BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2020-21/9597

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Abhijeet Chandrahas Asai
(PAN: AGEPA8137G)

In the matter of Hasti Finance Ltd.,

BACKGROUND

1. Securities and Exchange Board of India *(hereinafter referred to as "SEBI")* conducted an investigation in the scrip of Hasti Finance Ltd., *(hereinafter referred to as "HFL" / "Company")* based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. The focus of the investigation was 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, 1992")* and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {*hereinafter referred to as "SEBI (PFUTP) Regulations"}* by certain entities in scrip of HFL during the period August 27, 2010 and August 31, 2015 (*hereinafter referred to as "Investigation Period"/"IP").*

2. Based on the variance in the quantum of trading volumes, the price movement of the scrip during the IP, the investigation period was split into six patches. The price & volume details of the scrip HFL during the six patches of the investigation period are tabulated hereunder:

Period	Date		Opening Price /volume on first day of the period (₹)	Closing price /volume on last day of the period (₹)	Low price/volume during the period (₹)	High Price/volume during the period (₹)	Avg. no. of (shares) traded daily during the period
Patch 1	27/08/2010 to 06/06/2011 (price rise)	Price	23	84.2	18.35 (30/09/2010)	84.75 (06/06/2011)	44.75
		Volume	991	10271	1(31/07/2010)	76445 (07/04/2011)	6719
Patch 2	07/06/2011 to 08/10/2012 (price fall)	Price	86.5	52.5	48.5 (17/09/2012)	88.8 (09/06/2011)	70.17
		Volume	5607	2307	1(05/09/2011)	73460 (05/07/2011)	4653
Patch 3	09/10/2012 to 03/12/2012 (price rise)	Price	52.5	84.9	48.1 (10/10/2012)	89.65 (30/11/2012)	71.94
		Volume	1653	14195	10 (29/11/2012)	77982 (26/10/2012)	9249
Patch 4	04/12/2012 to 05/04/2013 (price fall)	Price	84.65	43.2	43.20 (05/04/2013)	84.75 (05/12/2012)	71.70
		Volume	5289	1	1 (28/03/2013)	21742 (22/01/2013)	2628
Patch 5	*11/04/2013 to 31/03/2014 (price rise)	Price	45.35	76.8	45.35 (11/04/2013)	80.9 (14/05/2013)	67.34
		Volume	1	1	1 (11/04/2013)	7500 (13/09/2013)	11797
Patch 6	**09/04/2014 to 31/08/2015 (price fall)	Price	76.8	12.05	10.8 (29/07/2015)	76.8 (09/04/2014)	25.10
		Volume	3	2	1 (05/05/2014)	24580 (13/08/2014)	746

** no trading between April 6, 2013 to April 10, 2013*
*** no trading between the period April 1, 2014 to April 8, 2014*

3. Pursuant to carrying out Last Traded Price (LTP) analysis for the investigation period, the investigation inter-alia found that during Patch-1 of the investigation period i.e., price rise, the market net LTP in the scrip was ₹61.20 with a market volume of 12,69,908 shares and the positive LTP was ₹1277 with a market volume of 3,30,211 shares. During the Patch-1 of the investigation period the price of HFL opened at ₹23.00 and closed at ₹84.20 i.e., contributing to net positive LTP of ₹61.20. The investigation revealed that during Patch-1of the investigation period, Abhijeet Chandrahas Asai (hereinafter referred to as "Noticee") was not acting as genuine buyer and had no bona fide intention to buy because in spite of most of the disclosed quantity of sell orders being larger, he was placing small quantity buy orders by matching or placing orders at prices slightly higher than sell order price which were already above LTP thereby contributing to significant positive LTP. Accordingly, the investigation concluded that the Noticee had manipulated the price of HFL scrip and created a misleading appearance of trading in the scrip, which is in violation of the

provisions of Regulations 3(a), (b), (c), (d),4(1), 4(2)(a) and (e) of SEBI (PFUTP) Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer, vide order dated July 31, 2017, under Section 19 of the SEBI Act read with Section15-I of the SEBI Act 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as *"SEBI Adjudication Rules"*) to inquire into and adjudge under Section 15HA of the SEBI Act 1992, for the violation alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/ADJ/PM/AA/OW/29765/2017 dated November 29, 2017 was served upon the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against him in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the violation alleged to have been committed by him. The Noticee vide letter dated December 13, 2017 sought extension of 10 days to furnish his reply, which was acceded to. Thereafter, the Noticee vide letter dated December 26, 2017 submitted his reply, which is summarized hereunder:

   a) *Please note that I had a Demat account bearing no. ABIH0076 which I hold with India Infoline Ltd. at Vile Parle. I am a small- time investor and used to invest in stocks for the purpose of investment.*

   b) *My trade book as on April 2010 to March 2012 inter alia reflects the transactions done by me between the period 26 August 2010 to 7 June, 2011 ("Relevant Period"). Copy of the trade book for the period April 2010 to March 2012 is attached. I am shocked to see some of the transactions reflected in the trade book as these transactions were never executed by* *me. I have highlighted the transactions which were not executed by me in the foregoing attachment. The reason being, I never had account balance in my savings bank account to execute these transactions, as can be seen from the attached account statement.*

c) *I had my saving account with ICICI Bank, Dombivli branch bearing saving account no. 008801009995. For my trading purposes, I used the foregoing saving account. I used to make payment and receive the amount into this account by buying and/or selling the securities. As per the account statement from August 2010 till June 2011, it can be seen that I used to not have huge amount of balance in my account.*

d) *A statement of `pay-ins' and `pay outs' of my Demat account for the Relevant Period clearly reflects that I was not a regular person who used to deal in securities on the stock exchange.*

e) *The transactions mentioned in the Letter were also not executed by me as can been seen from my trade books and the savings bank account statement In view thereof, I say that the allegations of price manipulation is therefore baseless and not based on correct findings. I believe that either the transactions mentioned in the Letter have been traded by some-one else and wrongly mentions my demat account number or some person had been trading under my name and also having access of my personal information*

6. In the interest of natural justice and in terms of Rule 4 (3) of SEBI Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on October 14, 2020, which was communicated vide notice dated September 18, 2020. In view of the prevailing circumstances owing to Covid-19 pandemic, the hearing was scheduled through video conferencing on Webex platform on October 14, 2020. On the scheduled date of hearing, the Noticee along with his Authorized Representative appeared before me through videoconference. The Noticee sought 3 weeks additional time to make fresh submissions, which was acceded to. Thereafter, the Authorized Representative vide email dated November 5, 2020 made fresh submissions, which are summarized hereunder:

a) *It is submitted that for the same set of alleged violations in the same matter, Hon'ble WTM, SEBI has passed an Order against him on January 23, 2019 and therefore a separate Order cannot be passed in the present* *matter.*

b) *The Noticee opened a Trading Account alongwith a Dematerialisation Account with India Infoline Limited (herein after referred to as "IIFL") in or about 2009 for the purpose of doing some savings out of his regular nominal income which was about Rs. 25,000/- per month during the alleged period of the alleged trades*

c) *The Noticee was not very conversant with the art of trading in shares, however, he never appointed any broker as his income was meagre and amount of investment was not more than Rs. 5,000/- per month. The Noticee traded on the basis of some graphical movements of volatility which he saw on some stock trading websites and while sometimes he made some profits, he was very cautious that he should at least not make any losses, being a small time investor.*

d) *He has done some transaction in his account on his own but he is not aware of the alleged transactions in the scrip of HFL. He came to know about the said transaction only after he has received a notice from SEBI.*

e) *The Noticee states that he has never received any SMS or contract note in physical form for the alleged traded transactions which he never had any intention to trade in and he cannot be held responsible for any price manipulation since he has not been part of the trading activities of the said scrip, HFL. In the case that he would have received the same, he would have known about it and would have taken immediate action for investigating it.*

f) *The Noticee states that, he always maintained his portfolio by himself and did not allow anyone else to operate it. The Noticee once again approached IIFL to question them as to how so many trades not intended nor instructed were committed from his trading cum demat account. The representatives of IIFL very bluntly reverted to the Noticee stating that the trades could not have taken place without the approval or instructions of the Noticee himself. The Noticee has been in a state of shock and tried various measures of investigation, after receiving the Notice for personal hearing issued by SEBI, from his own demat account only to discover a number of contract notes and that IIFL not only placed sell and buy orders of shares but also dealt with futures and options through the trading account of the Noticee.*

g) *The Noticee states that someone has wilfully and deliberately caused such trades and conveniently done so without the need to transfer any* *funds from the savings account of the Noticee but simply rolling the amounts in the trading account out of final settlements of contracts.*

h) *The Noticee states that his savings account statements show that he had never transferred the funds from his savings account for the purpose of buying the shares. The Noticee relies upon the bank statement and the pay-in and payout statements.*

i) *A police complaint has been filed by the Noticee as soon as he was summoned for personal hearing on December 13, 2018 by the SEBI. The reason that the police complaint was not filed earlier was that the notices were sent for the alleged offences if any, committed in the period 2010 - 2015 only in the year 2017 and after the Noticee replied to the said notices, no further queries came from SEBI thus leaving an impression that the reply was justified with the revert by the Noticee. However, now the police complaint has been filed by the Noticee against IIFL with the Wagle Estate Thane police station on December 27, 2018. Also, a legal notice has been addressed to IIFL and its group of Office bearers calling upon them to reveal as to how the trades come to be executed without any instructions.*

j) *The Noticee states that it is a case of criminal breach of trust, cheating and fraud upon him and which came to his knowledge only when this Hon'ble Authority served him with notice for conduct of the personal hearing. Until then, the Noticee was completely amused and under the sole impression that the alleged trades are not conducted by him and such revert to this Hon'ble Authority was justifying and satisfactory and needed no intervention or investigation.*

k) *However, it is also a matter of fact that there has essentially been a manipulation in the pricing and the Noticee has been made to or succumbed to being a party to it without his own personal knowledge of the trades and transactions. Assuming without admitting, that there were contract notes issued to this effect in the way that they are directly uploaded on the demat account and the Noticee would not be able to view it unless he logs onto his account and accesses the link reserved for viewing the contract notes and which he would not do until there is a cause of suspicion or to do so, it would remain to be viewed. It is as much surprising that the Noticee never discovered any excess funds in his account and the transactions took place through the settlement amounts only, thus the question of transfer from the savings bank account for the purpose of trading, by way of pay-ins and pay-outs did not arise at all and on the basis of which there could never arise a suspicion that his account* *is being operated by some other person.*

l) *The Noticee further states that the question of manipulation of pricing cannot arise at all. In all the cases of his intentional trading, he only places an order to buy the shares after a particular amount of pay-in. The order gets executed through the trade engine and one would never know how many vendors for that particular scripts are there until the order is not executed. Generally, he places a limit price for buying orders and if there would be more than one vendor the trade order would get split through the trade engine and this would come to the knowledge of the buyer only on execution. The person who may have placed orders through the account of the Noticee, in such case of an allegation, could only be someone who is an Inside-Trader and has knowledge of the vendor and the buyer and can match the trade orders exactly at the said point of time. There could hardly be any human involvement for meeting the parameters of orders as alleged as these are first placed on the server and then passed onto the Exchanges and matched at the Exchange Level. All such trades as alleged were essentially done on a price time priority. Such trading is beyond the imagination of the Noticee. The Noticee prays to SEBI that a thorough investigation be conducted with IIFL to find out as to who has done the said trades without any instructions from the Noticee.*

m) *The Noticee has not been the beneficiary to any of the traded transactions. None of the pay-ins and pay-outs from the Noticee's bankers prove the intention to trade for the said script at the said times. Also, the sell orders are placed prior to the buy orders unlike the way the Noticee generally trades as would be made out from the statement of his intentional trades. The Noticee was not aware that such kind of trading is even possible where the sell orders can be placed prior to the buy orders. The Noticee is a mere graduate and has least knowledge of trading. He is a graphic designer by profession, employed with Reliance Industries Ltd., and all such trading websites are blocked and he cannot trade from his place of work.*

CONSIDERATION OF ISSUES

7. After perusal of the material available on record, I have the following issues for consideration viz.,

I. *Whether the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003?*

II. *Whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?*

III. *If so, what quantum of monetary penalty should be imposed on the Noticee?*

FINDINGS

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PFUTP Regulations), 2003 which reads as under:

Regulation 3 of SEBI (PFUTP) Regulations: - Prohibition of certain dealings in securities

3. 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 thereunder;

(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 thereunder.

Regulation 4 of SEBI (PFUTP) Regulations: - Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;
(e) any act or omission amounting to manipulation of the price of a security;

10. It has been alleged that the Noticee had manipulated the price of HFL scrip and created a misleading appearance of trading in the scrip. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances.

11. Before going into the merits of the case, I would like to deal with the primary contention of the Noticee regarding multiple enforcement actions for the same set of alleged violation in the same matter. In this regard, I deem it appropriate to mention the Hon'ble SAT's observations in the matter of Sunita Gupta Vs. SEBI in the Appeal No. 193 of 2016 decided on April 21, 2017, which reads as under:

> *"Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market,*

the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.

12. Therefore, in light of the above, the principle of double jeopardy does not apply to the present proceedings, as the proceedings under Chapter VIA of SEBI Act and Chapter IV of SEBI Act are independent and accordingly I find no merit in the argument put forth by the Noticee.

13. I note from the SCN that during Patch 1of the investigation period, the price of the scrip, HFL had increased. I note that during this period the price of HFL opened at ₹23.00and closed at ₹84.20 i.e., contributing to net positive LTP of 61.20. I note that on an average around 6,719 shares were traded daily during Patch 1. Further, it is observed from the Investigation Report that the company showed a rise in profit during the year ended March 2011 from ₹0.06 crore to ₹0.68 crore and thereafter showed a continuous fall between years ended March 2012 to March 2016. The company made a loss of ₹0.05 crore during year ended March 2016. I note that the unusual rise in the price of the scrip from ₹45.35 to ₹76.80 during Patch 5 of the investigation period happened without any underlying fundamental reasons or without any significant corporate announcements.

14. The LTP contribution by the top 10 net positive LTP contributors from buy side was analyzed and the details of the same are furnished hereunder:

Entity Name	All trades			LTP Diff. >0			LTP Diff. < 0			LTP Diff. =0		% of Positive LTP to Total Market Positive LTP
	LTP impact	Sum of Quantity	No of trades	LTP impact	Sum of Quantity	No of trades	LTP impact	Sum of Quantity	No of trades	Sum of Quantity	No of trades	
MOHAMMADILIYAS I SHAIKH	49.30	35226	170	57.10	23672	110	-7.80	1327	18	10227	42	4.47
ABHIJEET CHANDRAHAS ASAI	**43.45**	**5172**	**264**	**121.50**	**1014**	**70**	**-78.05**	**1765**	**151**	**2393**	**43**	**9.51**
PARAG RAMESH KALWANKAR	37.80	3607	214	87.85	629	59	-50.05	1258	103	1720	52	6.88

VANMALA DWARPALAK	31.60	49893	208	40.2	12394	70	-8.60	6496	25	31003	113	3.15
SURENDER KUMAR SUNTWAL	29.15	54551	131	35.05	26868	74	-5.90	8666	6	19017	51	2.75
MIITESH CHUNILAL DESAI	24.10	38938	144	30.35	19244	67	-6.25	4073	19	15621	58	2.38
FAST TRACK MARKETING SERVICES PRIVATE LIMITED	19.40	55081	79	20.15	6218	17	-0.75	4453	4	44410	58	1.58
HIMADRI ACHARYA BHADURI	18.15	1664	25	19.85	54	5	-1.70	8	8	1602	12	1.55
RATNAPRABHA VASANTRAO JADHAV	17.20	22245	47	23.35	16024	24	-6.15	1533	9	4688	14	1.83
BABABHAI PARMAR MANUBHAI	16.75	1300	6	16.75	1300	6	0	0	0	0	0	1.31
Total LTP of Top 10 entities	286.90	267677	1288	452.15	107417	502	-165.25	29579	343	130681	443	35.41
Remaining entities	-225.70	1002231	4963	824.85	222794	1124	-1050.55	266685	1522	512752	2317	64.59
Market LTP	61.20	1269908	6251	1277.00	330211	1626	-1215.80	296264	1865	643433	2760	100.00

15. From the above table, it is noted that top 10 buy entities have contributed ₹452.15 to positive LTP (35.41 % of total market positive LTP). Net positive LTP contribution of the above mentioned entities is ₹286.90. Out of the total purchase through 264 trades, the Noticee contributed ₹121.50 to positive LTP (9.51% of total market positive LTP) through 70 trades. On analysis of these 70 positive LTP contributing trades, it was noted that in 66 trades, the buy orders were placed after respective sell orders. While for the remaining 4 trades, the buy orders were placed before the sell order. The counter parties to the above mentioned 70 trades were scattered. No connection was observed between the Noticee and the major counter parties to his positive LTP contributing trades. However, on further analysis of the positive LTP contributing trades of the Noticee, it was observed that in 61 out of the 70 positive LTP contributing trades, buy order placed by the Noticee was for 1 share even though sell orders were available for higher quantities. The details of the 70 positive LTP contributing trades are as under:

Sl. No.	Description	No. of trades	LTP Contribution ₹	% of total market positive LTP
1	Trades where buy order quantity is 1 share	61	106.9	8.37
2	Trades where buy order quantity is 2-10 shares	2	4.6	0.36
3	Trades where buy order quantity is more than 10 shares	7	10	0.78
4	All buy trades which contributed to positive LTP	70	121.5	9.51

16. It is noted from the material available on record that the Noticee out of the 70 buy trades of the Noticee contributing positive LTP of ₹121.50, for 63 trades (90% of his total positive trades) the buy order quantity was in the range of 1-10 shares which contributed to positive LTP of ₹111.50, during Patch 1, price rise of the investigation period.

17. An analysis of the top 5 positive LTP contributing trades of the Noticee is given below:

Batch Date	Buyer Name	Seller Name	Trade Time	Buy Order Time	Sell Order Time	Trade Price	LTP Difference	Buy Order Price	Sell Order Price	Trade Qty	Sell Order Disclose Vol	Buy Order Qty
12.05.2011	ABHIJEET	AMIT JAYESH SHETH	11:03:20	11:03:20	10:43:06	71.75	6.35	71.75	71.75	1	300	1
19.05.2011	ABHIJEET	BHARTIBEN KANTILAL SHAH	09:27:44	09:27:44	09:21:41	71.9	5.4	71.9	71.9	1	200	1
24.05.2011	ABHIJEET	AMIT JAYESH SHETH	11:17:33	11:17:33	09:49:22	68.95	3.9	68.95	68.95	1	162	1
12.05.2011	ABHIJEET	AMIT JAYESH SHETH	09:17:05	09:17:05	09:16:35	71.85	3.85	71.85	71.85	1	500	1
23.05.2011	ABHIJEET	STUISH CAPITAL SERVICES PRIVATE LIMITED	09:35:51	09:35:51	09:31:18	69.85	3.75	69.9	69.85	1	50	1

18. I note from the above table that in respect of the 5 positive LTP contributing trades, the buy orders were placed for 1 share, for which quantity, the above trades were executed. These 5 trades for small quantity were executed on 5 days and contributed to significant positive LTP. From the afore-mentioned analysis of top 5 positive LTP contributing trades of Noticee, I note that while the disclosed volume of the sell orders were large, buy orders were placed by the Noticee only for 1 share on all the 5 days and accordingly the trades were executed for 1 share. Similar pattern was found to have been observed in respect of the remaining trades executed by the Noticee, which had significantly contributed to positive LTP.

19. It is noted from the IR that when the Noticee was executing trades for 1 share, the daily average number of traded shares in the scrip was 6,719 shares compared to 1,738 shares during the previous period of August 27, 2010 to June 6, 2011, i.e. an increase of 74.13% in average number of shares traded daily. This shows that liquidity in the scrip had increased at the relevant time. It is also noted from the top 10 net LTP contributors as buyers that there were other buyers in the scrip who have executed trades for significant volume at LTP or lower than LTP. In light of the aforesaid, it can be said that the Noticee instead of executing 26.5% of his trades over the LTP, had the opportunity to buy shares at LTP or lower than LTP which is evident from his trade details also, confirming that he had also bought shares at LTP or lower than LTP.

20. Furthermore, out of the said 63 over the LTP trades, it is noted that the frequency of putting buy orders over the LTP was at a regular interval and sometimes on multiple instances within the same trading day. The same shows a consistency (both in terms of volume and price) in the way the Noticee was putting orders in the scrip. Further, the fundamentals of the company also does not justify Noticee’s persistence of putting buy orders over the LTP.

21. At this juncture, I would like to quote the order of Hon’ble Securities Appellate in the matter of Shri Lakhi Prasad Kheradi Vs. SEBI decided on June 21, 2018 wherein the Hon’ble Tribunal was addressing the issue wherein the entity had

contributed to 9.17% of the market New High Price in 9 trades for 1 share each for the total value of 9 shares within a span of two weeks. The Hon'ble Tribunal observed as follows:

> *"…Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades…"*

22. In the extant matter the Noticee by executing single trade on 61 occasions has contributed to ₹106.9/- to the positive LTP which is 8.37% of total market positive LTP (second highest net LTP contributor during the Patch). Further, the only justification given by the Noticee for executing such trades is that one someone else has executed the trades in the scrip from his trading account.

23. The said explanation itself casts a strong shadow of doubt on the genuineness of the said trades. Without prejudice, to all the preceding findings in pre paragraphs, I note from the submission of the Noticee wherein he has submitted his "admittedly trading" statement that during the period when the alleged trades for single shares were being executed in the scrip of HFL from the Noticee's trading account, he has also traded in 6 other scrips in the month of May, 2011. More so on May 3,6,9,11 and 19, 2011 when the trades in single share took place in the scrip of HFL, Noticee has traded in one of the said 6 scrips. Further, from the said "admittedly trading" statement, it is also noted that the Noticee was quite active during the period between February, 2011 to May, 2011. He has traded in 16 scrips including the aforesaid 6 scrips during the period between February, 2011 to May, 2011.

24. From the above, it is noted that if the Noticee was taking / giving deliveries in other scrips, which indicates that he must be perusing / checking his demat account / broking statement. Consequently, he must also be aware that the demat statement is also reflecting that he has done transactions in the scrip of HFL, as he was not doing intraday trading / jobbing in the scrip of HFL. So any suspicion that he had about the trading in the scrip of HFL, should have been raised at that point in time and not at this belated stage which leads to the

conclusion that it is an afterthought. Therefore, the submission of the Noticee that someone else has traded in his account or that the contract notes were directly uploaded in his demat account and he would not be able to view it unless he logs into his account, is not acceptable.

25. The submission of the Noticee regarding the police complaint not being filed earlier than when the notices were sent for the alleged offences if any, committed in the period 2010 -2015 only in the year 2017 and after the Noticee replied to the said notices, no further queries came from SEBI thus leaving an impression that the reply was justified, is also not tenable. The reasoning being that misuse of trading account is a grave offence as it results into a host of illegal activities including breach of trust, misappropriation, benami transactions etc. and to effectively deal with the said issues, a police complaint has to be filed / other actin has to be taken irrespective of the reply to SEBI.

26. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on miniscule quantities traded. It must not be forgotten that every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicate a fraud. In this regard, the observations of Hon'ble Supreme Court of India in SEBI Vs. Kishore R Ajmera et.al. decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

> *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct*

evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

27. In the instant matter Noticee has repeatedly placed buy orders (63 instances) for miniscule quantity of shares (less than 10 shares) over the LTP at frequent intervals, even though the sell order disclosed volume was for more than one share on multiple occasions. Thus, sell orders for higher quantities were existing in the system when the Noticee had placed order for single share. If the Noticee was a genuine buyer then he had the opportunity to buy more than one share of the company on multiple occasions but still he chose not to buy shares more than one at a time and continued to execute buy trades over the LTP by buying just one share at a time on 61 instances. Moreover, he was also placing buy orders over and above the existing sell order price. Further, the fundamentals of the company also do not support the persistent interest shown by the Noticee in buying the scrip at prices higher than LTP.

28. Further, it is worthwhile to mention here that the Hon'ble SAT, after considering all the facts and circumstances, in the matter of ***Kalpana Dharmesh Chheda & Ors. vs SEBI & Ors.*** **[Appeal no. 454 of 2019]** has made the following observations:

"7. It was further contended by the learned counsel for the appellants that appellants have no connection with the list of connected entities nor with the company or its promoters; since the scrip of Zodiac was traded in the 'T' group trades were settled compulsorily by delivery and under the tight supervision of BSE (Respondent No. 2) during the periodic call auction sessions. In order to press their contention that sellers of shares cannot be accused of impacting the LTP in the absence of any connection with other entities or fund transfers etc. the learned counsel

for the appellant relied on the orders of this Tribunal in respect of M/s. Nishith M. Shah HUF vs. SEBI (Appeal No. 97 of 2019 decided on January 16, 2020) and Sapna Dilip Bombaywala vs. SEBI (Appeal No. 219 of 2019 decided on January 28, 2020.

8. We have also heard Shri Kumar Desai, the learned counsel for the respondent SEBI who contended that the appellants' trading in the scrip of Zodiac is ex facie manipulative since appellants were the only sellers during most of the days and therefore but for the sell orders placed by the appellants, mostly in single shares each, no transaction would have fructified and no LTP would have been formed. The appellants mode of trading was manipulative because instead of selling a large part of their stock when demand was already available in the trading system the appellants were offloading only one share each most of the time and had benefited considerably from the LTP successively created over a long period of time and therefore made a windfall gain out of their transactions.

9. We do not find much merit in the submissions made by the learned counsel for the appellants though generally it can be stated that selling at a price higher than the LTP particularly when buy orders are available in the system cannot be considered as manipulative in itself. However, looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP Regulations".

29. It can be seen from the above extracts that the Hon'ble SAT, has observed that the appellants sold shares in minuscule quantity even though when large quantity buy orders were pending and that this behavior cannot be justified and that when the appellants were holding a large number of shares, their selling miniscule quantity of one share each on more occasions is nothing but a strategy of manipulation.

30. It is evident from the trading pattern of the Noticee that the intention of the Noticee was to create a misleading appearance of trading in the scrip by marking the price higher and was not merely entering into the buy transactions. The trades executed by the Noticee were not done in normal course of dealing in securities and are devoid of any bonafide intentions. In this regard, I note that the Hon'ble Supreme Court in Kanaiyalal Baldev Bhai Patel v. SEBI [supra] have explained that: *"...The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*

31. In light of the aforesaid findings, I conclude that the Noticee's trading in the scrip was manipulative in nature and had created a misleading appearance of trading in the scrip. Accordingly, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) and (e) of SEBI (PFUTP) Regulations.

ISSUE -II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?

32. Pursuant to detailed analysis as brought out above, it is established that the Noticee manipulated the price of the scrip and created a misleading appearance of trading in the scrip by placing buy orders small quantity and above LTP, which are not trades executed in normal course of trading and investment in securities market. The Noticee has deliberately manipulated the price of the scrip and created a misleading appearance of trading in the scrip to induce innocent investors in the securities market thereby contravening the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a), and 4 (2) (e) of SEBI (PFUTP) Regulations, 2003. Therefore, the Noticee is liable for monetary penalty under

Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher".

ISSUE – III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

33. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

34. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

35. It is difficult, in cases of such nature, to quantify the disproportionate gains or unfair advantage enjoyed by an entity and the consequent loss suffered by the investors. General public and normal prudent investors could have been easily carried away by such unusual change in the prices in the scrip of HFL and were bound to get induced into investing in the said scrip looking at the steep rise in its price without realizing that the price rise was been artificially introduced by manipulative trades executed by the Noticee. This kind of trading behavior seriously affects the normal price discovery mechanism in the securities market. Therefore, I am of the view that people who indulge in manipulative, fraudulent and deceptive transactions, or abet in carrying out such transactions, which are fraudulent and deceptive in nature, should be suitably penalized for such acts of omissions and commissions.

36. Further, Hon'ble SAT, in its order dated August 02, 2019 in the matter of P G Electroplast vs SEBI, has held that the Order passed in corresponding proceedings before the Whole Time Member should be factored in while fixing the quantum of penalty.

37. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticee under the provisions of Sections 11(1), 11(4) and 11B of SEBI Act under the same facts. In the said proceedings, vide Order dated March 16, 2020, Hon'ble Whole Time Member of SEBI has restrained the Noticee from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of four (4) years.

ORDER

38. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹5,00,000/- (Rupees Five lakhs only) on the Noticee i.e., Abhijeet Chandrahas Asai under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Regulations

3 (a), (b), (c), (d), 4 (1), (2) (a) and (e) of SEBI (PFUTP) Regulations, 2003.

39. The said penalty imposed on the Noticee, as mentioned above is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

40. The Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

41. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-IV, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

42. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and to SEBI.

Date: November 20, 2020
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER