

WTM/AB/IVD/ID2/14517/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
(INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF –

NOTICEE	M/s. GRISHMA SECURITIES PRIVATE LIMITED MEMBER, BSE & NSE SEBI REGN NOS. – INB011127132 [BSE] & INB231127136 [NSE] PAN: AABCG1300K
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IN THE MATTER OF TRADING OF MR. ANIL DAVE

1. Present proceedings have emanated from a show cause notice dated April 07, 2016 (hereinafter referred to as “**the SCN**”), issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to M/s. Grishma Securities Private Limited (hereinafter referred to as “**Noticee / Grishma / GSPL**”), a SEBI registered stock broker, having memberships of the Bombay Stock Exchange (**BSE**) and the National Stock Exchange (**NSE**). The background of the case is as follows.
2. Pursuant to the directions of the Hon’ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**the Hon’ble SAT**”), SEBI conducted an investigation in the trading of Mr. Anil Dave, as a client of GSPL, during the period November 12, 2011 to December 28, 2011 (hereinafter referred to as ‘Investigation Period’) to ascertain, *inter alia*, whether there was any violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as “**SEBI Act, 1992**”), SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Broker Regulations, 1992**”)

and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”). Pursuant to the same, SEBI initiated proceedings against GSPL under the provisions of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) and appointed a Designated Authority (DA) under Regulation 24 of the Intermediaries Regulations to enquire into various alleged violations. The DA issued a show cause notice dated November 19, 2014 to GSPL which alleged the following:

- (a) The KYC documents of Mr. Anil Dave submitted by GSPL showed that he was a walk in client of GSPL and his account with GSPL was opened on November 12, 2011. He had registered for trading in the Capital Market segment of BSE and NSE, F&O Segment of NSE and Currency Derivative Segment of MCX-SX. His bank account was held with Cosmos Co-op Bank, Dadar West Branch. He had forwarded a request for change in bank account to Axis Bank, Lamington Road, in the records of GSPL vide form dated November 19, 2011.
- (b) The total value of buy and sell trades of Mr. Anil Dave through GSPL during November 16, 2011 to December 28, 2011 at BSE and NSE was Rs. 1,74,84,981.36 and Rs. 69,11,988.60 respectively. Investigation revealed that some of the buy trades of Mr. Anil Dave executed through GSPL (BSE and NSE) were synchronized with the sell trades of Mr Vimal Patel (another client of GSPL who was debarred by SEBI along with GSPL from buying, selling or dealing in securities for a period of 5 years, vide order dated July 31, 2013 in the matter of Tijaria Polypipes Ltd). It was found that the buy and sell orders placed by Anil Dave and Vimal Patel for such trades were for identical quantities and rates and these orders were placed within time gap of one minute. GSPL was the broker both on the buy and the sell side. It was observed that GSPL had executed synchronized trades for Mr. Anil Dave and Mr. Vimal Patel for a total value of over Rs. 54 lakhs. In BSE, the synchronized

trades in the scrip of Agre Developers (now known as Future Media Networks Ltd.), Advanta Ltd, Monsanto India Ltd and Hathway Cable Datacom Ltd accounted for around 94.7%, 20.36%, 25.25% and 7.74% of the day's market volume respectively for the date 16/11/2011. In NSE, the synchronized trades in the scrip of Agre Developers (now known as Future Media Networks Ltd) accounted for around 58.87% of the day's market volume for the date 16/11/2011. Therefore, it was observed that the synchronized trades executed by GSPL on behalf of Mr. Anil Dave and Mr. Vimal Patel created artificial volumes in the said scrips. Investigation further revealed that there were transfers of funds from the bank account of Mr. Anil Dave with Axis Bank to the account of Mr Vimal Patel.

- (c) From the Income Tax Returns (ITRs) of Mr. Anil Dave for the assessment years 2012-13 and 2013-14 submitted by him, it was observed that the gross total income of Mr. Anil Dave for the said years was only Rs.4,680 and Rs.779 respectively. As the said ITRs of Mr. Anil Dave did not indicate his risk taking capacity, his bank accounts were examined to ascertain the source/end use of the funds.
- (d) From the KYC of Mr Anil Dave submitted by GSPL, it was observed that the bank account of Mr Anil Dave, held with Cosmos Co-operative Bank Ltd, Dadar West, for the period from October 1, 2011 till March 12, 2012 showed very limited financial transactions. The bank account of Mr Anil Dave with HDFC Bank, which was opened on June 11, 2009, had transactions in the range of Rs. 500 to Rs. 6,00,000 during the period from April 2009 to March 2013. Further, the bank account of Mr Anil Dave with Axis Bank, Lamington Road Branch, was opened on November 5, 2011 just prior to opening of account with GSPL.
- (e) Examination of the trail of funds received in the account of Mr Anil Dave's Axis bank account revealed the following:

- (i) On November 15, 2011, the account was deposited with Rs. 5200 by cash. Subsequently, on November 18, 2011, there was a deposit of Rs. 1 crore in Mr Anil Dave's account from the account of United Enterprises. On November 21, 2011, the said amount of Rs. 1 Crore was transferred to various accounts of GSPL in 4 tranches of Rs. 25 lakh as mentioned below, leaving a balance of Rs.5200 in the said account:
- Rs. 50 lakh was transferred to the account of GSPL (NSE F&O Client Account).
 - Rs. 25 lakh was transferred to the account of GSPL (BSE Client Account).
 - Rs. 25 lakhs was transferred to the account of GSPL (NSE Client Account).
- (ii) The abovementioned amounts transferred to GSPL -NSE F&O Account (Rs. 50 lakhs) and GSPL -BSE Client Account (Rs. 25 lakhs) were further transferred to the account of GSPL (Current Account). Further, from GSPL (Current Account), Rs. 25 lakhs was transferred to GSPL - NSE Client Account. On the same day, Rs. 49,06,999.24 (Rs. 25 lakhs received from current Account and Rs. 25 lakhs transferred by the Mr Anil Dave) was transferred to Pramod Goenka (another client of GSPL). Investigation had revealed that on November 16, 2011, Mr Anil Dave had purchased shares worth Rs. 47,67,092.75 in BSE and Rs. 2,36,500 in NSE. He had not traded in the F & O segment though Rs. 50 lakhs was transferred from his account to GSPL NSE F&O Account.
- (iii) On November 26, 2011, there was a transfer of Rs.75,00,000/- in the account of the Mr Anil Dave from Global Enterprise. Investigation revealed that on the same day, the said amount was transferred to the account of GSPL (BSE Client Account) and further routed to the account of Mr Vimal Patel (another client of GSPL). The final balance in the account of the Mr

Anil Dave as on November 26, 2011 remained Rs. 5200. It was observed that though there were financial transactions between Mr Anil Dave and GSPL, Mr Anil Dave had not traded in BSE and NSE during the period from November 17, 2011 to December 4, 2011.

- (iv) On November 28, 2011, again there was a transfer of Rs.75,00,000/- in the account of Mr Anil Dave from Global Enterprise and on the same day, the entire amount was transferred to the account of GSPL (BSE Client Account). Investigation revealed that the entire amount was further transferred to GSPL (Current Account). Further, Rs. 1 crore (the amount of Rs. 75 lakhs along with other funds of GSPL) was transferred from GSPL (Current Account) to GSPL NSE F&O Account Client A/c on the same day. From GSPL NSE F&O Account Client A/c, Rs. 1 crore was transferred to the account of Mr Vimal Patel. The final balance in the account of Mr Anil Dave, as on November 28, 2011, remained Rs. 5200. It was observed that though there were financial transactions between Mr Anil Dave and GSPL, Mr Anil Dave had not traded in BSE and NSE during the period from November 17, 2011 to December 4, 2011.
- (v) On December 3, 2011, Rs. 42,90,000 was transferred to the account of Mr Anil Dave from the bank account of Shalimar Trading and Shreeji Corporation. Again, on December 5, 2011, there was a transfer of Rs. 7,10,000 in the account of Mr Anil Dave from the bank account of United Enterprises. On December 5, 2011, Rs. 50,00,000 was transferred from the account of Mr Anil Dave to the account of GSPL (NSE Client Account). Investigation revealed that on the same day, the entire amount of Rs. 50 lakhs was transferred to the account of Vimal Patel. The final balance in the account of Mr Anil Dave, as on December 5, 2011, was Rs. 5200. It was observed that though there were financial transactions between Mr

Anil Dave and GSPL, Mr Anil Dave had not traded in BSE and NSE during the period from November 17, 2011 to December 4, 2011.

- (vi) On December 7, 2011, there was a transfer of Rs.30,00,000 and Rs.50,00,000 in the account of Mr. Anil Dave from Global Enterprise and United Enterprises respectively. On the same day, the entire amount was transferred to GSPL (BSE Client Account). Investigation revealed that on the same day, Rs. 70,00,000 was transferred to the account of Vimal Patel and on December 8, 2011 Rs.10,00,000 was transferred to GSPL (Current Account). The final balance in the account of Mr. Anil Dave as on December 7, 2011 was Rs. 5200. It was observed that on December 5, 2011, Mr. Anil Dave had purchased shares worth Rs. 93,74,955.94 in BSE and on December 7, 2011, he had sold shares worth Rs. 15,47,062 in NSE.
- (vii) On December 8, 2011, Global Enterprises transferred Rs. 70,00,000 to the account of Mr. Anil Dave and on the same day, the entire amount was transferred to GSPL (NSE Client Account). Investigation revealed that on the same day, the entire amount was further transferred to the account of GSPL (Current Account). Again, on the same day, the entire amount was further transferred to the account of GSPL (BSE Client Account). This entire amount was transferred to the account of Mr. Vimal Patel. The final balance in the account of Mr. Anil Dave as on December 9, 2011 remained Rs. 5200. It was observed that on December 8, 2011, Mr. Anil Dave had purchased shares for Rs.1916.72 and sold shares for Rs. 10,93,926.6 in BSE.
- (viii) On December 9, 2011, Global Enterprise transferred Rs. 70,00,000 to the account of Mr. Anil Dave and on the same day, the entire amount was transferred to GSPL (NSE Client Account). Investigation revealed that on the same day, the entire amount was further transferred to the account of

GSPL (Current Account). Again, on the same day, Rs.39,00,000 was transferred to the account of GSPL (NSE F&O Client Account) which was further transferred to the account of Mr. Vimal Patel and Rs.34,40,000 was transferred to GSPL NSE (F&O Settlement Account) which was further transferred to IL & FS for settlement. The final balance in the account of Mr Anil Dave as on December 9, 2011 remained Rs. 5200. It was observed that Mr. Anil Dave had not purchased shares in BSE and NSE from December 9, 2011 to December 12, 2011 nor did he trade in the F & O Segment during this period.

- (ix) On December 10, 2011, Shalimar Trading Co transferred Rs.39,00,000 to the account Mr. Anil Dave and on the same day, the entire amount was transferred to the account of GSPL (BSE Client Account). Investigation revealed that on the same day from the GSPL (BSE Client Account), Rs.1,00,000 was transferred to the account of Mr. Vimal Patel and Rs. 38,00,000 was transferred to the account of GSPL (Current Account). Of the Rs. 38,00,000 transferred to the account of GSPL (Current Account), Rs. 6,00,000 was transferred to the account of GSPL (NSE Client Account) and Rs. 24,00,000 was transferred to the account of Grishma Intermediaries P Ltd. Of the Rs. 24,00,000 transferred to the account of Grishma Intermediaries P Ltd, Rs. 23,00,000 was transferred to the account of Grishma Intermediaries P Ltd (Client Account). This amount (Rs. 23 lakhs) was transferred to Vimal Patel, on December 10, 2011. The final balance in the account of Mr. Anil Dave as on December 10, 2011 remained Rs.5200. It was observed that Mr. Anil Dave had not purchased shares in BSE and NSE from December 9, 2011 to December 12, 2011.
- (x) On December 12, 2011, Global Enterprises transferred Rs.30,00,000 to the account of Mr. Anil Dave and on the same day, the entire amount was transferred to the account of GSPL (BSE Client Account). Investigation

revealed that this amount was transferred to BSE Current Account and from there Rs.3850000 was transferred to GSPL (NSE F&O Settlement Account) and from there it was transferred to IL & FS. The final balance in the account of Mr. Anil Dave as on December 12, 2011 remained Rs.5200. It was observed that on December 12, 2011, Mr. Anil Dave had purchased shares for Rs.4,68,000 in BSE. However, he had not traded in the F&O segment.

- (xi) On December 17, 2011, Shalimar Trading Co had transferred Rs.25,00,00 to the account Mr. Anil Dave and on the same day, the entire amount was transferred to the account of GSPL (BSE Client Account). Investigation revealed that GSPL (BSE Client Account) transferred Rs.25,50,000 to Grishma Securities P Ltd (Current Account). From this account, Rs.90,00,000 (including other payments) was transferred to GSPL (F&O Settlement Account) and this was transferred to IL & FS. The final balance in the account of Mr. Anil Dave as on December 17, 2011 remained Rs.5200. It was observed that during the period from December 14, 2011 to December 17, 2011, Mr. Anil Dave had purchased shares worth Rs. 4,12,456 on NSE and, during December 13, 2011 to December 17, 2011 he had purchased shares worth Rs. 28,47,539.15 and sold shares worth Rs. 27, 50,000 on BSE.
- (xii) On December 21, 2011, Global Enterprise transferred Rs.5,00,000 and Rs.14,89,247 and Eleven Impex transferred Rs.5,10,753 to the account of Mr. Anil Dave. On December 22, 2011, Mr. Anil Dave transferred the entire amount to the account of GSPL (NSE Client Account). This amount was further transferred to GSPL (Current Account). From GSPL (Current Account), Rs.35,00,000 was transferred to NSE (F&O Settlement Account) and this entire amount was transferred to IL & FS. The final balance in the account of Mr. Anil Dave as on December 22, 2011 remained Rs.5200. It

was further observed that from December 19, 2011 to December 26, 2011, Mr Anil Dave had purchased shares worth Rs. 2,98,349 on NSE. Further, from December 19, 2011 to December 26, 2011, Mr Anil Dave had purchased shares worth Rs. 1,25,847.8 and sold shares worth Rs. 15,21,000 in BSE.

- (xiii) On December 27, 2011, Mr Anil Dave had received Rs. 18,50,000 from GSPL (NSE F&O Client Account) and on the same day, the entire amount was transferred to Mr Vimal Patel who further transferred it to Ms Arti Chetan Dave (a dealer of GSPL). The balance in the account of Mr Anil Dave on December 27, 2011 was Rs.5172.
 - (xiv) On December 30, 2012, Mr. Anil Dave had received Rs.1,12,75,000 from GSPL (NSE Client Account) and Rs.87,25,000 from GSPL (BSE Client Account). On the same day, Mr. Anil Dave had transferred Rs.1,00,00,000 to Muskan Trading Co and Rs.1,00,00,000 to Shalimar Trading Co. The balance in the account of Mr. Anil Dave on December 30, 2011 was Rs.5172.
 - (xv) On January 2, 2012, Mr. Anil Dave received credit of Rs.19,20,000 and Rs.1,65,84,733 from the account of GSPL (NSE Client Account). On the same day, Rs.1,85,00,000 was transferred to the account of Arti Chetan Dave in 2 tranches. On the same day, the entire amount was transferred to Mr. Mihir Ghelani, the CEO and Compliance Officer of GSPL. The balance in the account of Mr. Anil Dave on January 02, 2012 was Rs.14,434.
- (f) From the trades of Mr. Anil Dave and trail of funds received in his bank accounts and those of GSPL, the following were observed with regard to role of GSPL as a broker of Mr. Anil Dave:

- (i) The trading account of Mr. Anil Dave was opened with GSPL on November 12, 2011, whereas his bank account was opened on November 5, 2011 (just prior to opening his account with GSPL). Mr. Anil Dave, a walk in client, had started to trade with GSPL on November 16, 2011, on which date he had made purchases for Rs. 47,67,092.75 in BSE and Rs. 2,36,500 in NSE. However, for the said purchases, GSPL had not received any margins in advance from Mr. Anil Dave, who was a first time client and had never traded with GSPL before. Further, Mr. Anil Dave's reported income for AYs 2012-13 and 2013-14 was only Rs.4680 and Rs.779 respectively.

- (ii) During the investigation period, Mr. Anil Dave had purchased shares worth Rs. 1,49,17,528.36 and sold shares worth Rs. 53,64,926 in BSE and purchased shares worth Rs. 25,67,453 and sold shares worth Rs. 15,47,062 in NSE. However, it was observed that Mr. Anil Dave had transferred a total of Rs. 6,39,00,000 to various accounts of GSPL. The funds transferred by Mr. Anil Dave to the accounts of GSPL were not fully utilized for his trades but were majorly transferred to the account of Mr. Vimal Patel, a front client of GSPL, by routing them through various accounts of GSPL. It was observed that out of Rs.6.39 crores received by GSPL from Mr. Anil Dave, a total of Rs. 4,09,24,455 was transferred to the account of Mr. Vimal Patel by routing it through various accounts of GSPL in the guise of market transactions. Further, Rs. 2,03,54,733 transferred to the account of Mr Anil Dave by GSPL has been routed back to the accounts of Mr. Vimal Patel and Mr. Mihir Ghelani (CEO/Compliance Officer of GSPL). It was further found that the payments made to Mr. Vimal Patel by GSPL (using funds of Mr. Anil Dave) were was not in tune with the actual payments to be received by Mr. Vimal Patel for trades through GSPL on BSE and NSE during the period of investigation.

(iii) Even though Mr. Anil Dave had not traded in F& O segment through GSPL, he had transferred Rs. 50,00,000 to GSPL's NSE F & O Account on November 21, 2011. Further, the payments made by GSPL to IL & FS using the funds transferred from the account of Mr. Anil Dave were for the margin payments of GSPL in the F&O Segment.

(g) In view of the abovementioned observations and findings, it was alleged that GSPL i) did not collect advance margin from Anil Dave, a walk-in client, who was trading for the first time, ii) used the funds received from Mr. Anil Dave for making its own margin payments in the F&O trades though Mr. Anil Dave had not traded in F&O segment through GSPL, iii) routed funds received from Mr. Anil Dave to the account of another client, Mr. Vimal Patel and iv) executed synchronized trades on behalf of Mr. Anil Dave and Mr. Vimal Patel for creating artificial volumes. It was further alleged that GSPL had not exercised due skill, care and diligence in the conduct of its business and has failed to segregate money of its client and used the money of its client for self or for other clients. Accordingly, GSPL was alleged to have violated the provisions of Section 12A (a) of SEBI Act, 1992; Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003, Regulations 26(xiii), 26(xvi), 27(xii) and 27(xiv) of Brokers Regulations, 1992 and Clauses A(1), A(2), A(3) and A(5) of the Code of Conduct for Stock Brokers given in Schedule II read with Regulation 7 of Brokers Regulations, 1992.

3. Pursuant to the issuance of abovementioned show cause notice dated November 19, 2014 to GSPL, the DA upon consideration of the facts and records before him, found the Noticee to be in violation of the abovementioned provisions of law. Accordingly, the DA, vide his report dated November 04, 2015 (hereinafter referred to as “**DA Report**”) submitted under erstwhile Regulation 27 of the Intermediaries Regulations,

recommended that the certificate of registration of the Noticee as a stock broker be cancelled.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING –

4. In view of the above, the SCN dated April 07, 2016, as referred to in para 1 of this order, was issued by SEBI under erstwhile Regulation 28(1) of the Intermediaries Regulations, enclosing therewith a copy of the report of the DA and calling upon the Noticee to show cause as to why action as recommended by the DA or any other action, as deemed fit by the Designated Member, should not be taken against it.
5. The Noticee responded to the post-enquiry SCN vide its letter dated April 25, 2016 whereby it *inter alia* made a request for inspection of documents. However, it did not file any reply on merit. Subsequently, the Noticee was granted an opportunity of personal hearing on July 30, 2021 which was attended by the Noticee through video conferencing. During the hearing, the Noticee was granted time till August 16, 2021 to file a reply / written submission in the matter in the matter. Subsequently, the Noticee vide letter dated August 11, 2021 filed its reply to the post-enquiry SCM.
6. A gist of submissions of the Noticee made vide letter dated August 11, 2021 is as follows:
 - (a) The submissions of the Noticee are in continuation of and in addition to the replies filed before the DA and the reply dated April 25, 2016.
 - (b) The personal hearing in the matter has been conducted after an inordinate delay of 5 years from the issuance of the post-enquiry SCN. Thus, the post-enquiry SCN must be withdrawn on this ground alone. SEBI has not adhered to the timeframe prescribed under the Intermediaries Regulations for passing appropriate order.
 - (c) There has been a multiplicity of proceedings in this matter. SEBI has first passed an ex-parte ad-interim order dated December 28, 2011 in the matter of Tijaria Polypipes

Ltd (TPL) thereby suspending the broking activities of the Noticee. The said order was confirmed by a confirmatory order dated November 05, 2012. Thereafter, SEBI issued an SCN dated November 30, 2012 which further culminated into final order dated July 31, 2013. An appeal against the said order is still pending before the Hon'ble Supreme Court. Further, SEBI has also passed a final order dated December 16, 2014 in an enquiry proceeding against the Noticee, thereby restraining it from conducting its business as a stock broker for a period of 3 years. Apart from the above, SEBI also initiated a separate enquiry proceeding against the Noticee for alleged non-compliance with the fit and proper person criteria, which culminated in an order dated March 20, 2020 wherein the Noticee was exonerated from the said allegation. Further, SEBI has also conducted adjudication proceedings against the Noticee in which monetary penalty was imposed on the Noticee vide AO Order dated June 29, 2021.

- (d) The present proceedings are also an offshoot of the abovementioned proceedings emanated from Tijaria Ploypipes Limited. Had these proceedings been included in the above stated enquiry proceedings, these proceedings would not have been necessitated. The multiplicity and plurality of the proceedings on the same cause of action is not tenable and the present proceedings have to be dropped on this reason alone.
- (e) The DA failed to give all necessary documents to the Noticee despite writing multiple times. Further, the Noticee had again requested for inspection of documents vide letter dated April 25, 2016 (after issuance of post-enquiry SCN) which has not been considered.
- (f) The DA failed to give a personal hearing to the Noticee despite an express request by the Noticee, which led to the DA giving perverse and untenable findings in his report.
- (g) The Noticee denies that it had executed synchronized trades for its clients, as alleged. There are no enforcement actions against the clients who had indulged in the alleged synchronized trades. Further, there is no allegation that the scrips

mentioned in the SCN were manipulated in any manner. In such case, there can be no allegation of execution of synchronized trades against the Noticee independently.

- (h) The alleged synchronized trades had happened without any preplan, as alleged. In the absence of any price spurt, the increase in mere volume does not suggest any manipulation. The buyer had taken delivery of the securities bought and pay out of sale consideration had happened as per the ledger. Further, various orders of the Hon'ble SAT have held that synchronized trades per-se are not illegal.
- (i) There is no evidence on record that the Noticee was aware of any sinister moves by the said clients. The clients had paid necessary margin, made pay-in, taken deliveries and held the securities for long. The Noticee had no means to ascertain that Anil Dave and Vimal Patel had financial transactions between them. The Noticee was also not aware about the reasons behind the transactions.
- (j) As regards allegations pertaining to collection of advance margins from Anil Dave, the Noticee submits that it had received a cheque for Rs. 1 Crore on 16-11.2011. As per the practice, the said client was allowed to trade on the date of receipt of cheque. It is a permitted way of collecting the cheque. The ledger entries indicate date of physical receipt of cheque and not the date when funds were credited in the account. SEBI Circular no. MRD/SE/CIR-33/2003/27/08 dated 23.02.2005 allows broker to decide the mode of collection of margin money and also permits the practice of collecting margin money by means of cheques. During the relevant time, there was no obligation which required a broker receiving the margin payments by cheque to record the actual date of funds in the client's ledger account. Brokers were, in fact, required to record the date of receipt of cheque in the ledger either on T or T+1 provided the cheques were cleared subsequently. In this regard, the Noticee places reliance on NSE Circular nos. NSE/INSP/19583 dated December 14, 2011 and NSE/INSP/24805 dated October 23, 2013. SEBI has failed to appreciate that as per the said circulars, the quantum of margins, form and mode of collection are left to the discretion of the broker.

- (k) As regards the allegation that the Noticee had used funds received from Anil Dave for making payments in the F&O trades though Anil Dave had not traded in F&O segment through the Noticee, the Noticee submits that it never used the funds received from Anil Dave for any other purpose other than for settlement of Anil Dave's trades. Further, the transfer of funds from the account of the Noticee to the accounts of other clients were solely towards discharging pay-out obligations of the Noticee towards trades executed by the respective clients.
- (l) As regards the funds received by Anil Dave from various sources (i.e. United Enterprises, Global Enterprises, Shalimar Trading, Shreeji Corporation, Eleven Impex), as mentioned in the SCN, it was not the concern of the broker as to from where the client was getting funds and what was the nature of the transactions. It is true that Noticee had received pay-in of funds from Anil Dave, as mentioned in the SCN. These pay-ins were Anil Dave's pay-in obligations as per the ledger. However, the subsequent payments to other clients / clearing member (i.e. Pramod Krishna Goenka, Vimal Patel, IL & FS) from the accounts of the Noticee had nothing to do with the funds received from Anil Dave. The same were independent transactions and pay-outs as per the obligations. The Noticee had sufficient funds in his account to honour these pay-out obligations as per ledger even without receipt of pay-in from Anil Dave. The Noticee submits copies of its bank statements and copies of ledger of such other clients / clearing member to demonstrate that these were genuine pay-outs.
- (m) As regards the amounts paid by the Noticee to Anil Dave on different dates, the Noticee submitted that these pay-outs were obligations as per the ledger. However, the payments made by Anil Dave to Vimal Patel, Muskan Trading, Shalimar Trading and Arti Chetan Dave cannot be the concern of the Noticee, as the same were outside the scope of broking services. The Receipt of Rs.1.85 Crores by Mr. Mihir Ghelani from Arti Chetan Dave was a loan transaction between them which is outside the scope of broking services. The Noticee submitted copies of its bank statements to substantiate that the payments to Anil Dave were as per the

obligations. The Noticee also submitted copy of ledger of Arti Dave in the books of Mihir Ghelani.

- (n) In view of the above, the Noticee submitted that the abovementioned transactions of the Noticee with Anil Dave, as mentioned in the SCN, were in normal course of business and were either pay-in or pay-out transactions. There was nothing illegal in these transactions.
- (o) The Noticee submitted that Anil Dave did not fail in his margin or pay-in obligations and all the exposure was given to him based on the margins. There was no enforcement action taken against Anil Dave which suggests that all his trades were legal and normal.
- (p) The allegations against the Noticee, even if true, do not entail cancellation of registration.
- (q) The Noticee in two separate proceedings the matter of Tijaria Polypipes Limited has already undergone the penalty of debarment for 5 years and suspension of 3 years and thus no further order should be passed. The debarment order dated July 31, 2013 is still under challenge and pending before the Hon'ble Supreme Court.

CONSIDERATION AND FINDINGS –

- 7. I have examined the facts of the case, the allegations against the Noticee, as mentioned in the show cause notice dated November 19, 2014 issued by the DA, the DA's report, and the submissions made by the Noticee in its written submissions and during the hearing before me.
- 8. I note that the Noticee is alleged to have violated the provisions of section 12A (a) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations, Regulations 26(xiii), 26(xvi), 27(xii) and 27(xiv) of Broker Regulations and Clauses A(1), A(2), A(3) and A(5) of the Code of Conduct for Stock Brokers given in Schedule II read with Regulation 7 of Broker Regulations. The said provisions read as under:

SEBI Act, 1992:

"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 recognised 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;

PFUTP Regulations, 2003:

".....3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

Broker Regulations, 1992:

"Stock brokers to abide by Code of Conduct.

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II."

"SCHEDULE II

Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 7]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him....."

9. I note that the allegations against the Noticee pertain to the following alleged acts of commission / omission on part of the Noticee, as a stock broker:

- (a) Failure to collect advance margin from Anil Dave, a first time client, for his trades.
- (b) Using the funds received from Anil Dave for making own margin payments in the F&O segment though Anil Dave had not traded in F&O segment through the Noticee.
- (c) Routing of funds received from Anil Dave to the account of another client, Mr. Vimal Patel thereby using one client's money for other client.
- (d) Execution of synchronized trades on behalf of Mr. Anil Dave and Mr. Vimal Patel for creating artificial volumes.
- (e) Failure to exercise skill, care and due diligence in the conduct of its business

10. I observe that the Noticee has submitted its reply to the above allegations and has also raised certain important preliminary issues. I, therefore, proceed to deal with these issues.
11. The Noticee has contended that the DA failed to give all necessary documents to the Noticee as well as failed to provide an opportunity of personal hearing to the Noticee. In this regard, I note that all the relevant documents relied upon in the SCN issued by the DA were already provided to the Noticee as part of the Annexures to the show cause notice dated November 19, 2014 issued by the DA. The details of the annexures provided along with the said show cause notice issued by the DA are as under:
 - (a) Annexure I- Copy of KYC documents submitted by GSPL vide email dated February 28, 2012
 - (b) Annexure II - Copy of extracts of trade logs
 - (c) Annexure III - Copy of Mr. Anil Dave's letter dated January 13, 2014 forwarding the ITR for the assessment years 2012-13 and 2013-14
 - (d) Annexure IV - Copy of bank account statement of Cosmos Co-operative Bank Ltd, Dadar West for the period from October 1, 2011 till March 12, 2012
 - (e) Annexure V - Copy of Mr. Anil Dave's bank account statement of HDFC Bank for the period from June 11, 2009 to December 30, 2013
 - (f) Annexure VI - Copy of Mr. Anil Dave's bank account statement of Axis bank from 01-03-2011 to 29-02-2012
 - (g) Annexure VII - Copy of the trail of bank account of the Mr. Anil Dave showing the flow of funds
 - (h) Annexure VIII - Copies of various bank accounts pertaining to GSPL
12. I further note from the DA Report that the Noticee was provided an opportunity to inspect relevant documents on January 20, 2015 and subsequent to the said inspection, the Noticee was provided with copies of i) relevant findings of the

investigation along with relevant annexures, ii) correspondence with NSE/BSE seeking trade log of Mr. Vimal Patel, iii) Anil Dave's letter relating to income tax returns as mentioned in Annexure III of SCN and iv) trading details of Mr. Anil Dave and Mr. Vimal Patel in a CD. Subsequently, another inspection of documents was provided to the Noticee on March 24, 2015 during which copies of certain documents were also given. Further, I note from the DA Report that vide letter dated July 03, 2015, the DA had informed the Noticee that all the documents relied upon by SEBI had already been given to the Noticee. Thus, I find the Noticee's submissions that it was not provided with copies of relevant documents are untenable.

13. Further, as regards the issue of grant of personal hearing by the DA, I note that in terms of Regulations 25 to 27 of the Intermediaries Regulations, as existing at the relevant time, did not provide for any personal hearing by the DA. I note that the Intermediaries Regulations, as amended on 21/01/2021, now provides for hearing before the DA and hearing before the Designated Member is provided only in case where the DA Report recommends cancellation of certificate of registration or the Designated Member is of *prima facie* view that it is a fit case for cancellation of certificate of registration. I observe that the DA has already considered the Noticee's reply and has given his recommendation. The Noticee has been given opportunity to file reply to the DA's Report and an opportunity of personal hearing before me has also been provided to the Noticee on July 30, 2021. The Noticee had attended the said hearing and was represented by an advocate. Subsequent to the said hearing, the Noticee also filed written submissions dated August 11, 2021. Therefore, the requirements of principles of natural justice have already been complied with. Accordingly, the Noticee's submissions in this regard are not tenable.
14. I note that the SCN called upon the Noticee to show cause as to why action as deemed appropriate by the competent authority should not be taken against it in terms of Regulation 27 read with Regulation 28 of Intermediaries Regulations. I note

that by the amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by DA in case of default, has been substituted and Regulation 28 which dealt with procedure for action on receipt of the recommendation from DA, has been omitted and these matters now stand governed by the Regulations 26 and 27, respectively. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in **CIT, Bangalore Vs. Venkateshwara Hatcheries (P) Ltd. and Ors. (1999) 3 SCC 632** wherein it was held as under:

“.....15. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions.....”

15. The aforesaid judgment has been quoted with approval by Hon'ble Supreme Court in its subsequent judgment in **Fibre Boards (P) Ltd., Bangalore Vs. CIT, Bangalore (2015) 10 SCC 333**. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before designated authority (DA) and designated member (DM) was provided under Regulations 25 to 28 of the Intermediaries Regulations wherein Regulation 25 dealt with issue of SCN by DA, Regulation 26 dealt with reply of SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the DA and Regulation 28 dealt with conduct of proceedings before DM like issue of SCN, hearing and passing of final order. After the amendment, Regulation 25, as substituted deals with holding of

enquiry proceedings before DA, Regulation 26 deals with recommendation for actions which can be made by DA and Regulation 27 deals with conduct of enquiry proceedings before DM and passing of order by DM. Thus, the proceedings before DM which were earlier governed by the provisions of Regulations 28 are now governed by the provisions of Regulation 27 with certain modifications. Therefore, by virtue of the judgment of Hon'ble Supreme Court in *Venkateshwara Hatcheries case (supra)*, the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of new Regulation 27 i.e. January 21, 2021. Accordingly, the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations and for the violations committed by the Noticee, directions under Regulation 27 of the Intermediaries Regulations can be issued.

16. I now proceed to deal with the allegations, as mentioned in para 9 above, one by one.

Failure to collect advance margin from Anil Dave, a first time client.

17. I note from the DA Report that the trading account of Anil Dave with the Noticee was opened on November 12, 2011 as a walk-in client. He had executed buy trades of Rs.47,67,092.75 and Rs.2,36,500, on BSE and NSE, respectively, on November 16, 2011. It is alleged that the said trades were executed by the Noticee without collecting any advance margin from the said client. In this regard, the Noticee has submitted that it had received a cheque for Rs.1 Crore on November 16, 2011, which was deposited in the bank for clearing and the same was cleared on November 18, 2011. As per the Noticee, Anil Dave was allowed to trade on the date of receipt of cheque. The Noticee has submitted that the ledger entries indicate the date of physical receipt of cheque and not the date when funds were credited in the account of the broker. The Noticee has further contended that in terms of circulars issued by NSE and also

SEBI, the quantum, form and mode of collection of margins are left to the discretion of the broker.

18. I note that Annexure I of the show cause notice dated November 19, 2014 sent by the DA to the Noticee contains the copies of ledger reports of Anil Dave with the Noticee for trades at NSE and BSE. I note that the said ledgers, which are for the period from April 01, 2011 to March 31, 2012, do not contain any entry of receipt of cheque(s) of Rs.1 Crore either on November 16, 2011 or on November 18, 2011, which are the dates on which the Noticee has claimed to have received the cheque and encashed the cheque respectively. The opening entries in the said ledger reports pertaining to both BSE and NSE are each dated November 18, 2011 which are debits of Rs.4774142.60 and Rs.236905.99, respectively. There are no entries in the said ledgers denoting any credit or debit prior to the said debits on any earlier date. The annexures to the SCN containing bank account statements of the Noticee show that the money was credited from Anil Dave only on November 21, 2011, much after execution / settlement of the trades. Thus, I find that the Noticee's contention that the cheque was collected on November 16, 2011 and encashed on November 18, 2011 is untenable. Further, as regards the requirement of collecting advance margin, I note that various SEBI Circulars issued from time to time, viz. SEBI circulars dated February 23, 2005, December 31, 2010, April 13, 2012 and April 17, 2013 suggest that margin money is a pre-requisite and the requirements laid down by SEBI from time to time are mandatory which cannot be flouted by a broker as per his subjective decision.
19. I note that the Noticee in support of its contentions has also referred to NSE Circular No. NSE/INSP/19583 dated December 14, 2011 and the NSE Circular No. NSE/INSP/24805 dated October 23, 2013. The Circular dated December 14, 2011 provides that Cheques received / recorded in the books of trading member on or before T day and deposited by member by T+1 day (excluding bank holiday, if any)

and cleared subsequently shall be counted among the scenarios under which margin collected are adequate. Further, the Circular dated October 23, 2013 provides that *“In case a cheque is received from a client and the same is recorded in the books on or before T day and deposited by T+1 day, Member shall report the margin collected from such client after considering the effect of such cheque, if the same is cleared within T+5 days.”*

20. I note that while the said circulars were issued subsequent to the transaction in question, the object behind the said circulars can be said to be valid even for prior period. I note that though the Noticee's bank statement shows credit of funds on November 21, 2011, i.e. within T+5 days, however, the Noticee had not recorded the receipt of any cheque in the ledger records of Anil Dave on or before November 16, 2011, i.e. T Day. I have noted that though the Noticee had failed to show the receipt of cheque for advance margin in the ledger of the client, it had received the credit of funds in its accounts within T+5 days, as required under NSE Circular No. NSE/INSP/24805 dated October 23, 2013.

Using the funds received from Anil Dave for making own margin payments in the F&O segment

21. I note from the DA Report that Rs.50 Lakh was transferred from the account of Anil Dave to the Noticee's NSE F&O Client Account on November 21, 2011, even though Anil Dave has not traded in the F&O segment through the Noticee. Further, it was found that out of the funds transferred by Anil Dave to the bank accounts of the Noticee on December 09, 2011, December 12, 2011, December 17, 2011 and December 21, 2011, amounts of Rs.34,40,000, Rs.30,00,000, Rs.25,00,000 and Rs.25,00,000 were further transferred to the Noticee's NSE F&O Settlement Account and from thereon to IL&FS clearing account for margin payments for the Noticee's trades in the F&O Segment. IL & FS was the clearing member of the Noticee.

22. I note that in respect of the abovementioned transfers and alleged utilization of funds of Anil Dave by the Noticee for its own purposes in the F&O segment, the Noticee has denied the said allegation and has submitted that it never used the funds received from Anil Dave for any purpose other than for settlement of Anil Dave's trades. It has further submitted that the receipts of funds from Anil Dave were his pay-in obligations as per the ledger. However, the payments made to IL&FS, which were on account of payment obligations as a clearing member of the Noticee for its F&O trades, had nothing to do with the funds received from Anil Dave and these were independent transactions. The Noticee has further claimed that even without the receipt of funds from Anil Dave, it had sufficient funds in its account to honour its pay-in obligations.
23. I note that Anil Dave's trades on NSE through the Noticee during the period under investigation were for Rs.25,67,453 (buy value) and Rs.15,47,062 (sell value) in the cash segment and he had not traded in the F&O segment of NSE through the Noticee during the said period. However, the total funds received by the Noticee from Anil Dave in the Noticee's NSE F&O Client Account and in other accounts from which payments were made to IL&FS Settlement Account amounted to 1.65 Crores approx. While the Noticee has claimed that the funds received from Anil Dave were his pay-in obligations, it has failed to substantiate the said assertion with documentary evidence in the form of contract notes etc.
24. The Noticee has claimed that even without the funds received from Anil Dave, it had sufficient funds in its bank account to honour its pay-in obligations. I note that after receipt of funds from Anil Dave on December 09, 2011, December 12, 2011, December 17, 2011 and December 21, 2011, the Noticee, out of the said funds, had transferred Rs.34,40,000, Rs.30,00,000, Rs.25,00,000 and Rs.25,00,000, respectively, to its's NSE F&O Settlement Account and from thereon to IL&FS clearing account for margin payments. However, I note from the bank account statement of the said NSE F&O Settlement Account (Axis Bank No. 004010200405027) that the credit balances in the said account immediately prior to

such transfers were only Rs.45433.96 (December 09, 2011), Rs.48788.75 (December 12, 2011), Rs.2,53,903 (December 17, 2011) and Rs.69420.16 (December 22, 2011), respectively. Thus, I find that the credit balances in the said account were insufficient to make the above payments to the Noticee's clearing member for F&O segment, IL&FS, implying that the Noticee had used excess funds of Anil Dave for making margin payments in F&O segment.

Routing of funds received from Anil Dave to the account of client, Mr. Vimal Patel

25. As per the DA Report, during the period under investigation, Anil Dave had transferred a total of Rs.6.39 Crores to various accounts of the Noticee. However, the said funds were allegedly not fully utilized for his trades but were majorly transferred to the account of another client, Vimal Patel, by routing it through various accounts of the Noticee in the guise of market transactions. Further, some funds were also routed to the account of Mihir Ghelani, CEO / Compliance Officer of the Noticee. It was alleged that out of Rs.6.39 Crores received from Anil Dave, Rs.4.09 Crores was routed back to the account of Vimal Patel. Further, a total sum of Rs.2.03 Crores transferred to the account of Anil Dave by the Noticee had also been routed back to the accounts of Vimal Patel and Mihir Ghelani. The Details of how the funds were routed are provided under para 2 above.
26. In respect of the above allegations, the Noticee has submitted that the payments made to Vimal Patel had nothing to do with the funds received from Anil Dave. The payments to Vimal Patel were pay-out obligations and were independent transactions. The Noticee has further claimed that without the funds from Anil Dave, it had sufficient funds in its own accounts to meet the pay-out obligations. In support of its contentions, the Noticee has submitted copies of its bank account statements and the ledger of Vimal Patel.

27. The investigation report alleges that the payments made to Vimal Patel by the Noticee using the funds of Anil Dave were not in tune with the payments to be received by him for his trades on BSE and NSE through the Noticee. The Noticee has claimed that payments were received from Anil Dave and payments were made to Vimal Patel as per their pay-in and pay-out obligations, respectively. The Noticee has submitted only copies of ledger of Vimal Patel in support of its claim. However, the same is not backed by contract notes etc. I note that the value of entire trades of Anil Dave through the Noticee at BSE and NSE during the period under investigation was Rs.1.75 Crores (buy value) and Rs.69.12 Lakh (sell value), whereas the total funds received by the Noticee from Anil Dave was Rs.6.39 Crores. Thus, the Noticee had collected funds from Anil Dave in excess of the value of his buy and sell trades. I, thus, find that the circumstantial evidences show that the Noticee has used excess funds of Anil Dave for making payments to the account of Vimal Patel.

Execution of synchronized trades on behalf of Mr. Anil Dave and Mr. Vimal Patel for creating artificial volumes.

28. As per the DA Report, some of the buy trades of Mr. Anil Dave executed through the Noticee at BSE and NSE were synchronized with the sell trades of Mr. Vimal Patel. It was found that the buy and sell orders placed by Anil Dave and Vimal Patel for such trades were for identical quantities and rates, and these orders were placed within time gap of up to one minute. The Noticee was the broker both on the buy and the sell side. It is alleged that the synchronized trades executed by the Noticee on behalf of Anil Dave and Vimal Patel created artificial volumes in those scrips. A summary of such trades is provided below:

Trade Date	Exc han ge	Scrip Name	Buy Order Last Modifi	Buy Order Last Modifi	Buy Order Last Modifie d Time	Sell Order Last Modifi	Buy Order Last Modifi	Buy Order Last Modifie d Time	Trade Value	Time Differen ce	Day's Market Volume	% Of Traded Qty To Day's
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			ed Price	ed Qty		ed Price	ed Qty					Market Volume
16/11/2011	BSE	Sujana Metal	6.67	2000	14:54:33	6.67	2000	14:54:34	13340	0:00:01	286060	0.7
16/11/2011	BSE	Monsanto India Ltd	755	500	14:53:05	755	500	14:53:05	377500	0:00:00	1980	25.25
16/11/2011	BSE	TVS Motor Company Ltd	64.7	2000	14:55:14	64.7	2000	14:55:15	129400	0:00:01	179561	1.11
16/11/2011	BSE	Subex Ltd	28.7	2000	14:53:50	28.7	2000	14:53:50	57400	0:00:00	203684	0.98
16/11/2011	BSE	GOL Offshore Ltd	104.9	500	14:52:01	104.9	500	14:52:01	52450	0:00:00	98215	0.51
16/11/2011	BSE	Advanta Limited	397.25	5000	14:56:01	397.25	5000	14:56:01	1986250	0:00:00	29045	17.21
16/11/2011	BSE	Advanta Limited	397.25	915	14:56:44	397.25	915	14:56:45	363483.8	0:00:01	29045	3.15
16/11/2011	BSE	Hathway Cable Datacom Ltd	113.75	10000	14:52:32	113.75	10000	14:52:31	1137500	0:00:01	129262	7.74
16/11/2011	BSE	Future Market Networks Ltd(Formerly known as Agre Developers Ltd)	38.5	15994	14:51:00	38.5	15994	14:50:55	615769	0:00:05	16889	94.7
8/12/2011	BSE	Nextgen Animation Mediaa Ltd	1.94	988	13:33:52	1.94	988	13:34:00	1916.72	0:00:08	162759	0.61
12/12/2011	BSE	Newinfra	31.2	14984	14:06:37	31.2	14984	14:06:16	467500.8	0:00:21	15000	99.89
16/11/2011	NSE	Future Market Networks Ltd(Formerly known as Agre Developers Ltd)	39	4997	02:46:39	39	4997	02:46:34	194883	0:00:05	8487	58.87

16/11/2011	NSE	Madras Fertilizers Ltd	20.75	2000	02:59:16	20.75	2000	02:59:20	41500	0:00:04	95133	2.1
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29. The Noticee has denied the abovementioned allegations. The Noticee, in respect of the above, has submitted that synchronized trades are per-se not illegal and that the concerned trades had happened without any pre-plan, as alleged. The buyer and seller had taken delivery of the securities bought and the payout of sale consideration had happened as per the ledger. The beneficial ownership of the traded shares had changed hands. Only two clients were involved in the alleged synchronized trades and since the delivery was taken without squaring off, there is no question of disturbing the market equilibrium. As per the Noticee, there is no evidence on record to show that the Noticee was aware of any sinister moves by the said clients. The Noticee had no means to ascertain that Anil Dave and Vimal Patel had financial transactions between them. As a broker, the Noticee had a limited role to play while the clients gave instructions to buy or sell.
30. I note from the above Table containing the details of the alleged synchronized trades that there were a total of 13 trades which were executed over two days, out of which 11 trades were on a single day i.e. November 16, 2011. The total value of such trades was Rs.54 Lakh. I note that for all the said trades, Anil Dave had acted as the buyer and Vimal Patel had acted as the seller. Further, the both the buyer and the seller were acting through the same broker, which was the Noticee. I further note that the order price and the quantity for the said trades were identical and the time gap between the order ranged from 0 second to 8 seconds, except for one trade where the time gap was 21 seconds. Further, there was a direct transfer of Rs.18.50 Lakh from the account of Anil Dave to the account of Vimal Patel on December 27, 2011. The routing of funds received by the Noticee from Anil Dave to the account of Vimal Patel through various accounts of the Noticee, the direct transfer of funds between the accounts of Anil Dave and Vimal Patel, the identical placement of buy and sell

order quantity and price and the close time gap between the buy and sell order and the placement of buy and sell orders through the same broker (the Noticee), indicate that there was a nexus and meeting of mind between the said clients and the Noticee had facilitated the execution of such synchronized trades between its two clients from its terminals. Synchronization of 13 trades between two clients of the Noticee, from the above facts and circumstances, cannot be coincidental and was not possible without the assistance of the Noticee. I note that the abovementioned synchronized trades consisted of 13 trades over three days. These synchronized trades were executed in a number of scrips, i.e. 11 scrips, out of which in 9 scrips there was single synchronize trade. In two scrips, there were two trades each. The SCN does not reveal any impact of the synchronized trades on the price of these scrips and the volume creation in these scrips was also not significant. However, such synchronized trades interfere with the anonymous order matching system of a stock exchange. I further take note of the fact that SEBI has already taken any enforcement action against Anil Dave for the said synchronized trades and has imposed a monetary penalty of Rs.25 Lakh on him vide Adjudication Order dated October 13, 2014. Thus, I find that the Noticee has violated Regulations 3(a) and 4(1) of the PFUTP Regulations, 2003.

Failure to exercise skill, care and due diligence in the conduct of its business

31. I note that the Noticee has failed to collect advance margin from its client, Anil Dave, details of which have already been discussed above. Further, the Noticee had utilized the excess funds of Anil Dave for other client. The above acts by the Noticee amount to failure to maintain high standard of integrity, fairness and failure to ensure due diligence in the conduct of the Noticee's business. I, therefore, find that the Noticee has violated Clauses A(1), A(2), A(4) & A(5) of the Code of Conduct prescribed under Regulation 7 and mentioned in Schedule II of the Brokers Regulations, 1992 for the stock brokers

Multiplicity of proceedings etc.

32. The Noticee has further contended that there has been multiplicity of proceedings against the Noticee since SEBI has already passed final orders under Section 11/11B proceedings vide order dated July 31, 2013 and Enquiry Proceedings vide order dated December 16, 2014 against the Noticee in the matter of Tijaria Polypipes Limited whereby the Noticee was debarred from securities market for a period of 5 years and its certificate of registration was suspended for 3 years. The Noticee has already undergone the said debarment and suspension. Further, the Noticee has also undergone another Enquiry Proceedings to decide compliance of fit and proper person criteria by the Noticee in which a final order dated March 20, 2020 was passed exonerating the Noticee. The Noticee has submitted that the present proceedings are an offshoot of the abovementioned proceedings emanating from the matter of Tijaria Polypipes Limited. The Noticee has submitted that had the current proceeding been included in the said earlier proceedings, the current proceedings would not have been necessitated. Thus, the Noticee has prayed for dropping the current proceedings. Besides replying on merit to the abovementioned violations, the Noticee has also contended that a time period of 10 years has already elapsed and that it has improved its systems and procedures.
33. I note that though certain allegations against the Noticee in Tijaria Polypipes Ltd. (i.e. allowing a walk-in client to trade for huge amount without collecting funds towards margins and using the funds of other clients for making the margin payments of the said walk-in client) have similarities with the allegations in the present proceedings, the violations in both the case are not entirely overlapping. While the current proceedings also involve the allegation of execution of synchronized trades by the Noticee in various scrips, the said allegation of synchronized trades was not there in earlier proceedings in the matter of Tijaria Polypipes Limited. The previous

proceedings against the Noticee in the scrip of Tijaria Polypipes Limited was limited to allegations of granting huge exposure to a walk-in client without collecting margin, using the funds and securities of other clients for meeting margin requirements etc. Thus, I do not find the contention regarding the multiplicity of proceedings to be tenable. However, I agree with the contention of the Noticee that the present proceedings are an offshoot of and have emanated from the proceedings in the matter of Tijaria Polypipes Limited, during the course of appeal proceedings filed by Anil Dave before the Hon'ble SAT in the matter of Tijaria Polypipes Limited, as evident from the order dated March 03, 2014 passed by the Hon'ble SAT in Appeal no. 30 of 2014. I also take note of the fact that the violations by the Noticee in the matter of Tijaria Polypipes Limited had taken place around the same period as in this matter, i.e. the period covered by investigation in this matter is November 12, 2011 to December 28, 2011 whereas the allegations against the Noticee in the matter of Tijaria Polypipes Limited pertained to period around October 14, 2011 which was the first date of listing of the said scrip.

DIRECTION –

34. I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 27(5) of the Intermediaries Regulations, hereby prohibit the Noticee from taking up any new client for a period of two months from the date of this order.
35. The order comes into force with immediate effect. A copy of this order shall be served on the Noticee and all recognized Stock Exchanges.

-sd-

PLACE: MUMBAI

DATE: DECEMBER 22, 2021

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA