. The *Noticee* has also failed to submit any evidence which could have established that the above discussed unusual trading pattern followed by her was not unique to the scrip of the *Company* but was being followed by her in a number of other scrips in which she followed similar trade practice of placing buy order for one share in each order even though the pending sell orders were already available for larger quantities of shares in those scrips. The unusual behavior on the part of the *Noticee* of buying the shares of a scrip having no sound fundamental by taking a specious plea of generating small gains, is full of suspicion and devoid of any explanation as to what was the rationale that enticed her to muster courage to buy the shares always at above the LTP with an anticipation of making small investment gains in future. It is also observed that despite being asked, the *Noticee* has failed to submit either her ITR Returns or details of her trading in any other scrips during Patch 1 of the Investigation Period so as to substantiate her submissions. What the *Noticee* has submitted is consolidated buy-sell statements during the whole investigation period, which gives no inkling of the trading practices being followed by her during Patch 1 or during the rest of Investigation Period. Under the circumstances, lack of consideration of the above factors and factual aspects of the matter renders the impugned order of the AO erroneous and not in the

interest and integrity the securities market, thereby warranting invocation of the power vested under Section 15-I(3) of the SEBI Act, 1992.

22. While the *Noticee* has submitted that the contribution of each of her trade in LTP was only of a few paisa, I cannot ignore the fact that from the time the *Noticee* started purchasing shares of the *Company* till the time the patch 1 of the Investigation Period ended, the price of the scrip of the *Company* almost got doubled. Adding to that, I note that almost 90% of her trades resulted into creation of positive LTP, either on BSE or NSE, thereby substantially contributing to the price rise of this scrip during the said period.
23. The impugned order while exonerating the *Noticee* has observed that the scrip having more liquidity is difficult to manipulate. I find that the AO has relied upon the fact that the trading volume in the scrip and the number of trades in the scrip were generally high during the relevant period making the scrip look comparative liquid one *vis-à-vis* other scrips. Therefore, it appears that, looking at the large volume and number of trades noticed in the shares of the *Company* during patch 1 and after observing a comparatively small number of shares purchased by the *Noticee*, the AO has decided to give a benefit of doubt to the *Noticee*.
24. However, such a *prima facie* view has to be examined against the totality of peculiar facts and circumstances of each case. What the AO has missed out is the fact that more than the number of shares involved in a particular trade with respect to a scrip, the number of trades executed in that scrip can substantially affect the price of the scrip of a company since a large number of trades, comprising every single trade executed for only a single share, has the ability to establish a new price (LTP) and such single trades for single share executed continuously over a period of time can affect the price of the scrip as much as the applicable circuit limits in that scrip can permit. Thus, an investor, by placing buy orders for one share every time at a higher price can push the price of scrip artificially so much so that the scrip may touch the circuit limit.

25. As mentioned above, the *Noticee* in the present matter was continuously busy with her inimitable trading strategy of buying single shares over a long period of seven and half months. During the same period, while the number of trades executed by the *Noticee* were comparatively small, it is noticeable to find that her contribution of 15% to creation of market positive LTP in the scrip despite having executed trades which constituted even less than 2% of the total trades executed in the said scrip during the same period, clearly shows how deliberately and systematically the *Noticee* had tried to manipulate the scrip price even by engaging in a minimum number of trades. The result of such efforts of the *Noticee* can be discerned from the fact that by the end of Patch-1 of the Investigation Period, the scrip price of the *Company* had doubled as compared to price at the start of Patch 1.
26. Given the aforesaid facts and circumstances, the AO has certainly committed an error by extending the benefit of observations made by Hon'ble SAT in Nishith M Shah HUF (*supra*) order to the *Noticee* without ever getting into the factual details or appreciating the case on merit. It is therefore clear to me that the impugned order passed by the AO has grossly failed in appreciating the facts of the matter while arriving at a finding and further has committed a grave error by seeking reliance on an order of the Tribunal, which is factually different and not applicable to the instant matter. Under the circumstances, when the *Noticee's* claims are found to have no support of any tangible evidence and no justifications have been advanced by her to substantiate the rationale behind the unusual trading strategy followed by her, I see no reason to uphold the findings recorded in the impugned order of the AO. Having considered the materials on record and the submissions put forth by the *Noticee* in justification of the trades executed by her where she was found to be placing a substantial number of trades above the LTP on a continuous basis and on every occasion she ended up buying only 1 share that too even after seeing the pending sell orders were available for large

quantities in the system, by no stretch of imagination it can be held that she was engaging in acts of fair trade practice in the normal course of dealing in securities. On the contrary, as the facts of the matter clearly indicate, the trades of the *Noticee* cannot be held to be trades executed by a prudent person in the normal course of trading. Mere submission that she was not financially literate enough to gauge the intricacies of the securities market can't be held as a tool to permit her to play with the established principles of the securities market under the garb of her exuberance and innocence. The numbers of trades and the unusual pattern of trading as adopted and followed by her are sufficient in itself to hold that these trades were executed in an unfair manner and have caused artificial contribution to the price rise of the scrip of the *Company*, having no market fundamental to support such price rise. Therefore, in my view, the impugned order of the AO has committed grave error in judgment by granting the present *Noticee* benefit of the ratio of the case of Nishith M Shah (*supra*). Considering the aforesaid deliberations and my observations, the impugned order passed by the AO deserves to be recalled as the same may set out a wrong precedent for such entities to continue the abovementioned mischief unabashedly thereby artificially affecting price of a scrip, by deliberately transacting (buying or selling shares) in minuscule quantities over number of trades, and as a consequences adversely affecting the integrity of the securities market, through such mischievous trades that are inimical to the interest of the investors of the securities market. Therefore, I find it necessary to set aside the impugned Order passed by the AO and hold the *Noticee* guilty of violation of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations by executing the aforesaid trades in the scrip of the *Company*.

27. As established in the pre-paragraphs, the *Noticee* has violated the provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations.

Therefore, the *Noticee* is also liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being 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 twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.*

29. With regard to the consideration of the above noted factors, I find that the Investigation Report (IR) has not quantified the profit made or loss caused to general investors on account of the afore-discussed violations committed by the *Noticee*. It is further noted from the IR that the *Noticee* has not been found having committed similar violation in any other scrip. However, I cannot lose sight of the fact that the *Noticee* was operating in the scrip of the *Company* by using the aforesaid peculiar modus operandi for a period of seven and half months thereby operating against the interest of the investors of the securities market apart from acting against the market equilibrium. At the same time, considering the fact that vide another separate and parallel proceedings initiated against the *Noticee* under the provisions of Sections 11(1), 11(4) and 11B of SEBI Act, the *Noticee* has been restrained from accessing the securities market and has further been prohibited 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 four (4) years, I find that it is sufficient that the instant proceeding is disposed of by imposing appropriate monetary penalty after taking into cognizance the outcome of the other proceedings concluded against her referred to above. Accordingly, I, in exercise of the powers conferred upon me under Section 15-I(3) of the SEBI Act, hereby set aside the AO Order dated February 24, 2020 and impose a penalty of INR 1,00,000 (INR One Lakh only) on the *Noticee* under Section 15HA of the SEBI Act for her violation of the provisions of PFUTP Regulations as discussed in this order.

I am of the view that the said penalty is commensurate with the violations committed by the *Noticee*.

30. The *Noticee* shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/Members -> PAY NOW. In case of any difficulties in payment of penalties, the *Noticee* may contact the support at portalhelp@sebi.gov.in.
31. The *Noticee* shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The *Noticee* shall provide the following details while forwarding DD/payment information:
- a) Name and PAN of the entity (*Noticee*)
 - 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

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

Sd/-

Place: Mumbai

S.K. MOHANTY

Date: July 22, 2022

WHOLE TIME MEMBER