

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

ORDER

Under sections 11B and 11(4) of Securities and Exchange Board of India Act, 1992

In re front-running transactions of Mr. Kamal Jitendra Katkoria

In respect of

S. No.	Name	PAN
1	Mr. Kamal Jitendra Katkoria	AHCPK7426P

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had investigated the trading activities of Mr. Kamal Jitendra Katkoria (hereinafter referred to as 'the Noticee'), which had revealed that while the Noticee was employed by one Mr. Colin P. Shah (hereinafter referred to as 'Colin'), he had allegedly indulged in front running the trades of Colin during the period January 1, 2010 to December 31, 2010, and had earned ₹ 37,99,818/- through such trades.
2. Proceedings under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") were initiated against the Noticee for the alleged violations of the relevant provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 ("PFUTP Regulations"), including for disgorgement of the alleged ill-gotten gains of ₹ 37,99,818/-. In that regard, a show cause notice dated August 8, 2013 was issued by SEBI to the Noticee alleging that he had traded ahead of Colin's trades based on the prior knowledge about Colin's trades, executed matched trades with Colin and created an artificial volume and hence, allegedly disturbed the market equilibrium and normal price discovery mechanism of stock exchanges. By the SCN the Noticee was called upon to show cause as to why directions under sections 11(1), 11(4) and 11B of the SEBI Act should not be issued against him for the violations alleged to have been committed by him, which may include disgorging the alleged ill-gotten gain of ₹37,99,818 made by him and debarring

him from accessing the securities market and prohibiting him from buying, selling and otherwise dealing in securities for an appropriate period of time.

3. The Noticee filed a delayed reply to the SCN vide his e-mail dated November 12, 2013. Thereafter an opportunity of hearing was also given to the Noticee on December 17, 2013 when he appeared and made oral submissions on the line of his written reply. In his reply, amongst other submissions, the Noticee submitted that the trades, forming the subject matter of the SCN, were done by Colin himself and in some cases, he followed the trading pattern of Colin and traded ahead of the trades of Colin and later squared off the trades and earned some profit.
4. Upon considering the case on merits, SEBI vide order dated May 26, 2014, found that the Noticee had indulged in fraudulent transactions by way of placing orders ahead of Colin's orders based on the prior knowledge about Colin's trades and restrained the Noticee from accessing the securities market and also prohibited him from buying, selling and otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever for a period of three years. In the said order, it was also observed by SEBI that while the role of the Noticee in the impugned transactions is established, the probable role of Colin has not been examined in the investigation. While observing the above, it was directed that
"I find that while the role of Noticee in the impugned transactions is established, the probable role of Colin has not been examined. Further, in view of the statement of the Noticee during investigation and also during the hearing, the ill- gotten gain, if any, of the Noticee cannot be computed with certainty at this stage. I, therefore, find that the role of Colin in the impugned transactions and profit, if any, earned by him also need to be investigated. It also needs to be ascertained, by further investigation in the matter, as to how much ill- gotten profit the Noticee earned on account of his trades. I, therefore, direct accordingly."
5. Accordingly, in compliance with the aforesaid directions, further investigation was carried out with the limited objective of ascertaining the role of Colin in the front running transactions of Kamal and profit, if any, earned by him and also to ascertain how much ill-gotten profit the Noticee earned on account of his trades during the period January 01, 2010 to December 31, 2010 (hereinafter referred to as the '*investigation period*').
6. After completion of investigation in the matter, vide *ad interim ex parte* order dated March 17, 2016, SEBI ordered the impounding of the unlawful gains of a sum of ₹ 61,73,403/- (inclusive of the unlawful gain of ₹ 37,99,818/- + interest of ₹ 23,73,585/- from January 1, 2011 till March 15, 2016) from the Noticee. The amount of interest is calculated and provided in the table below:

Kamal Jitendra Katkoria (AHCPK7426P)			
	Gain (₹)	Interest @ 12% p.a. (₹)*	Total Amount (₹)
NSE	26,69,444	16,67,488	43,36,932
BSE	11,30,374	7,06,097	18,36,471
Grand Total	37,99,818	23,73,585	61,73,403

*The interest is calculated from January 01, 2011 i.e. the day after the investigation period.

7. Vide the said order dated March 17, 2016, the Banks were directed that no debits shall be made, without permission of SEBI, in respect of the bank accounts held by the Noticee except for the purposes of transfer of funds, to the extent of the amount to be impounded, to an escrow account. Further, the Depositories were also directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by the aforesaid entities. The Noticee was also directed not to dispose of or alienate any of his assets/ properties/securities, till such time the amounts mentioned above are credited to an escrow account created specifically for the purpose in a Nationalized Bank. Ms. Jagruti Katkoria (wife of the Noticee) and Ms. Saroj Katkoria (mother of the Noticee) were directed not to dispose of or alienate the Flat (identified in the investigation) until the amount mentioned above is credited to an escrow account created for the said purpose.
8. It is noted that the Noticee did not reply nor did he seek an opportunity of personal hearing pursuant to the Order dated March 17, 2016 within the stipulated time. Further, no proof of creation of escrow account was submitted to SEBI.
9. However, in the year 2017, the Noticee filed an appeal before Hon'ble SAT against earlier order of SEBI dated May 26, 2014 (mentioned above) with a delay of approximately 3 years which was well beyond the stipulated time-frame of 45 days stipulated under section 15T of the SEBI Act. The appeal filed by the Noticee was dismissed by Hon'ble Securities Appellate Tribunal ("SAT") vide its order dated October 11, 2017, *inter alia*, observing as under:

"1. This Appeal and Miscellaneous Application seeking condonation of delay of 984 days in filing the Appeal are preferred by the appellant in order to challenge the order dated May 26, 2014 passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short). By the said order the Appellant was restrained from accessing the securities market and also prohibited from buying, selling, and otherwise dealing in securities market, directly or

indirectly for a period of three years from the date of the order for violating the provisions of regulations 3(a),(b),(c) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 read with section 12A (a),(b),(c) of Securities and Exchange Board of India Act, 1992.

...

3. Although the appeal has become infructuous on account of the Appellant undergoing restraint order for 3 years, Shri. Deepak Dhane, Learned Counsel appearing on behalf of the Appellant insisted on arguing the Miscellaneous Application and seek condonation of delay on the following grounds:-

(a) Appellant came to know about two orders of this Appellate Tribunal in the matters of Dipak Patel vs. SEBI and Sujit Karkera vs. SEBI dated November 9, 2012 and December 17, 2012 respectively wherein it is held that front-running related charges could be applied only to intermediaries and not to other entities trading in the securities market.

(b) On January 18, 2017 SEBI has issued a show cause notice to the Appellant with a view to confirm the impounding order dated March 17, 2016 and along with that notice statements of Colin P. Shah and Pradip Shah have been furnished which are mutually contradictory. Thus, the order passed against the Appellant is based on mutually contradictory statements, it is necessary to condone the delay in filing the appeal against the order of SEBI.

4. We do not find any merit in the submissions of the Applicant /Appellant. The orders of this Tribunal in case of Dipak Patel (supra) and in case of Sujit Karkera (supra) are on the website of SAT since 2012. Therefore, the Applicant who was not aggrieved by the impugned order dated May 26, 2014 cannot contend that he became aggrieved by the impugned order on perusal of the aforesaid orders which were on the SAT website since 2012. In the absence of any explanation given for not perusing the SAT website even after the impugned decision, the Applicant cannot seek condonation of delay.

5. Similarly, argument based on the statements annexed to the show cause notice dated January 18, 2017 issued after the order impugned in the appeal cannot be a ground condoning the delay in filing the appeal. Correctness of our order has to be seen in the context of the reasons set out in the order and not on the basis of subsequent events. Moreover, the said show cause notice was issued on January 18, 2017, whereas, the present appeal is filed after delay of two months from the date of receiving the said show cause notice dated January 18, 2017. As the Applicant has failed to give any reasonable explanation, we see no reason to condone the delay in filing the appeal.

6. In our opinion, Appeal with the Miscellaneous Application seeking condoning the delay of 984 days is filed on the eve of completing the restraint order is in gross abuse of the process of law. Accordingly, the Miscellaneous Application is

dismissed with costs quantified at ₹25,000/-. Appellant is directed to pay the cost of ₹25,000/- to SEBI within 15 days from today.

7. In view of the dismissal of the Miscellaneous Application, the Appeal does not survive. Accordingly the Appeal is disposed of as infructuous with no costs.”

10. In the meantime, in view of the findings of investigation, a show cause notice dated January 18, 2017 (hereinafter referred to as “the SCN”) was issued to the Noticee calling upon him to show cause as to why suitable directions under sections 11B and 11(4) of the SEBI Act should not be issued against him to confirm the impounding order dated March 17, 2016, and to disgorge the aforesaid amount, including the wrongful gains made and the interest earned thereon by indulging in transactions in contravention of the provisions of the PFUTP Regulations. The SCN contained the following findings and allegations:

- i) It was observed that the Noticee was an employee of Kama Schachter Jewelry Private Limited of which Colin was the Managing Director. The Noticee was recruited for the post of Executive – Finance, and looked after the trades being conducted through brokers in stock exchanges for Mr. Colin Shah. The Noticee was the employee of Kama Schachter Jewelry Private Limited from November 2, 2009 to June 6, 2012. During his employment with Colin, the Noticee had allegedly indulged in two kinds of trading patterns through Satco Securities and other brokers, whereby the Noticee had indulged in front running activities in respect of trades of Colin which were executed by him, the details of which are given as under:
- ii) **Front Running of Sell Trades of Colin:** The Noticee had the information of Colin’s sell order details viz., scrip, quantity, time and price range. Before Colin’s sell orders in the scrip were entered, the Noticee had sold the shares in advance. The Noticee had then entered buy orders to square up his position in the scrip just before Colin’s sell orders were entered in the same scrip. On National Stock Exchange of India Ltd. (“NSE”), out of 59 scrip days, in 23 scrip days¹ and on Bombay Stock Exchange Ltd. (“BSE”), out of 38 scrip days, in 16 scrip days the Noticee followed the same pattern. Most of the Noticee’s buy trades were matched with Colin’s sell trades including certain instances of 100% matching.

¹ A scrip day denotes each day on which a scrip is traded. Total number of scrip days may be higher than total number of days on which trading has been done, as one trading day may be counted as multiple scrip days on the basis of different scrips traded on one day. E.g. suppose a person has traded in 3 scrips in one trading day, then it would be counted as 3 scrip days.

iii) **Front Running of Buy Trades of Colin:** The Noticee had the information of Colin's buy order details viz., scrip, quantity, time and price range. Before Colin's buy orders in the scrip were entered, the Noticee had bought the shares in advance. The Noticee had then entered sell orders to square up his position in the scrip just before Colin's buy orders in the same scrip were entered. On NSE out of 59 scrip days, in 37 scrip days and on BSE, out of 38 scrip days, in 23 scrip days the Noticee followed the same pattern. Most of the Noticee's sell trades were matched with Colin's buy trades including certain instances of 100% matching.

iv) The details of 59 scrip days at NSE are as follows:

S.N.	Date	Scrip Symbol	Kamal's Buy Qty	Kamal's Sell Qty	Square off Earnings	Matched Qty with Colin	Matched %
1	29-Jun-10	ALOKTEXT	1,90,000	1,90,000	1,23,951.20	1,10,000	57.89
2	06-Aug-10	ALOKTEXT	2,00,000	2,00,000	2,01,450.50	2,00,000	100.00
3	21-Jan-10	BANKRAJAS	2,500	2,500	1,016.10	-	0.00
4	27-Apr-10	BANKRAJAS	80,833	80,833	81,414.15	47,583	58.87
5	05-May-10	BANKRAJAS	1,25,600	1,25,600	1,72,201.00	45,747	36.42
6	26-May-10	BANKRAJAS	47,000	47,000	37,653.65	14,152	30.11
7	27-May-10	BANKRAJAS	10,000	10,000	8,686.25	10,000	100.00
8	07-Jan-10	CREWBOS	200	200	80.00	-	0.00
9	13-Aug-10	DBREALTY	6,000	6,000	23,569.40	6,000	100.00
10	16-Aug-10	DBREALTY	1,500	1,500	4,400.50	1,500	100.00
11	24-Sep-10	DBREALTY	6,000	6,000	46,938.35	3,902	65.03
12	11-Jun-10	EDELWEISS	421	421	2,773.00	237	56.29
13	14-Jun-10	EDELWEISS	622	622	2,788.75	422	67.84
14	21-Jun-10	EDELWEISS	2,120	2,120	13,902.35	2,070	97.64
15	23-Jun-10	EDELWEISS	6,200	6,200	42,518.90	2,947	47.53
16	09-Aug-10	EDELWEISS	5,000	5,000	51,400.55	5,000	100.00
17	24-Aug-10	EDELWEISS	7,000	10,000	9,940.00	10,000	100.00
18	13-Sep-10	EDELWEISS	50,000	50,000	51,174.35	39,853	79.71
19	14-Sep-10	EDELWEISS	50,000	50,165	81,157.55	49,454	98.58
20	12-Apr-10	ESSAROIL	23,200	23,200	16,374.75	10,000	43.10
21	01-Jun-10	FEDERALBNK	15,500	15,000	43,873.50	15,000	100.00
22	11-Jun-10	FEDERALBNK	14,000	14,000	27,819.05	13,000	92.86
23	07-Jul-10	GRABALALK	14,500	14,000	69,448.31	14,000	100.00
24	08-Jul-10	GRABALALK	8,568	8,568	34,897.80	6,000	70.03
25	09-Jul-10	GRABALALK	10,184	13,784	21,530.34	-	0.00
26	12-Jul-10	GRABALALK	21,500	21,500	61,658.95	21,500	100.00
27	13-Jul-10	GRABALALK	16,332	20,000	56,037.20	20,000	100.00
28	26-Aug-10	GRABALALK	1,311	3,311	4,978.50	3,311	100.00
29	26-May-10	KTKBANK	40,354	40,354	60,975.05	39,000	96.64
30	27-May-10	KTKBANK	45,190	45,190	69,619.10	42,126	93.22
31	16-Jun-10	KTKBANK	68,502	68,702	1,81,765.01	68,203	99.56

S.N.	Date	Scrip Symbol	Kamal's Buy Qty	Kamal's Sell Qty	Square off Earnings	Matched Qty with Colin	Matched %
32	13-Jul-10	MOSERBAER	29,000	29,000	41,084.80	28,999	100.00
33	13-Aug-10	MOSERBAER	40,000	41,500	57,185.34	40,000	100.00
34	28-Jul-10	MSKPROJ	7,100	5,600	9,382.13	4,823	86.13
35	30-Jul-10	MSKPROJ	4,600	5,100	14,735.94	5,100	100.00
36	03-Aug-10	MSKPROJ	11,000	11,000	31,073.15	11,000	100.00
37	06-Aug-10	MSKPROJ	30,000	30,000	99,993.95	30,000	100.00
38	10-Aug-10	MSKPROJ	8,500	8,500	30,683.50	8,500	100.00
39	13-Sep-10	MSKPROJ	15,000	15,000	1,06,928.90	15,000	100.00
40	14-Sep-10	MSKPROJ	28,750	28,000	1,42,104.98	27,865	96.92
41	20-Sep-10	MSKPROJ	22,000	22,000	90,803.55	16,264	73.93
42	24-Aug-10	ORCHIDCHEM	9,000	9,000	6,504.60	9,000	100.00
43	27-Aug-10	ORCHIDCHEM	10,000	10,000	16,634.55	10,000	100.00
44	31-Mar-10	SPICEMOBIL	15,000	15,000	17,195.55	15,000	100.00
45	11-Jun-10	SPICEMOBIL	20,000	20,000	30,995.25	20,000	100.00
46	14-Jun-10	SPICEMOBIL	3,000	3,000	3,458.75	3,000	100.00
47	21-Jun-10	SPICEMOBIL	9,500	9,500	18,441.60	9,500	100.00
48	13-Jul-10	SPICEMOBIL	30,399	30,399	57,130.05	28,000	92.11
49	14-Jul-10	SPICEMOBIL	19,500	19,500	20,967.15	19,500	100.00
50	29-Jul-10	SPICEMOBIL	20,000	20,000	3,638.90	20,000	100.00
51	10-Aug-10	SPICEMOBIL	25,000	25,000	40,212.50	23,431	93.72
52	16-Aug-10	SPICEMOBIL	15,510	15,510	18,849.85	15,000	96.71
53	23-Aug-10	SPICEMOBIL	50,000	50,000	46,102.30	50,000	100.00
54	22-Jun-10	VISHALRET	27,237	27,237	34,440.85	17,000	62.42
55	23-Jun-10	VISHALRET	10,000	10,000	26,863.20	5,455	54.55
56	24-Jun-10	VISHALRET	10,101	8,101	12,682.29	5,501	67.91
57	01-Jul-10	VISHALRET	6,000	6,000	9,979.10	6,000	100.00
58	07-Jul-10	VISHALRET	30,000	30,000	60,410.30	30,000	100.00
59	09-Jul-10	VISHALRET	11,000	11,000	14,966.80	11,000	100.00
Total			15,87,334	15,96,717	26,69,443.94	12,85,945	

v) The details of 38 scrip days at BSE are as follows:

S. N.	Date	Scrip Symbol	Kamal Buy Qty	Kamal Sell Qty	Square off Earnings	Matched Qty with Colin	Matched %
1	21-Jan-10	BANKOFRAJ.	1,000	1,000	595.95	1,000	100.00
2	26-May-10	BANKOFRAJ.	12,000	12,000	8,324.80	12,000	100.00
3	14-Sep-10	DBREALTY	8,500	8,500	47,427.30	7,973	93.80
4	22-Sep-10	DBREALTY	5,611	5,611	28,270.10	5,611	100.00

S. N.	Date	Scrip Symbol	Kamal Buy Qty	Kamal Sell Qty	Square off Earnings	Matched Qty with Colin	Matched %
5	23-Sep-10	DBREALTY	3,000	3,000	11,110.10	3,000	100.00
6	24-Sep-10	DBREALTY	11,000	11,000	1,13,358.65	11,000	100.00
7	11-Jun-10	EDELWEISSFS	195	195	1,202.90	21	10.77
8	15-Jun-10	EDELWEISSFS	900	900	5,103.00	861	95.67
9	18-Jun-10	EDELWEISSFS	650	650	1,243.50	650	100.00
10	27-Sep-10	EDELWEISSFS	85,500	85,500	1,65,861.05	85,500	100.00
11	6-Oct-10	EDELWEISSFS	85,000	85,000	75,615.80	74,455	87.59
12	26-Oct-10	EDELWEISSFS	37,000	37,000	15,680.20	23,196	62.69
13	12-Nov-10	EDELWEISSFS	80,000	79,500	56,236.49	60,000	75.47
14	22-Nov-10	EDELWEISSFS	60,981	60,981	73,208.20	40,981	67.20
15	25-Nov-10	EDELWEISSFS	29,505	29,505	17,455.50	29,505	100.00
16	2-Dec-10	EDELWEISSFS	33,641	33,641	37,903.50	33,641	100.00
17	7-Dec-10	EDELWEISSFS	45,000	45,000	50,714.20	15,000	33.33
18	18-Oct-10	GEODLTD	25,000	25,000	66,259.25	19,641	78.56
19	26-Oct-10	GEODLTD	11,748	11,748	11,579.05	10,086	85.85
20	8-Jul-10	GRABALALOK	2,000	900	940.52	-	0.00
21	15-Jul-10	GRABALALOK	5,132	5,132	12,677.05	5,132	100.00
22	22-Sep-10	GRABALALOK	2,000	5,600	3,064.33	2,914	52.04
23	15-Nov-10	GRABALALOK	15,000	15,000	11,567.90	14,770	98.47
24	8-Jan-10	GUJARANREC	1,000	1,000	365.00	1,000	100.00
25	16-Jun-10	KARNATAKABK	12,000	12,000	22,080.00	12,000	100.00
26	13-Aug-10	MOSERBAER	6,000	6,000	6,750.00	6,000	100.00
27	24-Aug-10	ORCHIDCHEM	1,400	1,400	1,060.70	-	0.00
28	1-Sep-10	PUNJLLOYD	500	500	1.90	-	0.00
29	11-Jan-10	SMOBILITY	500	1,000	49.20	-	0.00
30	6-Dec-10	TATASTL	10,500	10,500	513.60	1,500	14.29
31	6-Jul-10	V2RETAIL	4,000	5,500	4,344.36	-	0.00
32	15-Jul-10	V2RETAIL	7,000	10,500	12,070.37	2,500	23.81
33	12-Aug-10	V2RETAIL	5,000	5,000	2,426.10	2,835	56.70
34	20-Sep-10	WELPROJ	8,500	8,500	45,592.40	8,500	100.00
35	22-Sep-10	WELPROJ	33,662	37,162	1,38,111.01	22,297	66.24

S. N.	Date	Scrip Symbol	Kamal Buy Qty	Kamal Sell Qty	Square off Earnings	Matched Qty with Colin	Matched %
36	1-Oct-10	WELPROJ	10,000	10,600	42,124.51	6,300	59.43
37	29-Oct-10	WELPROJ	3,100	3,100	8,570.05	3,100	100.00
38	16-Nov-10	WELPROJ	11,000	11,000	30,915.25	-	0.00
Total			6,74,525	6,86,125	1130373.79	5,22,969	

vi) Therefore, by way of such trades the Noticee earned a profit of ₹ 37,99,818 (i.e. ₹ 26,69,444 while trading on NSE in 59 scrip days + ₹ 11,30,374 while trading on BSE in 38 scrip days). In view of the above, it is alleged that the Noticee had placed orders on behalf of Colin and, without the knowledge of Colin, had indulged in front running of Colin's trades.

vii) It was observed from the details of the Noticee's Bank Account Statements (and Annual Income Tax Returns that the Noticee's bank balances was not commensurate with his annual income. While his annual income was ₹ 2,05,580/- for the assessment year 2010-2011 and ₹ 11,25,160/- for the assessment year 2011-2012), he was possessing assets of ₹ 6,80,901/- in financial year 2009-2010 and assets of ₹ 31,88,858/- in the financial year 2010-11. Therefore, it is noted that the Noticee's assets had substantially increased in Financial Year 2010-11. Further, as per the bank account statements of the Noticee and his wife, no additional fund flow from Colin to the Noticee or from the Noticee to Colin, were noticed.

viii) In the personal hearing dated December 17, 2013, before then Whole Time Member, SEBI, the Noticee claimed that he had bought a property/flat at the address: **Flat No. 302, Building no-1, C-wing, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West) Mumbai** (hereinafter referred to as 'Flat') and that he was forced to sell it and the money was extorted by Colin. The Noticee was given seven days' time to make these submissions by way of an affidavit; however the Noticee failed to do so. It was observed that the said Flat was registered in the name of the Noticee and his wife Ms. Jagruti Katkoria vide "Agreement for sale" dated July 08, 2010. On analysis of share certificate of aforesaid Flat and letter dated September 2, 2015 of the Secretary of Mody Park, "C" Wing Co-operative Housing Society, it was observed that the Noticee transferred his share in the aforesaid Flat to his mother, Ms. Saroj Katkoria vide gift deed dated November 08, 2013 and the said transfer was approved by Annual General Meeting of the aforesaid building on September 29, 2014. No other transfer of the said Flat took

place during the investigation period, contrary to the Noticee's claims during the course of the proceedings.

- ix) From the Noticee's bank account statements, it was observed that the Flat was sold to the Noticee by Joint owners namely Mr. Mitesh Bharwada, Mr Amit Bharwada and Mr. Kumud Bharwada for ₹ 15,00,000 and the entire payment was made only by the Noticee. The relevant transactions from the Noticee's bank account are as follows:

Sr. No.	Date	Amount	Debit/Credit	Balance	Remarks
1	June 19, 2010	-	-	18,970.56	Balance in Kamal's Account
2	June 19, 2010	1,15,777.74	Credit	1,34,638.30	Amount received from Share broker Satco Securities
3	June 19, 2010	91,844,.45	Credit	2,26,482.75	Amount received from Share broker Satco Securities
4	June 24, 2010	2,00,000.00	Credit	3,56,552.75	Amount received from Share broker Satco Securities
5	June 25, 2010	1,09,631.23	Credit	4,66,183.98	Amount received from Share broker Satco Securities
6	July 10, 2010	1,00,000	Debit	3,43,245.98	Cheque No. 594520: Amount paid to Mitesh Bharwada pursuant to Agreement for sale dated July 08, 2010
7	July 14, 2010	1,00,000	Credit	3,61,798.25	Amount received from Share broker Satco Securities
8	July 20, 2010	1,00,000	Credit	4,43,298.25	Amount received from Share broker Satco Securities
9	July 23, 2010	4,00,000	Debit	38,521.25	Cheque No. 594525: Amount paid to Mitesh Bharwada pursuant to Agreement for sale dated July 08, 2010
10	July 23, 2010	2,00,000	Credit	2,38,521.25	Amount received from Share broker Satco Securities
11	Aug 03, 2010 to August 11, 2010	8,00,000	Credit	10,92,954.25	Received money from three entities on August 03, 2010 and August 11, 2010
12	Aug 12, 2010	10,00,000	Debit	89,996.25	DD/Cheque No. 615501: Final Amount paid to Mitesh Bharwada pursuant to Agreement for sale dated July 08, 2010

- x) It is observed from above table that there was a balance of ₹ 18,970.56 in the Noticee's account on June 19, 2010. Subsequently the Noticee received a sum of ₹ 5,17,253.42 from Satco Securities on June 19, 2010, June 24, 2010 and June 25, 2010 (trading account from where the Noticee indulged in front running trades). The Noticee made payment of ₹ 1,00,000 to the seller of the Flat out of the ill-

gotten gain amount the Noticee received from his broker. Further, the Noticee received a sum of ₹ 2,00,000 from the broker due to which balance in his account reached to ₹ 4,43,298.25 and he could make a payment of ₹ 4,00,000 to seller of Flat. There was a balance of ₹ 38,521.25 on July 23, 2010 in the Noticee's account and he received a sum of ₹ 2,00,000 from the broker on July 23, 2010 due to which balance in his account reached to ₹ 2,38,521.25 and subsequently he received an amount of ₹ 8,00,000 from other entities and balance in his account reached to ₹ 10,92,954.25. From this amount, the Noticee made the final settlement of ₹ 10,00,000 to seller on August 12, 2010.

- xi) Investigation revealed that neither Colin nor his company, namely Kama Schachter Jewelry Pvt. Limited or any of his related entities/ directors/ shareholders had taken any money from the Noticee. The statements of Colin and Mr. Pradeep Shah (the erstwhile CFO of Colin's company Kama Schachter Jewelry Pvt. Limited) were recorded during the course of investigation wherein Colin stated that the Noticee used to speak to the brokers on his behalf. It was further stated by Colin that he was not aware that the Noticee were trading in the securities market while in his employment. Further, as per the trade details provided by Colin, he accepted his day-wise trades during the investigation period. On the basis of the above, it was concluded that Colin did not have any knowledge of the front running trades by the Noticee.
- xii) In view of the above, it is observed that the Noticee carried out front running activities of the trades of Colin, and violated Regulation 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act, 1992 as has been held by SEBI vide order dated May 26, 2014. Vide the said order SEBI had restrained the Noticee from accessing the securities market and also prohibited the Noticee from buying, selling and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of three years.

Hearing and reply of the Noticee

11. The Noticee replied to the SCN vide letter dated February 13, 2017 denying all the allegations levelled in the SCN and also sought inspection of the documents referred to and relied upon in the SCN. Acceding to the said request, inspection of the documents relied upon for the purpose of SCN was provided to the Noticee. Thereafter, vide another letter dated April 17, 2017, the Noticee submitted that these proceedings against him are consequent to the order of SEBI dated May 26, 2014 and being aggrieved by the said order, he has appealed against the order before Hon'ble SAT. In view thereof, it was requested on behalf of the Noticee that the

proceedings pursuant to the SCN be kept in abeyance till the final disposal of the appeal.

12. Subsequently, an opportunity of personal hearing was provided to the Noticee on September 26, 2017. In that regard, the Advocate appearing on behalf of the Noticee reiterated that the Noticee has filed an appeal before Hon'ble SAT against SEBI's order dated May 26, 2014 whereby the Noticee was debarred for a period of three years. The Advocate made a request for keeping the proceedings in abeyance till October 11, 2017 i.e. the date of scheduled hearing before Hon'ble SAT in the appeal filed by the Noticee. The said request was acceded to and the hearing was adjourned.
13. Next date of hearing in the matter was scheduled on December 12, 2017. However, before the said date of hearing, the Advocate for the Noticee again made a request for adjournment on the ground that certain appeals in other matters relating to front running (i.e. "*Sanghvi Group and Kalpana group*") were pending before Hon'ble SAT wherein Hon'ble SAT had reserved its judgment after completion of arguments, and according to the Noticee, the order of Hon'ble SAT in the said appeals would have had a direct bearing on his case. The said request was also acceded to and the hearing was once again adjourned.
14. Thereafter, hearing was scheduled in respect of the Noticee on February 8, 2018 when his authorized representatives appeared and made submissions on his behalf. During the hearing, the Noticee sought permission to file an affidavit explaining how he acted on the directions of Colin in respect of the transactions mentioned in the SCN along with supporting documents, which was granted. The Noticee did not seek any interim relief regarding his bank accounts or the flat forming the subject matter of the impounding order dated March 17, 2016. The Noticee was asked to re-submit his asset details to SEBI. The Noticee was also given time till February 20, 2018 to file his written submissions and other documents in the matter, if any. The Noticee filed his written submissions vide letter dated February 20, 2018. The Noticee failed to file the affidavit, for which he had sought permission during the personal hearing. The submissions on behalf of the Noticee made during the personal hearing and by way of written submissions are, *inter alia*, as under: -
 - I. SEBI vide an Order dated May 26, 2014; had recorded that I had placed orders ahead of Mr. Colin P Shah's Order(s) based on the prior knowledge about Colin's trades and I was restrained from accessing the securities market and was also prohibited from buying, selling and otherwise dealing in the securities market, directly or indirectly, in any manner whatsoever for a period of three

years from the date of said Order. It is pertinent to note that the aforesaid restraint has been undergone by me.

- II. It is also significant to note that the Whole Time Member vide the said Order also issued directions to investigate and examine the role of Colin in the subject transactions and profit, if any, earned by Colin.
- III. Hon'ble Supreme Court vide its Judgment dated September 20, 2017 in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* laid down certain principles/guidelines/criteria's for establishing a charge of front running. Same are as under:-
 - i) one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence,
 - ii) such breach of duty was known to the tippee.
 - iii) tippee still trades thereby defrauding the person, whose orders were front run,
 - iv) by inducing him to deal at the price he did.
- IV. It is matter of record that the captioned show cause notice in no manner makes any allegation(s) in line with the above principles /ingredients as mentioned by the Hon'ble Supreme Court and the ingredients of any such charge are missing in the present Show Cause notice. SEBI in order to establish the charge of front running shall firstly allege and thereafter establish the aforesaid criteria/ingredients laid down by the Hon'ble Supreme Court. In the absence of any allegations, as prescribed by the aforesaid Judgment, the captioned SCN is invalid and the charge of front running cannot be proceeded with. In the absence of the specific charge in line with the aforesaid principles laid down by the Hon'ble Supreme Court, the captioned Show Cause notice is not maintainable and is bad in law.
- V. It is pertinent to note that for the first time, SEBI has furnished copies of the documents/ statement of Colin and Shri. Pradip Shah ("Pradip") (an erstwhile CFO of Kama Schachter Jewellery Pvt. Ltd of which Colin was the Managing Director at the relevant time) alongwith the SCN without any verification as to correctness, completeness and genuineness of the said statements before relying upon the same against the Noticee. It is submitted that the Noticee was never afforded an opportunity to confront Colin or Pradip which amounts to gross violation of principles of natural justice.

VI. No fraud on Colin or investors in securities market:

- a) It is SEBI's case in the SCN that on account of trades by Noticee, an unlawful profit of Rs. 37,99,818/- was earned by the Noticee by placing orders on behalf of Colin and without the knowledge of Colin.
- b) Nowhere does the SCN say that Colin or any investor(s) has ever claimed that they incurred loss or lost any such price advantage on account of subject trades. Also it is not Colin's case that Noticee had front run his trades.
- c) The SCN also does not in any manner aver/allege that Colin or investors in securities market were defrauded by execution of subject trades. Therefore, if SEBI itself has not alleged/ established that there was any fraud on account of the subject trades, it is impossible to understand and ascertain that how and in what manner SEBI has alleged that the provisions of PFUTP Regulations, are violated by the Noticee.

VII. Charge of front running is not sustainable:

- a) It is submitted that the charge of front running in any manner is not sustainable, since the SCN does not in any manner show any basis for alleging that the Noticee had front run trades of Colin. In order to allege front running, the SCN ought to have shown an analysis of the timings at which orders were placed by Noticee and orders were placed by Colin and also an analysis of actual time at which their respective trades were executed. However, the SCN does not mention any such time analysis for the orders and/or trades and in the absence of the same, it is vague and incorrect to allege that Noticee had front run trades of Colin. In order to allege front running, SEBI ought to show that Noticee's first order was placed before Colin's order(s) came on to the trading screen and only thereafter Noticee placed his counter order(s) with an intention to match his trades with Colin. In the event if Colin's order(s) was/were placed prior in time, in that case the charge of front running would be factually incorrect.
- b) Without prejudice to the aforesaid, the Hon'ble Supreme Court in para 19 of the aforesaid Judgment notices 3 kinds of front running 1) Trading by third parties who are tipped on an impending block trade ("tippee" trading); 2) Transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running") and 3) transactions where an intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead"). It was further observed that "trading ahead" has been explicitly been recognized under Regulations 4(2)(q) of PFUTP Regulations. This being the fact, the "tippee trading" not being included in Regulation 3 and 4 should not be

embraced within its scope especially because penal provisions should be strictly interpreted and there should be no scope of expansion of the provisions which will be detrimental to the Noticee. The Hon'ble Supreme Court in the aforesaid judgment held that front running by non-intermediary is prohibited under Regulations 3 and 4 of the PFUTP Regulations. However, it is observed in para 19 of the said Judgment that "trading ahead" has been explicitly been recognized under Regulations 4(2)(q) of PFUTP Regulations and not "tippee trading".

- c) Further without prejudice, it is important to note that Regulation 2(1)(c) of the PFUTP Regulations defines "fraud". It further delineates exceptions to fraud. From a perusal of the definition of "fraud" and exceptions to fraud, it is evident that all information or tips would not amount to Tippee Trading. Any information or comment based on trends in securities market or any other matter of like nature would not amount to fraudulent act or fraud. Since the 9 instances mentioned in definition does not cover any information provided or any tips provided, the Noticee's acts would only fall within the exceptions (c) and (d) of the exceptions to fraud and the Noticee's should be granted benefit of the same.
- d) That the present SCN has failed to establish the requirement of front running, which is that the person trading in stocks or other investments has to have knowledge of the upcoming transaction by a third party which is likely to affect the market price of the investment.

VIII. Assuming (without admitting) trades were front run”:

- a) It is a matter of record that SEBI for the first time defined "front-running" only on May 25, 2012 vide its Circular CIR/EFD/ 1/2012. Therefore, for the first time there was an attempt by SEBI to bring some clarity to the concept of front-running.
- b) It is pertinent to note that on November 9, 2012 the Hon'ble SAT passed an Order in the matter of Appeal No. 216 of 2011 by *Dipak Patel vs. SEBI*, whereby the Tribunal at para 12 of its said Order recorded that "*It is an admitted position on both sides that the aforesaid clause applies only to intermediaries and not to other persons trading in securities market*". Also at para 13 of the said Order the Tribunal held that in the absence of any specific provision in the Act, rules and regulations prohibiting front running by a person other than an intermediary, Dipak Patel cannot be held guilty of front running. Thereafter, the said order was relied upon by the Hon'ble SAT while deciding another Appeal No. 167 of 2012 in the matter of *Sujit Karkera vs. SEBI*, and concluded that the "*Appellants*

before us are traders and not intermediaries. So following our decision in the case of Dipak Patel supra we hold that the Appellant cannot be held guilty "

- c) It is also important to note that SEBI challenged both the abovementioned Orders of the Hon'ble SAT vide Civil Appeal Nos. 2596 and 2666 of 2013 before the Hon'ble Supreme Court and in the matter of Sujit Karkera, SEBI expressly sought stay of the Tribunal's order and same was rejected by the Hon'ble Court by its order on April 22, 2013.
- d) On September 4, 2013 the Hon'ble SAT, passed an order in a matter of Vibha Sharma vs. SEBI, wherein for the first time, the Hon'ble SAT recorded that "*... . We would like to give a liberal interpretation to the concept of front running and would hold that any person, who is connected with the capital market, and indulges in front running is guilty of fraudulent market practices...*". The said Order was challenged by Vibha Sharma before the Hon'ble Supreme Court vide Civil Appeal No. 11195--11196 of 2014.
- e) In the meanwhile, on September 6, 2013 an amendment was introduced to Regulation 4(2) of PFUTP Regulations w.e.f. September 6, 2013 whereby an "Explanation" was added to Regulation 4(2) of the PFUTP Regulations and thereby expanding the scope of Regulations 3 and 4 of PFUTP Regulations:-
"Explanation: - For the purpose of this sub-regulation, for removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3, notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulations."
- f) Thereafter, on September 20, 2017 the Hon'ble Supreme Court disposed of several Appeals (including the above 3 Appeals, in the matter of Dipak Patel, Sujit Karkera and Vibha Sharma), wherein it was held that front running by non-intermediary is prohibited under Regulations 3 and 4 of the PFUTP Regulations. However, amendment made to Regulation 4(2) of PFUTP Regulations w.e.f. September 6, 2013 whereby an "Explanation" was added to Regulation 4 (2) of the PFUTP Regulations and thereby expanding the scope of Regulations 3 and 4 of PFUTP Regulations was probably not an issue in that case and it appears from the record that same was never argued and brought to the notice of the Hon'ble Supreme Court and also therefore not considered by the Hon'ble Supreme Court. The said issue is important in the present case since the trades in question are during the period, much prior to 2013 and the law punitive in nature cannot be applied retrospectively.
- g) Without prejudice to the above, it is submitted that prior to the said amendment in 2013, the exhaustive illustrations or details (a) to (t) provided in Regulation 4(2) which deals with "Prohibition of manipulative, fraudulent and unfair trade

practices" were exhaustive and not inclusive as it reads "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". The words used are "may include all or any" which goes to show that the illustrations/ details of acts are exhaustive. The said illustrations/ examples were expanded only by an amendment w.e.f. September 6, 2013 by incorporating an "explanation". This explanation was added as a clarification in 2013, and the earlier provision as it stands/stood i.e. sub-regulation (i), (j), (1), (m), (p), (o), and (q) of Regulations 4 (2) was relatable only in case of intermediaries and not individuals, no person who have allegedly committed "front running" prior to the amendment can be held liable and guilty under Regulation 3 and 4 of PFUTP Regulations. Therefore, the provisions could have been given extended/ expanded meaning only post 2013 for the offences committed after the amendment. The Noticee having allegedly committed "front running" several years prior to 2013 cannot be held liable and guilty for the alleged acts which in any event falls within the exception of fraud.

- h) Further, without prejudice, the words "fraudulent manner", "fraud in connection with dealings in or issue of securities" etc. used in Regulation 3 prior to 2013 should be understood to only include illustrations (a) to (t) delineated in Sub-Regulations 2 of Regulation 4. Further the other acts which do not strictly fall within the ambit and scope of Regulation 4(2) (minus explanation) should be read in conjunction with the definition of fraud (Regulation 2(1)(c)) which also includes exceptions such as passing comments made in private or public with respect to trends in the securities market and any other matter of like nature.
- i) Law had an ambiguity till September 2017, till the Hon'ble Supreme Court passed the aforesaid judgment. Prior to that, there were in fact contrary judgments issued by Hon'ble SAT. Therefore, whether front running of trades by a non-intermediary is a violation of FUTP Regulations or not itself was unclear till the said Judgment of Supreme Court. Therefore, the alleged acts of front running prior to the judgment of Hon'ble Supreme Court deserve some leniency.
- j) Any ambiguity or incongruity should be decided in favour of the Noticee, is the settled principle of law.

IX. Incorrect Computation of alleged un-lawful gains

- a) Without prejudice to all the above submissions. It is submitted that the alleged unlawful gains/profits computed by SEBI are on the square off quantities and not matched quantities. If the charge is front running Colin's trades then the alleged profits/unlawful gains can be only for the quantities which had allegedly matched with Colin's quantities as a counter party.

- b) It is not SEBI's case that Mr. Colin has been prejudiced and had lost any price advantage etc. it is also not SEBI's case that investors in the securities market are prejudiced because of the trades in question,
- b) Further without prejudice, the SCN levies interest on the alleged ill-gotten gains after the investigation period i.e. from January 01, 2011. There is no basis for levying such interest.. There is no basis for levying interest from January 1, 2011. Interest can be levied only from the date the amount gets crystallized/ payable Even as per the Judgment of the Hon'ble SAT in the matter of the matter of Shailesh Jhaveri vs. SEBI in Appeal No. 79 of 2012 dated October 4, 2012, it is held as under:-

"10. we find merit in the argument of learned counsel for the appellants that when the disgorgement proceedings itself were initiated by the issue of a show cause notice on February 29, 2008, the interest could not be charged from January 2000. The amount of disgorgement got crystallized only on passing of the order on January 25, 2012. By the said order the Board has permitted the appellants to pay the total amount within 45 days from the date of the order. It was not an amount which was due or payable to the Government or to the Board. It is only after the Board concluded that the appellants have illegally enriched themselves and the amount of illegal gains got crystallized and disgorgement order is passed, it can be said that the amount has become payable. The Board granted 45 days time to the appellants to pay this amount. If any interest is to be charged, it can be charged only from the date of expiry of 45 days of the passing of the impugned order.

11. For the reasons stated above, we find no merit in the appeal. However, on the issue of interest, we are inclined to modify the order to the extent that the interest shall be payable @ 12% per annum on expiry of 45 days from the date of ' the impugned order. "

- c) The present SCN has levied interest on the alleged unlawful gain from the day after the investigation period, which is unfair and illegal in view of the aforesaid Judgment of the Hon'ble SAT and even otherwise.
- X. It is not in dispute that I was in employment (executive finance) of Kama Schachter Jewellery Pvt Ltd ("Company") of which Colin was the Managing Director. In the said Company, though my job profile was to coordinate with Colin and his stock brokers for placing orders on his behalf. However, it is important to note that though Colin in his Statement on Oath on August 14, 2015 has stated that he used to inform Pradeep who then informed me to speak to his stock broker. Further, contrary to Colin's statement, Pradip in his statement on August 21, 2015 has stated that Colin used to ask him or me to buy/sell shares. It is denied that the Noticee indulged in the alleged two kinds

of trading patterns through Satco Securities and other brokers and indulged in the front running in respect of Colin's trades which are alleged to be executed by the Noticee. It is submitted that SEBI has not provided time analysis of the trades of the Noticee and Colin and thus the Noticee denies SEBI's allegations. It is pertinent to note that SEBI has not shown any order time and/or trade time analysis, in the present SCN. It is reiterated that in order to allege front running of Colin's trades, the SCN ought to have shown an analysis of the timings at which actual orders were placed by the Noticee and Colin and also an analysis of actual time at which their respective trades were executed. However, the SCN does not mention any such time analysis for the orders and/or trades and in the absence of the same, it is vague and incorrect to allege that Noticee had front run trades of Colin. In order to allege front running, SEBI ought to show that first order by Noticee was placed before Colin's order(s) came on to the trading screen and only thereafter Noticee placed his counter order(s) with an intention to match his trades with Colin. In the event if Colin's order(s) was/were placed prior to Noticee's order(s), in that case the charge of front running would be factually incorrect.

- XI. It is pertinent to note that Noticee has already undergone debarment from the securities market for a period of 3 years under the earlier order dated May 26, 2014 passed by the WTM of SEBI for the very same trades in question. Therefore, also a lenient view may be taken.
- XII. In view of the above, Noticee requested that he may be discharged from the present proceedings and that the said SCN may be withdrawn.

Consideration of issues

- 15. I have perused the SCN, SEBI's orders dated May 26, 2014 and March 17, 2016, Hon'ble SAT's order dated October 11, 2017, submissions made by the Noticee and other material available on record.
- 16. I note that on May 26, 2014, SEBI had passed an order based on the same set of allegations, facts and circumstances as are stated in the present SCN. Vide the said order SEBI had observed that the Noticee had front run the trades of his employer, Colin and had thereby violated the provisions of regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with section 12A (a),(b),(c) of SEBI Act. For the said violations, SEBI restrained the Noticee from accessing the securities market and also prohibited him from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of three years from the date of the order.

17. As noted above, the order of SEBI dated May 26, 2014, whereby SEBI had found the Noticee guilty of violating the provisions of regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with section 12A (a),(b),(c) of SEBI Act, was appealed by the Noticee before Hon'ble SAT. The said appeal was dismissed by Hon'ble SAT vide order dated October 11, 2017. Thus, the findings on violation of the aforesaid provisions on account of front running transactions of the Noticee have attained finality. Accordingly, in my view, at this stage, the question whether the charge of front running is sustainable against the Noticee, whether the Noticee violated the above mentioned provisions of SEBI Act and PFUTP Regulations, and other issues ancillary thereto have no bearing on the issue for consideration in hand since the findings on the said issues have attained finality. The limited issue that arises for consideration in these proceedings is whether the profit made by the Noticee on account of the transactions entered into by him by front running the trades of Colin as computed in the SCN, should be disgorged from him along with interest thereupon.

Issue for consideration: *Whether the profit made by the Noticee on account of the transactions entered into by him by front running the trades of Colin as computed in the SCN, should be disgorged from him along with interest thereupon?*

18. I note that as revealed in the investigation, the Noticee on account of his transactions had made an unlawful gain of ₹ 37,99,818. The said unlawful gain of ₹37,99,818 along with interest of ₹23,73,585/- from January 1, 2011 till March 15, 2016 was ordered to be impounded by SEBI vide *ad interim ex parte* order dated March 17, 2016.
19. Regarding the said unlawful gain / profit, it has been contended by the Noticee that the computation of profit as mentioned in the SCN is wrong on the ground that if the charge is front running Colin's trades then the alleged profits/unlawful gains can be only for the quantities which had allegedly matched with Colin's quantities as a counter party. In this regard, I am of the view that front running is a fraud against the securities market as a whole and not only against the specific person, whose trades have been front run. It is noted that there is no requirement that Colin should have a case that his trades have been front run and he has incurred loss in view of that, contrary to the claim of the Noticee. The person, who does front running, makes profit not only at the expense of the person being front run but also at the expense of other investors in the market who incidentally suffer loss because of the transactions of the front runner. Thus, the calculation of the profit has to be done from the perspective of the person who is doing front running and not from the perspective of the person who is being front run.

20. To elucidate, in the present case (in respect of front running of buy trades of Colin), since Colin would have bought a bigger quantity, his trade would have had a positive impact on the price of the scrip. The Noticee with the prior knowledge of Colin's trades bought shares from general investors at a lesser price, and thus, extracted the price advantage and incidentally or deliberately set a last traded price (LTP). Thus, the general investors in the market who dealt with the Noticee when he placed orders prior to Colin's trades lost the price advantage. Thereafter, for Colin's order to successfully match, it had to be at a price equal to or better than the LTP, which was fixed because of Noticee's trades. At the time when Colin's order was placed, the Noticee squared off his position thereby reaping the profits. In this situation, because of Noticee's front running transactions, he made profits as his squaring-off trades which matched with Colin and also with other investors in the market who were also dealing at a price equal or better than the LTP fixed by the Noticee. Likewise, the Noticee also made profits while front running the sell trades of Colin.
21. In view of the above, I find that the computation of the profit taking into account all the squared off trades of the Noticee with Colin and other investors in the market is correct, and therefore, I reject the submissions of the Noticee in this regard.
22. Another submission of the Noticee, without prejudice to the other submissions is that SEBI cannot levy interest on the alleged disgorgement amount after the investigation period i.e. from January 01, 2011 as has been done in the present case. According to the Noticee, interest can be levied only from the date the amount gets crystallized/ payable. In this regard, the Noticee has placed reliance on the Judgment of the Hon'ble SAT in the matter of *Shailesh Jhaveri vs. SEBI*. In this regard, I find it important to mention that the issue regarding levy of interest on the ill-gotten gain has been settled by the Hon'ble Supreme Court of India in the matter of *Dushyant Dalal and another v. SEBI* (order dated October 4, 2017). The following observations of the Hon'ble Court on the point are noteworthy:

"16. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings.

...

28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity."

Considering the above observations of the Hon'ble Supreme Court, I do not find any merit in the submissions of the Noticee in this regard and hold that the levy of interest on the ill-gotten gains as has been mentioned in the present SCN is covered under the law laid down by the Hon'ble Supreme Court.

23. With regard to the date mentioned in the SCN from which interest has been calculated, I find it pertinent to mention that in the present case, interest has been calculated from the date (January 1, 2011), immediately after the investigation period (i.e. January 1, 2010 to December 31, 2010). Applying the principles recognized by the Hon'ble Supreme Court in the case of *Dushyant Dalal*, interest on the ill-gotten gains should be levied from the day it was earned. Accordingly, in the present case, interest should be levied on the respective ill-gotten gains, from the respective trading days on which they were earned by the Noticee. Though, at the same time, it is also noted that in the present case, calculation of interest has not been done in the aforesaid manner. Thus, considering the same, in my view, it would be reasonable that interest be calculated from the last trading day on which the Noticee made profit through squaring off transactions i.e. December 7, 2010 as has been mentioned in the SCN.
24. The Noticee has made a submission that Colin was aware of the Noticee's trades and in fact these trades were carried out by the Noticee on the directions of Colin. In this regard, I find it relevant to mention that pursuant to the order dated May 26, 2014, a detailed investigation was carried out by SEBI to ascertain the role of Colin in the transactions. The said investigation revealed that the Noticee indulged in front running the trades of Colin without Colin's knowledge. By way of the present SCN, the Noticee was given an opportunity to make his submissions in this regard and to provide documents to refute the conclusion of the investigation regarding non-involvement of Colin in the trades of the Noticee. However, the Noticee failed to submit any document in that regard. Further, at the time of personal hearing, the Noticee's representatives once again made the same submission and again they were given an opportunity to file an affidavit describing the role of Colin in Noticee's transactions and to submit the documentary evidence in support of this stance. The Noticee once again failed to submit the affidavit and documentary evidence to state that he had carried out the transactions at the behest of Colin. Considering the above, I do not find any merit in the submission of the Noticee that his transactions were carried out at the behest of Colin. In view of this finding, it will not alter the earlier finding of front running against the noticee which has already attained finality.
25. Without prejudice to all his arguments, the Noticee has submitted that he has already undergone debarment from the securities market for a period of 3 years under the earlier order dated May 26, 2014 passed by the WTM of SEBI for the very same trades

in question, and therefore he has prayed that a lenient view may be taken by SEBI. In this context, I find it pertinent to mention that the Noticee in the present case made ill-gotten gains on account of his fraudulent front running transactions. The disgorgement of the ill-gotten gain and the interest thereupon, is an equitable remedy and therefore cannot be treated as a penal measure. The objective of disgorgement under law is to prevent unjust enrichment of a person as a result of his fraudulent transactions. The following observations of Hon'ble SAT in the matter of *Karvy Stock Broking Ltd. v. SEBI* (Order dated May 2, 2008) are noteworthy in this context:

“Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge.”

In view of the above, I find that the fact that the Noticee has undergone the debarment for a period of three years for the same acts/omissions has no bearing on the directions of disgorgement which are envisaged in the present case. I, therefore, cannot accede to the request of the Noticee in this regard.

26. I note that in addition to the submissions that have been dealt above, the Noticee has made certain submissions on merits of the case in order to establish that he has not violated the provisions of PFUTP Regulations and SEBI Act noted above. As already noted, the order of SEBI dated May 26, 2014, whereby SEBI had found the Noticee guilty of violating the provisions of regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations read with section 12A (a),(b),(c) of SEBI Act, was appealed by the Noticee before Hon'ble SAT and the said appeal was dismissed by Hon'ble SAT vide order dated October 11, 2017. Thus, the findings on violation of the aforesaid provisions on account of front running transactions of the Noticee have attained finality. In view thereof, the consideration of these submissions of the Noticee on merits of the case will have no bearing on the outcome of these proceedings. However, I find it reasonable to address these submissions, especially the legal arguments which have been made in light of the judgment of the Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel*.

Consideration of submissions of the Noticee on merits of the case, which have no bearing on the conclusion in respect of violations by the Noticee

27. The Noticee has submitted that Hon'ble Supreme Court vide its Judgment dated September 20, 2017 in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* laid down

certain principles/guidelines/criteria for establishing a charge of front running, and SEBI in order to establish the charge of front running shall firstly allege and thereafter establish the said criteria/ingredients. It has also been submitted that in the absence of the specific charge in line with the aforesaid principles laid down by the Hon'ble Supreme Court, the captioned Show Cause notice is not maintainable and is bad in law. For the purpose of dealing with the above submissions of the Noticee, I find it relevant to list down the parameters/criteria laid down by the Hon'ble Supreme Court, which have also been highlighted by the Noticee in his submissions:

- i) one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence,
- ii) such breach of duty was known to the tippee.
- iii) tippee still trades thereby defrauding the person, whose orders were front run,
- iv) by inducing him to deal at the price he did.

28. In my view, the above submissions of the Noticee need to be dealt with on two fronts. *Firstly*, whether the Noticee's transactions in the present case are covered in the parameters laid down by the Hon'ble Supreme Court; and *secondly*, whether SEBI ought to have specifically made the allegations in the SCN in line with the above principles laid down by the Hon'ble Court.

29. To deal with the first front, I find it pertinent to mention that in the instant case, it is undisputed that the Noticee had the information regarding the impending trades of Colin as he used to receive the information in that regard from Colin and was employed by Colin to execute trades on his behalf through his broker. Drawing reference to the above principles laid down by the Hon'ble Court, I find that in the present case, there was no separate *tipper* or *tippee* as the Noticee fits in both the capacities. As an employee of Colin, the Noticee owed a fiduciary duty towards Colin for keeping the information regarding his trades confidential and not to use the same to the disadvantage of Colin. Undisputedly, the Noticee, being in the position as stated above, carried out the transactions (mentioned in the SCN) prior to Colin. Because of Noticee's transactions, the price advantage, which would have been available to Colin, was grabbed by the Noticee and Colin's trades were executed at a price (disadvantageous to him) which otherwise would not have been the case. In view of the above, I find that the conditions laid down by the Hon'ble Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are met out in the present case.

30. Coming to the second front i.e. whether SEBI ought to have specifically made the allegations in the SCN in line with the above principles laid down by the Hon'ble Court, I note that the SCN in the present matter was issued on January 18, 2017 and the

Hon'ble Supreme Court passed the judgment on September 20, 2017. The parameters set out by the Hon'ble Court (noted above) have to be satisfied in respect of a charge of front running to the extent they apply to the facts and circumstances of a particular case. It is important to mention that the Noticee was given several opportunities of hearing even after the passing of the order by Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel*. In fact, the Noticee also took adjournments citing the aforesaid judgment of Hon'ble Supreme Court. The Noticee had sufficient opportunity to respond to the SCN from the viewpoint of the aforesaid parameters laid down by the Hon'ble Court and he could always have justified how his case does not meet the parameters laid down by the Hon'ble Court. I find no merit in the submission of the Noticee that the SCN, which was issued prior to the issuance of the order by the Hon'ble Court, should specifically be designed to address the parameters laid down by the Hon'ble Court. In my view, testing the facts and circumstances of the case on the parameters would be sufficient, as has been done above. As observed above, in the present case, the conditions laid down by the Hon'ble Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are met. In view of the above, I reject the submissions of the Noticee in this regard.

31. The Noticee has further submitted that during the investigation, statements of Colin and Pradip were recorded and their correctness, completeness and genuineness was not verified before relying upon them against the Noticee. The Noticee has also submitted that he was never afforded an opportunity to confront Colin or Pradip which amounts to gross violation of principles of natural justice. In this regard, I note from the record that the findings against the Noticee in the investigation are based on the analysis of various facts and circumstances such as absence of fund transfer from the Noticee to Colin or vice-versa (as claimed by the Noticee), receipt of funds by the Noticee from his broker - Satco Securities, bank balance of the Noticee not being commensurate with his income, purchase of flat by the Noticee in his name and his wife's name and the subsequent transfer of his share in the flat to his mother, etc. The objective of the investigation was to ascertain the role of Colin with respect to the transactions of the Noticee. I note from the record that the conclusion of the investigation, that Colin had no knowledge of the transactions of the Noticee, was based on a multiplicity of factors and the said conclusion would be the same even in absence of the statements of Colin and Pradip. Thus, I do not rely upon the statements of Colin and Pradip for arriving at the conclusion that Colin did not have the knowledge of the transactions of the Noticee. Even otherwise, the Noticee was given copies of the statements of Colin and Pradip along with the SCN, however, he has failed to submit any evidence to refute the statements made by Colin and Pradip. Moreover, the Noticee was given opportunities to file an affidavit along with supporting

documents to explain the role of Colin, which he failed to avail. In view of the above, I do not find any merit in the submissions of the Noticee in this regard.

32. It has been argued by the Noticee that the SCN nowhere says that Colin or any investor(s) has ever claimed that they incurred loss or lost any price advantage on account of subject trades. Further, the SCN also does not in any manner aver/allege that Colin or investors in securities market were defrauded by execution of subject trades and therefore, if SEBI itself has not alleged/ established that there was any fraud on account of the subject trades, it is impossible to understand and ascertain that how and in what manner SEBI has alleged that the provisions of PFUTP Regulations, are violated by the Noticee. In this regard, I note that the power of SEBI to investigate any matter is not contingent upon the receipt of any complaint by an aggrieved person. Investigation can be taken up by SEBI in any case where there is a suspected violation of any rule, regulation, direction or any other provision of law being administered by SEBI. Thus, the contention that Colin or other investors have not claimed that they incurred loss or lost any price advantage on account of subject trades, holds no merit. Further, the submission of the Noticee that the SCN does not allege that Colin or investors in securities market were defrauded by execution of subject trades, is also incorrect. The earlier show cause notice dated August 8, 2013 at paragraph 10 stated “...*These trades were executed in fraudulent manner by you, to defraud Colin and other investors in the market*”. The said show cause notice was disposed of by SEBI vide order dated May 26, 2014. The present SCN also draws reference to the said order of SEBI. Thus, I find that the submission of the Noticee in this regard is fallacious and devoid of merit.

33. It has been argued by the Noticee that prior to the order of Hon’ble Supreme Court, there was ambiguity over the subject matter of non-intermediary front running since there were conflicting judgments of Hon’ble SAT in the matters of *Dipak Patel*, *Sujit Karkera* and *Vibha Sharma* and also in view of the fact that SEBI defined “front running” for the first time vide Circular dated May 25, 2012. Further, by way of an amendment in 2013, an explanation was also added to regulation 4(2) of PFUTP Regulations making it inclusive in nature.

34. With regard to the above submissions of the Noticee, I find it pertinent to point out at the outset that the Noticee, at no stage of the proceedings argued that his trades forming the subject matter of consideration were permitted under law. In fact, the Noticee has also not disputed his transactions. In the letters dated March 13, 2012 and March 26, 2012 written to SEBI, the Noticee had admitted that on several occasions, the Noticee got to know about the trading details of Colin and then he traded before him and later squared off his trades thereby making profits. In my view,

there was no ambiguity in law at the time when the subject transactions were carried out by the Noticee. The earlier show cause notice dated August 08, 2013 alleged violation of regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act against the Noticee. There was no allegation against the Noticee that he had violated regulation 4(2)(q) of the PFUTP Regulations which relates to "trading ahead" by intermediaries. The Hon'ble Supreme Court also in its judgment in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* has made it clear that conduct such as Noticee's conduct in the present case shall be covered under regulations 3 and 4(1) of the PFUTP Regulations. It has to be borne in mind that the Hon'ble Court in the aforesaid case has only thrown light on the correct interpretation of the provisions of regulations 3 and 4(1) of the PFUTP Regulations. It cannot be said that Hon'ble Supreme Court in the aforesaid case, has pronounced a new law, which shall apply only prospectively. The Noticee's conduct in the present case would have, at all times, been in violation of regulations 3 and 4(1) of the PFUTP Regulations read with section 12A of the SEBI Act. For the sake of argument, even if it is assumed that the conflicting decisions by the Hon'ble SAT in the years 2012 and 2013 created some doubt, the same will be of no avail to the Noticee since the subject transactions were carried out by him during the year 2010. Considering the above, I reject the submissions of the Noticee in this regard.

35. It has also been submitted that "tippee trading" has not been explicitly recognized in Regulation 3 and 4 and should not be embraced within its scope especially because penal provisions should be strictly interpreted and there should be no scope of expansion of the provisions which will be detrimental to the Noticee. Without prejudice to other arguments, it is submitted by the Noticee that prior to the amendment in 2013, the exhaustive illustrations or details (a) to (t) provided in Regulation 4(2) which deals with "Prohibition of manipulative, fraudulent and unfair trade practices" were exhaustive and not inclusive. For the purpose of dealing with these submissions, I find that following observations of the Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are noteworthy:

"An argument has been introduced by the Mr. K.T.S. Tulsi, learned senior counsel, that sub-clause (q) of regulation 4(2) includes only front-running by the intermediaries, by implication it means that any persons other than intermediaries are excluded from the rigors of law. In our opinion such submission cannot be sustained in the eyes of law as the intention of the legislation was to provide for a catchall provision and the deeming provision under sub-clause (q) of regulation 4(2) was specifically provided as the intermediary are in fiduciary relationship with the clients. There is no dispute as to the fact that a fiduciary must act in utmost good faith; he should not act for

his own benefit or benefit of any third party without the informed consent of his client. The essential irreducible core of fiduciary duty is the duty of loyalty. Such heightened standard demanded a deeming provision under the FUTP 2003.

... The reliance on 'expressio unius est exclusio alterius' may not be appropriate in this case instant as the intention of the regulation is apparent in this case. Moreover, it has been well established that 'expressio unius est exclusio alterius' is not a rule of law but a tool of interpretation which must be cautiously applied. In light of the above discussion, this rule of interpretation does not help the case of the violators."

36. As has been clarified by the Hon'ble Supreme Court, regulations 3 and 4 of the PFUTP Regulations are catch-all provisions, which cover within their ambit fraudulent conduct such as "tippee trading" as identified by the Hon'ble Court. It is clear from a reading of the above observations of the Hon'ble Court that an express deeming provision such as regulation 4(2)(q) is not required for regulation 3 and 4 to cover conduct such as that of the Noticee in the present case. Further, in my view, regulation 4(2) which provides that *"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..."* by no rule of interpretation can be read as being exhaustive in nature. The provision itself appears in the PFUTP Regulations as a deeming and illustrative provision and uses the words "may include" which are followed by the illustrations. The usage of the discretionary word "may" and the extensive word "include" clearly signify the inclusive nature of the provision. I am therefore unable to accept the submissions of Noticee in this regard.

37. It has also been submitted by the Noticee that In order to allege front running, the SCN ought to have shown an analysis of the timings at which orders were placed by Noticee and Colin and also an analysis of actual time at which their respective trades were executed. In this regard, it is important to refer to paragraphs 5 and 6 of the SCN which read as under

"5. Front Running of Sell Trades of Colin: *you had the information of Colin's sell order details viz., scrip, quantity, time and price range. Before Colin's sell orders in the scrip were entered, you had sold the shares in advance. You had entered buy orders to square up his position in the scrip just before Colin's sell orders were entered in the same scrip. In NSE out of 59 scrip days, in 23 scrip days and in BSE out of 38 scrip days, in 16 scrip days you followed the same pattern. Most of your buy trades were matched with Colin's sell trades including certain instances of 100% matching.*

6. **Front Running of Buy Trades of Colin:** *you had the information of Colin's buy order details viz., scrip, quantity, time and price range. Before Colin's buy orders in the scrip were entered, you had bought the shares in advance. You had entered sell orders to square up his position in the scrip just before Colin's buy orders in the same scrip were entered. In NSE out of 59 scrip days, in 37 scrip days and in BSE out of 38 scrip days, in 23 scrip days you followed the same pattern. Most of your sell trades were matched with Colin's buy trades including certain instances of 100% matching."*

38. From the above excerpts of the SCN, it is evident that the SCN, for the purpose of levelling allegations against the Noticee, does rely upon the analysis of the trades of the Noticee. It is seen that the SCN points out the instances (on BSE and NSE) on which the Noticee had placed trades in advance and just before Colin's trades, he placed his orders to square off his positions. The particulars of the trades of the Noticee have also been provided in the SCN. It is also pertinent to note that along with the earlier show cause notice dated August 8, 2013, the relevant trade logs and order logs were also provided to the Noticee. Thus, the Noticee at all times had the details of his trades and the relevant analysis of his trades and he did not dispute the details of his trades mentioned in the trade logs. In view thereof, the above submission of the Noticee does not hold true and is therefore rejected.

39. The Noticee has further submitted that since the 9 instances mentioned in the definition of "fraud" under regulation 2(1)(c) of PUTP Regulations do not cover any information provided or any tips provided, the Noticee's acts would only fall within clauses (c) and (d) of the exceptions to fraud and the Noticee should be granted benefit of the same. In this regard, I note that regulation 2(1)(c) defines "fraud" by providing an inclusive list of acts, expressions, omissions or concealments which shall be treated as fraudulent, by first identifying the features of "fraud" and then by providing an inclusive list of identifiable conducts/acts/omissions, which amount to "fraud". Thus, for a conduct to be "fraudulent" it has to meet the essential features mentioned in regulation 2(1)(c) and does not have to necessarily fall in any of the 9 instances stipulated therein. Further, the exceptions that have been carved out from the definition of "fraud" are only limited to *general comments made in good faith* with regard to the 4 subject matters that have been listed therein. Clearly, in the present case, the transactions of the Noticee do not relate to any of the 4 subject matters [mentioned in the exceptions clause of regulation 2(1)(c)] and therefore do not qualify for the exceptions to regulation 2(1)(c). In view thereof, I find that the conduct of the Noticee in the present case i.e. trading on the basis of information regarding trades of Colin to his own advantage, would be covered under regulation 2(1)(c) of the PFUTP

Regulations. The arguments of the Noticee in this regard are therefore devoid of any merit.

40. Having observed as above, it is once again made clear that the findings on these arguments on merits of the case shall have no bearing on the conclusion that the Noticee had violated the provisions of PFUTP Regulations and SEBI Act as noted in the SEBI order dated May 26, 2014, which has also attained finality in light of the order of Hon'ble SAT dated October 11, 2017.

Order

41. In view of the foregoing, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me in terms of Section 19 read with Section 11(4) and 11B of the SEBI Act, 1992, I direct as under:

- i) The Noticee shall disgorge the wrongful gain made by him i.e. ₹ 37,99,818 along with simple interest @ 12% per annum from December 7, 2010 till the date of payment. He shall pay the said amount within 45 (forty five) days from the date of this order by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.
- ii) The Banks, with whom the Noticee's accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held, by Mr. Kamal Jitendra Katkoria except for the purposes of compliance of this order.
- iii) The Depositories, with whom the Noticee's demat accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held, by Mr. Kamal Jitendra Katkoria except for the purposes of compliance of this order. However, credits, if any, into the accounts of Mr. Kamal Jitendra Katkoria may be allowed.
- iv) Mr. Kamal Jitendra Katkoria is also directed not to dispose of or alienate any of his assets/ properties/ securities, till such time the direction of this order is complied with.
- v) The flat, having address as 302, Building no-1, C-wing, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West), Mumbai, was bought by Kamal (in his name and that of his wife) from the ill-gotten gains of front running transactions. The said flat is now registered in the name of Ms. Jagruti Katkoria and Ms. Saroj Katkoria (wife and mother of Kamal, respectively). Considering the same, I direct

Ms. Jagruti Katkoria (wife of Kamal) and Ms. Saroj Katkoria (mother of Kamal) not to dispose of or alienate the said flat until the directions of this order are complied with by the Noticee.

42. In case the Noticee fails to pay the wrongful gains alongwith interest as directed herein within the above specified time, SEBI shall initiate recovery process under section 28A of the SEBI Act.
43. This order shall come into force with immediate effect. Accordingly, the interim order dated March 17, 2016 and the SCN dated January 18, 2017 are disposed of.
44. A copy of this order shall also be served upon the Depositories, Stock Exchanges and Registrars and Transfer Agents for necessary action on their part.
45. A copy of this order shall be served to the Registrar/ Sub-Registrar (of the area where the above mentioned property is located) and the Secretary of the 'housing society' of the Building no. - 1, Mody Park, Pruthvi Classique, Iraniwadi, Kandiwali (West), Mumbai with a direction not to act upon any documents purporting to be dealing with transfer, mortgage, charge, lease or creation or alteration of any interest in the said property mentioned above, if presented for registration, till the compliance of this direction of this order or completion of recovery as mentioned above.

Sd/-

DATE: May 08, 2018
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA