BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DP/2022-23/23921]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Chirag Parmar

PAN: BTXPP2379A

Garibnagar, Behrampura,

Ahmedabad – 380022

In the matter of

A.F. Enterprises Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of A.F. Enterprises Ltd. (hereinafter referred to as "**company**") during the period of May 23, 2014 to April 29, 2015 (hereinafter referred to as "**Investigation Period**") to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") by Chirag Parmar (hereinafter referred to as "**Noticee"**). It was observed that during the investigation period, price of the scrip of the company rose from Rs. 255 to a high of Rs. 648 and closed at low of Rs. 17.65.

2. The price movement of the scrip of the company at BSE Limited (hereinafter referred to as "**BSE**") during and after the investigation period is summarized under:

Period	Dates		Opening Price (volume) on first day of the period (Rs)	Closing price (volume) on last day of the period (Rs.)	Low price(volume) during the period (Rs.)	High Price(volume) during the period (Rs.)	Total no. of shares traded during the period (avg. daily vol.)
Before Investigation Period	**Feb 25, 2014 to May 22, 2014**	The scrip got listed on BSE with effect from May 23, 2014.					
During Investigation Period	**Patch-I May 23, 2014 to Feb 03, 2015 (Price rise)**	**Price**	255 (23/05/2014)	472.6 (03/02/2015)	246.7 (30/5/2014)	472.7 (03/2/2015)	11098 (693.62)
		Vol	2114 (23/05/2014)	8700 (03/02/2015)	1 (13/05/2014)	8700 (03/2/2015)	
	Patch-II Feb 4, 2015 to June 9, 2015 (Price rise)	**Price**	472.3 (04/02/2015)	446.60 (09/06/2015)	382 (28/4/2015)	648 (9/6/2015)	14,75,592 (17,995.02)
		Vol	6500 (04/02/2015)	1,29,842 (09/06/2015)	520 (23/04/2015)	1,29,842 (9/6/2015)	
	Patch-III Jun 10, 2015 to April 29, 2016 (Price fall)	**Price**	438 (10/06/2016)	17.65 (29/04/2016)	17.65 (21/4/2016)	438 (10/6/2015)	62,17,522 (31401.62)
		Vol	16505 10/06/2016)	50 (29/04/2016)	1 (09/12/2015)	267781 (28/09/2015)	
After Investigation Period	**April 30, 2016 to July 29, 2016**	**Price**	17.3 (2/5/2016)	11.18 (29/7/2016)	6.87 (7/7/2016)	17.3 (2/5/2016)	39,57,622 (63,832.61)
		Vol	155	28403	6 (24/05/2016)	276986 (24/06/2016)	

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI had appointed Ms. Geetha G. as the Adjudicating Officer under Section 15I of SEBI Act read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "**Rules**"), vide communique dated May 25, 2022 to enquire into and adjudge under Section 15HA of SEBI Act, the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a) and (g) of PFUTP Regulations by the Noticee. Upon transfer of Ms. Geetha G, vide communique dated September 19, 2022, Shri Amit Kapoor was appointed as the Adjudicating Officer. Subsequently, vide communique dated October 06, 2022, the undersigned was appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice dated November 04, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to

show cause as to why an inquiry should not be held and penalty be not imposed on him under section 15HA of SEBI Act for the alleged violation of the provisions of SEBI Act and PFUTP Regulations. The SCN, *inter alia*, alleged the following:

4.1. During the investigation period, total market volume was 77,04,212. It was observed that total 149 entities had entered into 504 circular trades for 8,09,282 shares. The circular trading occurred on 51 days out of the 296 days of trading during the investigation period. Circular trading created 10.51% of the market volume during the investigation period. For the entities involved in the circular trading, connection was established on the basis that the entities are involved in at least one circular trade with any one entity in the group.

4.2. It was observed that out of those 149 entities (divided into two groups), Group A comprised of 119 individuals including the Noticee, which created circular trade volume 7,26,222, i.e. 18.41% of the total volume of 39,45,059 shares on 51 days on the days the circular trades were executed. The circular trade volume created by group of 119 entities (7,26,222) is 90% of the total circular trade volume (8,09,282) during the investigation period. From the order log, it was observed that Noticee had entered into circular trades of 50,116 shares and contributed 1.27% of the circular trades to the total volume of the 51 days on which the circular trades were executed. Therefore, it was alleged that Noticee has violated Section 12 A (a), (b), (c) of SEBI Act 1992, Regulation 3 (a), (b), (c), (d), Regulation 4(1), 4 (2)(a) and 4 (2) (g) of PFUTP Regulations.

5. The SCN was served on the Noticee through Speed Post Acknowledgment Due (**SPAD**) and digitally signed email. However, Noticee did not file any reply to the SCN.

6. Vide Notice of personal hearing dated December 02, 2022, Noticee was granted an opportunity to appear for the hearing on December 19, 2022. However, Noticee failed to appear for the personal hearing. Subsequently, vide Notice of personal hearing dated December 19, 2022, Noticee was granted a final opportunity of personal hearing on December 28, 2022.

7. Vide letter dated December 19, 2022, Noticee requested for adjournment of hearing and submitted that the proceeding suffers from unexplainable, grave and irreparable delays and laches of 7-8 years as the alleged trades/transactions pertain to the year 2014-2015 and the

present SCN was issued on November 4, 2022. Further, vide the said letter, the Noticee requested for inspection of documents.

8. Vide email dated December 19, 2022, Noticee was granted an opportunity to inspect the documents on December 20, 2022. The Authorised Representative (AR) of the Noticee conducted inspection of the documents on December 20, 2022.

9. Subsequently, vide Notice of personal hearing dated December 21, 2022, Noticee was granted a final opportunity of hearing on December 30, 2022. Vide letter dated December 30, 2022, Noticee filed reply to the SCN and submitted that following:

   9.1. *the SCN in the present matter has been issued after unexplainable and fatal delay of 7-8 years as the alleged trades/transactions pertain to the year 2014-2015.*

   9.2. *attention is drawn to Adjudication order dated November 02, 2017 in the matter of Sungold Capital Limited wherein the artificial volume of the Noticee therein was 1.75% of the market volume and the Adjudicating Officer disposed of the Show Cause Notice in favour of the Noticee on the grounds that it constituted only 1.75% of market volume. This order has been accepted by the SEBI Board and no review u/s 15 (I) (3) has been carried out by the board and neither is possible anymore due to expiry of limitation period. In the present SCN the allegation of volume contribution of the Noticee is only 1.27% of the circular trades to the market volume.*

   9.3. *Infact in this very matter, SEBI has issued administrative warnings to all the other 148 entities who have allegedly entered into circular trades and have only proceeded against the present Noticee for Volume contribution. The SCN alleges that that the present Noticee contributed to 1.27% of the trades to the market volume and 6.9% of circular trades among the group. It may be kindly noted that any trade requires 2 parties. In the present matter the counter parties to the circular trades alleged to have taken place have been issued an Administrative Warning and no penalty proceedings have been initiated; on this ground itself the SCN should be dropped.*

10. The AR of the Noticee, appeared for the hearing on December 30, 2022 and reiterated the submissions made vide reply dated December 30, 2022 and submitted that SEBI has issued

Administrative Warning to the other 118 entities who entered into circular trades. Therefore, it was requested that a lenient view may be taken.

11. Vide letter dated January 06, 2023, Noticee filed additional reply to the SCN and reiterated the submissions made by the earlier replies.

12. Further, vide email dated February 13, 2023, the Noticee filed additional reply and submitted the following:

12.1. It has come to the knowledge of the present Noticee that an Adjudication Order bearing No. Order/SM/DP/2022-23/23695 dated February 10, 2023 has been passed by your Honour with respect to Noticee No. 4 to the present SCN, wherein your Honour has considered the fact that no proceedings have been initiated against the counter parties of the trades in question as a mitigating factor in holding that the matter was unfit to impose any penalty.

12.2. It maybe kindly appreciated the present Noticee vide its earlier submissions dated December 30, 2022 has also clearly demonstrated that any trade requires 2 parties. In the present matter no penalty proceedings have been initiated against the counter parties to the circular trades alleged to have taken place. The Noticee has also submitted that all parties to the alleged circular trades are on the same footing and the allegation is equally against them all, irrespective of what was done by each of them individually.

12.3. Further, your Honour's kind attention was also drawn to the fact that in the present matter no penalty proceedings have been initiated against any of the other 148 group entities (counterparties) whose circular trades contribute to 93.1% of circular trades among the group entities.

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

    I. Whether Noticee has violated Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a) and (g) of PFUTP Regulations?

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?

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

14. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations:

<u>SEBI ACT</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *No person shall directly or indirectly—*

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

<u>PFUTP REGULATIONS</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or

contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following:—

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

…

(g)entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

I. Whether Noticee has violated Section 12 A (a), (b), (c) of SEBI Act, Regulation 3 (a), (b), (c), (d), Regulation 4(1), 4 (2)(a) and 4 (2) (g) of PFUTP Regulations?

15. From the material available on record, it is noted that it has been alleged that the Noticee entered into circular trades and contributed to artificial volume during the investigation period.

16. Hon'ble Securities Appellate Tribunal (SAT) in the matter of Monika Jain Vs. Adjudicating Officer SEBI decided on 11.02.2011 defined circular trades as: "…*A circular trade is a fictitious trade which is executed on the trading screen of the exchange which does not result in the transfer of beneficial ownership in the traded scrip. Such trades only create false or misleading appearance of trading in the securities market and thereby lure the lay investors to jump into the fray*…"

17. It is noted from the Investigation Report that the Noticee entered into circular trades for 50,116 shares for 26 days and contributed 6.90% of the total circular trades executed within the group of 119 entities and 1.27% of the total market volume. However, it is observed from the investigation report that no allegation has been brought out against the other entities who allegedly entered into circular trades. Further, no relationship is brought on record between the Noticee and the other group entities except that the entities involved in the circular trading, connection was established in the investigation report, on the basis that the entities are involved in at least one circular trade with any one entity in the group. Further, investigation has not brought on record that how the circular trades were entered into and who was beneficial owner of such trades.

18. In this regard, reliance is placed on the order dated September 30, 2003 of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of KSL & Industries Ltd. Vs. SEBI (Appeal No. 9/2003), wherein it was held:

"*I have carefully considered the Respondent's submissions on the charge that the Appellant had violated the provisions of regulation 4 and 6 in the light of the provisions of FUTP Regulations. But I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained. I fully agree ... that allegation of 'fraud' cannot survive on mere conjectures and surmises*."

19. It is noted that the investigation report has not found any connection of Noticee with the Director /Promoter of the company or the preferential allottees of the scrip of the company. Apart from the connection on the basis of the trading with each other at least once, investigation report has not brought any connection between the Noticee and other entities with whom he purportedly entered into the circular trades. Further, SEBI has issued Administrative Warning to other 148 entities for entering into circular trades and did not initiate any penal action.

20. I note that the investigation report has not brought anything on record that there was collusion between the Noticee and the counterparties of his trades. I observe that there is no confluence of factors like meeting of mind or pattern of trading like synchronized, reversal, self-trades

brought out by the investigation. Therefore, in the absence of any evidence with respect to the same, I am constrained to give benefit of doubt to the Noticee.

21. In the extant matter, no proceedings have been initiated against the counter party of such trades. In view of the foregoing and the guidance I derive from the above referred orders of Hon'ble SAT, I find that it is difficult to accept that the Noticee manipulated the price in the scrip 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.

ORDER:

22. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee and Show Cause Notice dated November 04, 2022 without imposition of any monetary penalty. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 20, 2023
Place : Mumbai

SAHIL MALIK
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER