BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/AB/2020-21/8804

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

Tanuj Khandelwal
(PAN: AILPK1473G)

In the matter of Malabar Trading Company Ltd.,

BACKGROUND

1. Securities and Exchange Board of India *(hereinafter referred to as "SEBI")* conducted an investigation in the scrip of Malabar Trading Company Ltd.,*(hereinafter referred to as "MTCL" / "Company")* 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 MTCL during the period December 26, 2011 to June 30, 2015(*hereinafter referred to as "Investigation Period"/"IP").*

2. During the investigation period, the price of the scrip opened at ₹5.15 and closed at ₹13.5 with a high of ₹351.9 and a low of ₹5.15. A total of 33,01,711 shares were traded during the investigation period with the average daily traded volume of 8,296 shares. 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 four patches. The price & volume details of the scrip MTCL during the four patches of the investigation period are tabulated hereunder:

Period	Dates		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 of IP (Price Rise)	**(26/12/2011 to 29/05/2014)**	**Price**	5.15 (26/12/2011)	126.5 (29/05/2014)	5.15 (26/12/2011)	126.5 (29/05/2014)	1341 (211857)
		Vol	1 (26/12/2011)	90000 (29/05/2014)	1 (26/12/2011)	90000 (29/05/2014)	
Patch 2 of IP (Price Fall)	**(30/05/2014 to 17/06/2014)**	**Price**	120.2 (30/05/2014)	65.15 (17/06/2014)	65.15 (17/06/2014)	120.2 (30/05/2014)	29187 (379430)
		Vol	10660 (30/05/2014)	4 (17/06/2014)	4 (17/06/2014)	81030 (09/06/2014)	
Patch 3 of IP (Price Rise)	**(18/06/2014 to 12/11/2014)**	**Price**	68.4 (18/06/2014)	345 (12/11/2014)	68.4 (18/06/2014)	346.95 (11/11/2014)	18964 (1706728)
		Vol	4 (18/06/2014)	501 (12/11/2014)	1 (02/07/2014)	513450 (18/08/2014)	
Patch 4 of IP (Price Fall)	**(13/11/2014 to 30/06/2015)**	**Price**	351.9 (13/11/2014)	13.5 (30/06/2015)	13.5 (30/06/2015)	351.9 (13/11/2014)	7326 (1003696)
		Vol	5395 (13/11/2014)	106 (30/06/2015)	1 (18/11/2014)	59512 (22/05/2015)	
After Investigation Period	**(01/07/2015 to 30/09/2015)**	**Price**	13.5 (01/07/2015)	4.42 (30/09/2015)	4.13 (23/09/2015)	14.14 (06/07/2015)	3332 (186594)
		Vol	72 (01/07/2015)	24150 (30/09/2015)	1 (07/09/2015)	53786 (12/08/2015)	

3. Pursuant to carrying out Last Traded Price (LTP) analysis for the investigation period, the investigation found that during Patch-1 of the investigation period i.e., price rise, the market net LTP in the scrip was ₹121.35 with a market volume of 2,11,857 shares and the positive LTP was ₹121.35 with a market volume of 2,044 shares. During the Patch-1 of the investigation period the price of MTCL opened at ₹5.15 and closed at ₹126.50 i.e., contributing to net positive LTP of 121.35. The investigation revealed that during Patch-1 of the investigation period, Tanuj Khandelwal (hereinafter referred to as *"Noticee")* manipulated the price of the scrip by continuously placing sell orders for miniscule quantities even when buy orders were already existed at higher prices and for larger quantities and created a misleading appearance of trading in the scrip. Accordingly, the investigation concluded that the Noticee had violated 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 October 10, 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 15 HA 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/9639/2018 dated March 27, 2018 was served on 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.

6. The Noticee vide letter dated April 10, 2018 made his preliminary submissions, which are summarized hereunder:

   (a) Dealt in the scrip MTCL in the normal course of trading and the same was within his financial risk and risk bearing capacity. There was no intention or purpose to contribute positive LTP.

   (b) All transactions were executed through the normal screen based trading system of stock exchange, which is a computer system driven process and buy/sell orders in the scrip is done by online trading module which is anonymous.

   (c) The transactions in the scrip of MTCL were done absolutely in fair and transparent manner and that there has been no grievance by any investor, stockbroker, stock exchange or any other agency concerned in the matter.

7. The Noticee vide his aforesaid letter sought inspection of documents and copies thereof that are referred to and relied upon by SEBI in the instant Adjudication proceedings.

8. Vide email dated October 12, 2018, the Noticee was provided with order log and trade log of MTCL and was also informed that the relevant portion of investigation report has already been included in the SCN and that copy of the same cannot be provided. Further, the Noticee was informed that other documents sought by him were either not relied upon or not available and accordingly was advised to furnish his reply to the SCN at the earliest.

9. It was observed that the Noticee thereafter did not furnish his reply and accordingly in terms of Rule 4 (3) of SEBI Adjudication Rules, the Noticee was granted an opportunity of personal hearing on February 25, 2020, which was communicated vide notice dated February 7, 2020. The Noticee vide letter dated February 14, 2020 confirmed his attendance for the said hearing. Pursuant to receipt of a request from the Noticee, the hearing was rescheduled to March 3, 2020. On the scheduled date of hearing i.e., March 3, 2020, the Authorized Representative appeared before me and sought 5 days to file additional submissions, which was granted. The Noticee vide letter dated March 6, 2020 had filed additional submissions, which are summarized hereunder:

   a) *In the entire SCN, there is no whisper of allegation of connection/collusion in between me and Promoter/ Director/Employee of the Company and/or counterparties to my trades. Since I am not facing any allegation of connection/collusion with any of the entity, the allegation of price manipulation cannot be established against me. In this regard, reliance is placed on the judgment of the Hon'ble SAT in the matter of Vikas Ganeshmal Bengani Vs SEBI dated February 25, 2010.*

   b) *I further say and submit that I had placed Orders to sell the shares of the Company at prevailing market price. It is matter of recorded that my sell Orders had been placed in the system when the buy Orders already placed and therefore the question of raising the price of the scrip does not arise. I place on reliance the Order dated May 31, 2019 passed by the Hon'ble WTM, SEBI in respect of Amit H Tilalain in the matter of Essar (India) Ltd., defining the market practice.*

   c) *I further say and submit that I had stopped selling the shares of the Company on July 19, 2012, when the price of the scrip was quoting around Rs. 20 per* *share. The price of the scrip of the Company continued to increase thereafter and went to a high of Rs.351.90. I had no role in the said increase in the price of the scrip from Rs. 20.20 to Rs. 351.90, which is 1600% increase in the price of the scrip. It shows that the price of the scrip of the Company was increasing due to heavy demand and poor supply and not by manipulation as alleged in the SCN. Thus, no allegation should be made against me for manipulation of price as the price was increasing in normal course of trading.*

d) *It is further submitted that the allegation made against me in the SCN are vague as could be as I have every right to decide that how much quantity I should sell at a time. No SEBI Rules and Regulation bar me from trading in the quantity of my choice. I had admittedly no collusion with any entity. I had executed trades within the circuit filters established by the SEBI/Stock Exchanges. I had not received any warning or caution from the Stock Exchange when I was selling the shares. I was acting as a genuine seller and had bona fide intention to sell shares. It is not my business to fulfil the demand of the buyer and to sell the shares in one slot.*

e) *I further say and submit that my trades in the scrip of the Company spread over a period of 7 months. My alleged contribution to +ve LTP was Rs. 12.05 i.e. too miniscule if it is compared with the total +ve LTP during the Investigation Period i.e. Rs. 634.65 (as per Trade Log Data).*

f) *I have no connection and or relation with any other shareholder/promoter/director/employee of the Company. Thus, the allegation that most of the trades executed by me were the only trades of the day is futile.*

g) *I further say and submit that I had placed orders at prevailing market price. It is the buyers who placed their orders first. Their buy Orders had always been placed at the upper circuit filter. Thus, it is the buyer who contributed to +ve LTP not me.*

h) *There is no word about any meeting of mind with counterparties to my trades. I further say and submit that there were huge time differences in between placing of buy orders and sell orders. Thus, prior meeting of mind in between the buyer and seller or with any entity is not possible at all.*

i) *In this regard, reliance is placed on the Orders of Hon'ble SAT (Nishit Shah Vs. SEBI Dated January 16, 2020, Rajesh Marchya Vs SEBI dated February 7, 2020)and SEBI (Adjudication Orders in respect of Amit Tilala in the matter of Essar (India) Ltd., dated January 23, 2018, Jayanant Indulal Sethna in the matter of Dhenu Buildcon Infra dated April 26, 2018 and Sushma Agarwal in* *the matter of Winsome Yarns Ltd., dated February 25, 2020) wherein the controversy involved in the present matter is squarely covered.*

j) *I once again request your goodself to provide me a copy of the investigation report, which has been relied upon the captioned SCN. I and comment on the counterparties may provide me the extract of the investigation report, which deals trades executed, to my sell trades. Since, I was not provided the copy of the investigation report, it violates the principle of natural justice. I place reliance on the two Judgements passed by the Hon'ble SAT in the matter of Vikas Gourihar Narnavar vs the Adjudicating Officer, SEBI (Order date 15-06-2010, Appeal No. 281 of 2009) and Dhirrajbhai V. Shanghavi HUF and Ors. vs SEBI (Order date 19-02-2020) on violation of Principle of Natural Justice in quasi-Judicial proceedings.*

CONSIDERATION OF ISSUES

10. 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

11. 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?

12. 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;

13. It has been alleged that the Noticee had manipulated the price of MTCL 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.

14. Before going into the merits of the case, I would like to deal with the primary contention raised by the Noticee with regard to supply of documents including investigation report.

15. The Noticee has stated that a copy of the Investigation Report has not been provided to him, and hence, it is a gross violation of natural justice as it has restricted his defence to the investigation carried out by SEBI. I note that the allegations against the Noticee are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticee and it is the Noticee's responsibility to defend his case by referring to the documents on which SEBI has relied upon in the SCN.

16. I find that the SCN issued by SEBI to the Noticee contains the findings of investigation in respect of the Noticee. I note that the vide email dated October 12, 2018, trade log and order log was also provided to the Noticee. As regards, the Noticee's contention that he has not been furnished with the entire Investigation Report, I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticee.

17. In this connection, I would like to refer to the observations of the Hon'ble SAT in the matter of *Mayrose Capfin Private Limited Vs SEBI* (decided on 30.03.2012) wherein SAT observed that:*".....................the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."*

18. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations:

"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".
"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

19. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

20. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided to the Noticee, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings. Therefore, I do not find that the interest of the Noticee has been prejudiced in any manner, and the Noticee has not explained as to how its interest is getting prejudiced by not having a copy of the investigation report when the charges/allegations along with documents in support of the show cause have been clearly spelt out in the SCN and the detailed facts on the basis of which those charges have been framed are already contained in the SCN and the documents provided vide email dated October 12, 2018.

21. I note from the SCN that during Patch 1 of the investigation period, the price of the scrip, MTCL had increased. I note that during this period the price of MTCL opened at ₹5.15 and closed at ₹126.50 i.e., contributing to net positive LTP of 121.35. I note that on an average around 1,341 shares were traded daily during Patch 1. I note that the unusual rise in the price of the scrip from ₹5.15 to ₹126.50 during Patch 1of the investigation period is perplexing, as there was no significant change in economic fundamentals of the Company.

22. The LTP contribution by the top 10 net positive LTP contributors from sell 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
	Sum of LTP diff	Sum of Quantity	No of trades	LTP impact	QTY traded	No of trades	LTP impact	QTY traded	No of trades	QTY traded	No of trades	
Rajesh Marchya	26.4	1710	37	26.4	245	27	-	-	-	1465	10	**21.76%**
Henal Hemantbhai Shah	21.3	5	4	21.3	5	4	-	-	-			**17.55%**
Sushma Chaudhary	15.15	289	25	15.15	82	22	-	-	-	207	3	**12.48%**
Prerna Chaudhary	12.15	28	15	12.15	27	14	-	-	-	1	1	**10.01%**
Tanuj Khandalwal	12.05	4304	63	12.05	267	51	-	-	-	4037	12	**9.93%**
Narendra Kumar Rathore	11.85	500	11	11.85	135	7	-	-	-	365	4	**9.77%**
Sanjay Dasot	6	44500	29	6	300	1	-	-	-	44200	28	**4.94%**
Natubhai Kantilal Parikh	4.75	202	5	4.75	165	4	-	-	-	37	1	**3.91%**
BP Fintrade Private Limited	4.7	73	1	4.7	73	1	-	-	-			**3.87%**
Ritesh Sharma	1.25	3	1	1.25	3	1	-	-	-			**1.03%**
Total of Top 10 Entities	**115.6**	**51614**	**191**	**115.6**	**1302**	**132**	**-**	**-**	**-**	**50312**	**59**	**95.26%**
Total of Market	**121.35**	**211857**	**280**	**121.35**	**2044**	**157**	**-**	**-**	**-**	**209813**	**123**	**100.00%**

23. I note from the above table that the Noticee was one of the entities who had contributed to more than 5% to total market positive LTP through 5 or more trades during Patch 1 of the investigation period. Upon analysis of his contribution, it is observed that the Noticee executed 63 trades for 4,304 shares. Out of these 63 trades, the Noticee contributed ₹12.05 to market positive LTP i.e., 9.93% of total market positive LTP through 51 trades for a total quantity of 267 shares.

24. The details of the trades executed by the Noticee which had contributed to the positive market LTP are furnished hereunder:

Date	Buy Order time	Sell order Time	Buy Order Quantity	Sell Order Quantity	Buy Order Price	Sell Order Price	Traded Quantity	LTP Impact (in ₹)	Total market volume during the day	Total no. of trades during the day	No. of shares held before trade	Balance No. of shares after trade
20/01/2012	09:00:01	13:56:39	999	1	5.77	5.77	1	0.11	1	1	13300	13299
23/01/2012	09:00:00	14:22:42	1800	1	5.88	5.88	1	0.11	1	1	13299	13298
31/01/2012	09:00:01	13:21:09	500	1	6.1	6.1	1	0.11	100	2	12299	12298
07/02/2012	09:00:00	10:05:47	1000	1	6.58	6.58	1	0.12	500	2	12199	12198
09/02/2012	09:00:00	14:59:17	2000	1	6.84	6.84	1	0.13	1	1	11698	11697
21/02/2012	09:00:00	14:57:37	500	1	7.38	7.38	1	0.14	1	1	10697	10696
22/02/2012	09:00:00	15:22:23	3400	1	7.52	7.52	1	0.14	1	1	10696	10695
24/02/2012	09:00:00	15:20:38	500	1	7.82	7.82	1	0.15	1	1	10695	10694
28/02/2012	09:00:00	15:05:21	500	1	8.12	8.12	1	0.15	1	1	10694	10693
29/02/2012	09:00:00	15:17:07	500	1	8.28	8.28	1	0.16	1	1	10693	10692
03/03/2012	11:00:00	11:37:38	500	1	8.44	8.44	1	0.16	1	1	10692	10691
06/03/2012	09:00:00	15:08:12	2000	1	8.77	8.77	1	0.17	1	1	10691	10690
14/03/2012	09:00:00	15:01:22	2500	1	9.29	9.29	1	0.18	1	1	10540	10539
15/03/2012	09:00:00	15:19:23	500	1	9.47	9.47	1	0.18	1	1	10539	10538
16/03/2012	09:00:00	15:09:56	2500	1	9.65	9.65	1	0.18	1	1	10538	10537
19/03/2012	09:00:00	15:07:41	2000	1	9.84	9.84	1	0.19	1	1	10537	10536
23/03/2012	09:00:00	15:08:02	3000	1	10.43	10.43	1	0.2	1	1	10536	10535
26/03/2012	09:00:02	15:09:47	1000	1	10.63	10.63	1	0.2	1	1	10535	10534
29/03/2012	09:00:02	15:11:23	3000	1	10.84	10.84	1	0.21	1	1	10534	10533
30/03/2012	09:00:01	15:08:35	2000	1	11.05	11.05	1	0.21	1	1	10533	10532
02/04/2012	09:00:01	15:10:30	3000	1	11.27	11.27	1	0.22	1	1	10532	10531
02/05/2012	09:00:01	15:00:54	200	1	11.49	11.49	1	0.22	1	1	10531	10530
03/05/2012	09:00:00	13:49:00	2000	1	11.71	11.71	1	0.22	1	1	10530	10529
04/05/2012	09:00:00	12:29:38	1001	1	11.94	11.94	1	0.23	1	1	10529	10528
07/05/2012	09:00:00	14:39:48	500	1	12.17	12.17	1	0.23	201	2	10528	10527
08/05/2012	09:00:01	13:35:53	500	1	12.41	12.41	1	0.24	1	1	10527	10526
09/05/2012	09:00:00	12:59:56	1000	1	12.65	12.65	1	0.24	1	1	10526	10525
10/05/2012	09:00:00	14:09:30	251	1	12.9	12.9	1	0.25	1	1	10525	10524
11/05/2012	09:00:00	14:33:33	150	1	13.15	13.15	1	0.25	1	1	10524	10523
14/05/2012	09:00:00	14:10:11	2000	1	13.41	13.41	1	0.26	1	1	10523	10522
15/05/2012	09:00:00	14:26:29	2000	1	13.67	13.67	1	0.26	1	1	10522	10521
16/05/2012	09:00:00	15:00:09	1000	1	13.94	13.94	1	0.27	501	2	10521	10520
17/05/2012	09:00:00	13:44:17	1000	1	14.21	14.21	1	0.27	1	1	10020	10019
21/05/2012	09:00:00	13:16:08	2000	1	14.49	14.49	1	0.28	1	1	10019	10018
22/05/2012	09:00:00	13:15:27	500	1	14.77	14.77	1	0.28	1	1	10018	10017
23/05/2012	09:00:00	13:41:37	201	1	15.06	15.06	1	0.29	1	1	10017	10016
24/05/2012	09:00:00	13:47:32	300	1	15.36	15.36	1	0.3	801	4	10016	10015
30/05/2012	09:00:00	13:10:18	500	1	15.66	15.66	1	0.3	1	1	9715	9714

31/05/2012	09:00:00	14:17:51	500	1	15.97	15.97	1	0.31	1	1	9714	9713
01/06/2012	09:00:01	13:25:45	1000	1	16.25	16.25	1	0.28	1001	3	9713	9712
02/07/2012	09:00:00	14:21:18	2500	1	16.85	16.85	1	0.3	1	1	9712	9711
03/07/2012	09:00:01	14:46:02	2000	1	17.15	17.15	1	0.3	1	1	9711	9710
04/07/2012	09:00:00	11:46:41	1000	1	17.45	17.45	1	0.3	1	1	9710	9709
05/07/2012	09:00:01	13:45:07	1000	1	17.75	17.75	1	0.3	1	1	9709	9708
09/07/2012	09:00:00	11:52:10	515	10	18.1	18.1	10	0.35	100	2	9708	9698
12/07/2012	09:00:00	14:18:00	200	1	18.45	18.45	1	0.35	1	1	9608	9607
13/07/2012	09:00:00	12:49:37	499	5	18.8	18.8	5	0.35	5	1	9607	9602
16/07/2012	09:00:00	13:29:39	200	500	19.15	19.15	200	0.35	500	2	9602	9402
17/07/2012	09:00:00	15:08:48	200	1	19.5	19.5	1	0.35	1	1	9102	9101
18/07/2012	09:00:01	13:03:17	100	5	19.85	19.85	5	0.35	5	1	9101	9096
19/07/2012	09:00:00	15:25:58	258	1	20.2	20.2	1	0.35	100	2	9096	9095
TOTAL			**58774**	**567**			**267**	**12.05**	**3854**	**63**		

25. I note from the above table that except on three occasions, the Noticee was consistently placing sell order in 1 quantity, whereas the respective buy order quantity was in the range of 100-3400 shares with total of 58,774 shares were already available in the system. I also note that the sell orders were placed by the Noticee after placement of buy orders and that most of the trades of the Noticee resulted into the only trades of the day. It is pertinent to note that the Noticee was holding 1,900 shares of MTCL in his DP account bearing no. 1201090002224077 as on September 30, 2008. Pursuant to allotment of bonus shares in the ratio of 6:1 by the Company on August 26, 2011, the holding of the Noticee increased to 13,330 shares as on August 29, 2011.

26. From this trading pattern adopted by the Noticee, it can be concluded that the Noticee had no bonafide intention to sell because when sufficient buy orders were available, the Noticee, despite having adequate holdings in the scrip of MTCL, sold only 1 share per transaction, which resulted in creation of positive LTP and thus created false or misleading appearance of trading in the securities market and amounted to manipulation of the price of MTCL scrip. The Noticee was aware that the scrip was thinly traded and that the price was constantly moving upwards. There was no need for the Noticee to sell the shares in installments of 1 share as there were sufficient buy orders in the system on most of the days. However, the Noticee appears to have knowingly, sold small amount of shares every day to ensure that there is at least one trade in the scrip and the price of the scrip kept on increasing.

27. The Noticee has submitted that his trading activity was in response to the already available buy orders. The Noticee also submitted that when the buy orders are already available in the market at a higher price the seller is bound to grab the opportunity and sell his shares. Therefore, if there was any illicit raise in the price of the scrip the same due to the buy orders which were repeatedly placed at higher price than the LTP. In this regard, it is surprising to note that if the Noticee was only responding to the buyer then there is no reason for the Noticee to place sell orders of only 1 share on different days despite holding adequate number of shares. Therefore, the contention raised by the Noticee in this regard is devoid of any merit.

28. The Noticee in his submission stated that since there is no allegation of connection/collusion with counter parties of their trades or any of the entity, the allegation of price manipulation cannot be established against him. It is necessary to examine trading patterns of parties with respect to their strategy and rationale for such dealings. As stated above the Noticee has sold only 1 share per day inspite of having sufficient buy orders as well as holding with him. This behavior of the Noticee is devoid of any logic or rational behavior.

29. In this regard, the observations of Hon'ble Supreme Court of India in *SEBI Vs. Kishore R Ajmera* 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…"

30. Taking support of the observations of Hon'ble Apex Court in Kishore R Ajmera matter, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of attending circumstances an inference will have to be drawn.

31. In the instant matter, Noticee has repeatedly sold shares in 1 quantity over the LTP at frequent intervals. If the Noticee was a genuine seller, then he had the opportunity to sell shares in more than 1 quantity on multiple occasions but still the Noticee chose not to sell shares in more than 1 at a time and continued to execute sell trades at successive higher prices by selling just 1 share at a time on 48 instances. Further, the fundamentals of the company also do not support the persistent interest shown by the Noticee in selling the scrip at prices higher than LTP

32. The Noticee argued that the SCN has ignored the increase in the price rise in other phases and all other parties who have contributed to the said price. As per the SCN, there was manipulative trading observed in the scrip of MTCL in Patch 1 of the investigation period and accordingly, the Noticee was called upon to show cause about his role in the said manipulative trading. In the present proceedings, I have to determine whether during Patch 1 of the investigation period there was any manipulative trading by the Noticee, based on the allegations levelled in the SCN and the material available on record.

33. The Noticee in his submissions contended that his contribution to positive LTP

is minuscule as compared to the total market positive LTP to the total market LTP for the entire investigation period. I note that the Noticee is trying to justify their contribution of LTP to the total investigation period, whereas the charge of their contribution is confined to Patch 1 of the investigation period, wherein it is established that the Noticee has contributed to positive LTP of 9.93% of total market positive LTP of Patch 1.

34. In this connection, I would like to rely on the observations of the Hon'ble SAT in the matter of *Giriraj Kumar Gupta HUF v. SEBI* (DoD: February 25, 2020), wherein the Hon'ble SAT had inter-alia, observed that *"Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument that each entity's trade is miniscule and only on a few days alone etc., is not sufficient to rebut the findings in the impugned order".*

35. The Noticee placed reliance on the Orders of Hon'ble SAT, Hon'ble WTM and Ld. Adjudicating Officer, SEBI *(which are mentioned in the summary of the replies),* in their defence and having perused the same, I note that the instant case is distinguishable in view of the above findings and does not help the Noticee in any manner.

36. I note that the Noticee has placed reliance on the Hon'ble SAT order in the matter of *M/s Nishith M. Shah HUF vs. Securities and Exchange Board of India.* I note from the material/documents available that SEBI has preferred an Appeal before the Hon'ble Supreme Court against the Hon'ble SAT order in the matter of *M/s Nishith M. Shah HUF vs. Securities and Exchange Board of India.* In view of the above, I am of the opinion that the Hon'ble SAT order in the aforesaid matter of *M/s Nishith M. Shah HUF vs. Securities and Exchange Board of India* is not yet settled and therefore has not attained finality. In view of the same, I am of the considered view that deciding the present matter based

on the aforesaid Hon'ble SAT Order would be premature and may have repercussion.

37. 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 consciously differed from its earlier order in the matter of ***M/s Nishith M. Shah HUF*** and 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".

38. It can thus 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.

39. 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 sell 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"*

40. In view of the various judgements of Hon’ble Supreme Court and Hon’ble SAT and on the basis of the findings in the foregoing paragraphs, I find that the alleged trading behavior of the Noticee by way of selling shares in minuscule quantity at above LTP despite more number of share were available on the buy side clearly establish that his trades were executed with only a manipulative design to raise the price of the said. Therefore, for the reasons recorded above, I conclude that the alleged trades of the Noticee as abnormal, deceptive, misleading, artificial and manipulative in nature and substance, which were executed with a malicious intent to fraudulently cause rapid rise in the price of the scrip of MTCL. 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?

41. 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 trading in minimum lot 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?

42. 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.

43. 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.

44. It is difficult, in cases of such nature, to quantify with mathematical precision 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 MTCL 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.

ORDER

45. 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 ₹8,00,000/- (Rupees Eight lakhs only) on the Noticee i.e., Tanuj Khandelwal 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.

46. The said penalty imposed on the Noticee, as mentioned above, shall 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.

47. 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

48. 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-II, 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

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

Date: August 31, 2020 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**