BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2022-23/ 22686-22687]

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

In respect of

1. MBL & Company Limited

PAN AADCM8394F

CIN U74899HR1995PLC041583

Registration No. INZ000289536

2. Asiatic Portfolio Limited

PAN AAFCA7609H

CIN U67120DL2006PLC149724

In the matter of investigation in the trading activities of certain entities in the scrip of C Mahendra Exports Limited

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FACTS OF THE CASE

1. Securities and Exchange Board of India ("**SEBI"**) conducted an investigation into the trading activities of certain entities in the scrip of C Mahendra Exports Limited (**"CMEL"** or **"the Company"**), listed on BSE and NSE, during the investigation period from February 01, 2013 to October 22, 2014 ("**IP**") to ascertain any violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**").

2. The IP was divided into three patches based on the price movement of the scrip of CMEL. The patch 1 of IP included period from February 01, 2013, to October 01, 2013 ("**patch 1**"), the patch 2 of the IP included period from October 03, 2013 to July 30, 2014 ("**patch 2**") and the patch 3 of the IP included period from July 31, 2014 to October 22, 2014 ("**patch 3**"). It was observed that there was a decrease in the price of the scrip of CMEL in the patch 2 of IP. In this context, it is alleged that MBL & Company Limited (**"Noticee No. 1**") on BSE and Asiatic Portfolio Limited ("**Noticee No. 2**") on NSE have manipulated the price of the scrip of CMEL by repeatedly selling shares of the scrip in minuscule quantities (1-9 shares) at negative last traded price ("**LTP**") and thereby, causing a fall in the price of the scrip of CMEL. The Noticees are alleged to have violated Section 12A (a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(a), (b), (c) and (d) and 4(1), (2)(a) and (e) of the PFUTP Regulations.

3. In view of the above, SEBI initiated the instant adjudication proceeding against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Suresh B Menon was appointed as the Adjudicating Officer ("**AO**") in the matter vide communique dated February 18, 2021, under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Adjudication Rules"**), to inquire into and adjudge under Section 15HA of SEBI Act the aforementioned alleged violations of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3(a), (b), (c) and (d) and 4(1), (2) (a) and (e) of the PFUTP Regulations by the Noticees. Pursuant to the superannuation of Shri Suresh B Menon, the matter was transferred and the undersigned was appointed as AO in the instant matter vide communique dated June 06, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notices ("**SCN**") bearing No. SEBI/EAD-1/SBM/JR/ SCN/ 6749/ 2021 dated March 23, 2021 and SEBI/EAD-1/SBM/JR/ SCN/ 6758/ 2021 dated March 23, 2021 were issued to the Noticee No.1 and Noticee No. 2 respectively under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on the Noticees under Section 15HA of SEBI Act for the aforesaid alleged violations.

6. The allegations made in the said SCN, *inter alia*, are reproduced below:

i. On the basis of the price movement in the scrip of CMEL during the investigation period, alleged price manipulation in the scrip has been analyzed in three patches as mentioned hereunder:

Patch 1 of IP: (February 01, 2013 to October 01, 2013)-price rise patch
Patch 2 of IP: (October 03, 2013 to July 30, 2014)-price fall patch
Patch 3 of IP: (July 31, 2014 to October 22, 2014)-price fall patch

Price Volume (BSE)

Particulars	Period		Opening Price (volume) on first day of the period (Rs.)	Closing price (volume) on last day of the period (Rs.)	Low price (volume) during the period (Rs.)	High Price (volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period
Before Investigation period	01/01/ 2013 to 31/01/2013	Price	87.05	51.70	45.85	92.75	97056
		Date	01/01/2013	31/01/2013	31/01/2013	02/01/2013	
		Vol.	33634	142662	142662	31875	
During Investigation Period	01/02/ 2013 to 01/10/2013 (Patch 1)	Price	53	225.75	51.05	229.80	58794
		Date	01/02/2013	01/10/2013	01/02/2013	30/09/2013	
		Vol.	283362	81362	283362	64822	
	03/10/ 2013 to 30/07/2014 (Patch 2)	Price	227	208	175.05	259	64573
		Date	03/10/2013	30/07/2014	30/01/2014	30/12/2013	
		Vol.	45050	161162	44934	337972	
	31/07/2014 to 22/10/2014 (Patch 3)	Price	208	11.4	11.4	210.90	313388
		Date	31/07/2014	22/10/2014	22/10/2014	31/07/2014	
		Vol.	95271	121585	121585	95271	
After investigation period	23/10/ 2014 to 31/12/2014	Price	10.85	12.80	10.65	20.97	212609
		Date	23/10/2014	31/12/2014	28/10/14	17/11/2014	
		Vol.	272343	59497	176802	160472	

Price Volume (NSE)

Particulars	Period		Opening Price (volume) on first day of the period (Rs.)	Closing price (volume) on last day of the period (Rs.)	Low price(volume) during the period (Rs.)	High Price(volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period
Before Investigation period	01/01/2013 to 31/01/2013	Price	87.65	50.60	45.80	96.40	124705
		Date	01/01/2013	31/01/2013	31/01/2013	07/01/2013	
		Vol.	65949	96803	96803	12684	
During Investigation Period	01/02/2013 to 01/10/2013 (Patch 1)	Price	52.95	225.80	51	228.40	53886
		Date	01/02/2013	01/10/2013	01/02/2013	27/09/13	
		Vol.	105652	94163	105652	188699	
	03/10/2013 to 30/07/2014 (Patch 2)	Price	226	208.35	161.60	259.90	139315
		Date	03/10/2013	30/07/2014	30/01/2014	13/06/2014	
		Vol.	84235	271226	104375	114300	
	31/07/2014 to 22/10/2014 (Patch 3)	Price	205.20	11.35	11.35	209.85	572768
		Date	31/07/2014	22/10/2014	22/10/2014	31/07/2014	
		Vol.	165641	692952	692952	165641	
After investigation period	23/10/2014 to 31/12/2014	Price	10.80	12.85	10.60	20.70	376155
		Date	23/10/2014	31/12/2014	28/10/2014	17/11/2014	
		Vol.	455398	93370	926942	374228	

Patch 2 (Patch fall):

BSE:

Top 10 LTP contributors

Sr. No.	Seller Name *	All Trades			LTP >0			LTP < 0			LTP = 0		% of Negative LTP to Total Market Negative LTP
		Net LTP	Sum of Qty	No. of Trade	LTP impact	Qty Traded	No. of Trade	LTP impact	Qty Traded	No. of Trade	Qty Traded	No. of Trade	
1	MBL Company Limited	-896.85	460246	14598	987	69149	2242	-1884.15	46288	2560	344809	9796	12.28
2	…	-133.80	154816	8925	854	22672	1428	-987.60	33306	1812	98838	5685	6.44
3	…	-267.95	142527	7006	633	34668	1415	-901.20	26557	1602	81302	3989	5.87
4	…	-76.15	86310	4157	395	24191	920	-471.20	16078	874	46041	2363	3.07
5	…	-59.35	63500	2267	324	11210	476	-383.30	18101	635	34189	1156	2.50
6	…	-59.35	108430	2006	110	13344	287	-168.85	8473	266	86613	1453	1.10
7	…	-79.75	61154	1456	60	4953	137	-139.50	12453	301	43748	1018	0.91
8	…	-83.80	145585	861	21	1362	35	-104.30	33555	224	110668	602	0.68
9	…	-67.35	153101	293	37	45147	46	-104.05	70693	107	37261	140	0.68
10	…	-82.20	50819	1068	13	2255	45	-95.35	14467	248	34097	775	0.62
	top 10 entities total	-1806.55	1426488	42637	3434	228951	7031	-5239.50	279971	8629	917566	26977	34.15
	remaining entities	1788.80	11810919	152306	11890	2377925	20924	-10100.80	1994596	20728	7438398	110654	65.20
	market total	-17.75	13237407	194943	15323	2606876	27955	-15340.30	2274567	29357	8355964	137631	99.35

**Some names excised for the sake of confidentiality*

From the trading details of the Noticee (MBL Company Limited/Noticee No. 1), the following was observed:

- *The Noticee (MBL Company Limited) had a negative LTP contribution of Rs -1884.15 in (12.28% of market negative LTP) in 2560 trades with a trading volume of 46,288 shares.*
- *Upon further analysis, it was observed that in 1340 trades (contributing Rs -1094.70 to negative LTP i.e. 7.1% of market negative LTP) the sell orders were placed before the corresponding buy orders. However, out of 1340 trades, in 356 trades, the sell orders were not placed at the prevailing buy order prices.*
- *Further, in respect of 1220 trades (contributing Rs -789.45 to negative LTP i.e. 5.1 % of market negative LTP), the sell orders were placed after buy orders. However, out of 1220 trades, in 424 trades, the sell orders were not placed at the prevailing buy order prices.*

ii. *The trading pattern of the Noticee (MBL Company Limited) for patch 2 was further analysed and following was observed:*

Sell order qty	***Available buy order quantity***	***No. of trades***	***Traded quantity***	***Negative LTP Contribution***	***% To Market -ve LTP***
1	*1*	*525*	*525*	*-621.20*	*4.05*
1	*2 to 9*	*81*	*81*	*-102.35*	*0.67*
1	*10 and above*	*365*	*365*	*-466.75*	*3.04*
2	*1 to 2500*	*27*	*48*	*-22.70*	*0.15*
3-5	*1 to 331*	*66*	*196*	*-40.35*	*0.26*
6-9	*1 to 200*	*21*	*113*	*-9.25*	*0.06*
10 and above	*1 to 5450*	*1475*	*44960*	*-621.55*	*4.05*
	Total	***2560***	***46288***	***-1884.15***	***12.28***

iii. *Based on the trading analysis, it was observed that MBL contributed Rs.-1262.6 to negative LTP i.e. 8.23% of total market negative LTP, by placing sell orders ranging between 1-9 shares in 1,085 instances, despite buy orders being available for a larger quantity in the range of 1 to 2500, during the period October 03, 2013 to July 30, 2014. Trading pattern of the* *entity shows that its intention was not to sell shares but to decrease the price through contributing to negative LTP by repeatedly placing sell orders of miniscule quantity (1 to 9 shares each).*

NSE:

iv. During patch 2, the price of the scrip opened at Rs. 226 on October 03, 2013 (previous day closing price Rs. 225.80) and closed at Rs. 208.35 on July 30, 2014 with a net LTP of Rs. -17.45 and a market negative LTP of Rs. -25,042.50. Since this is a price fall patch, LTP analysis was carried out on the sell side. Details of the analysis of trades carried out by top 10 net negative LTP contributors and suspected entities is mentioned as under:

Top 10 LTP contributors

Sr. No.	Seller Name *	All Trades			LTP >0			LTP < 0			LTP = 0		% of -ve LTP to Total Mar-ket -ve LTP
		Net LTP	Sum of Qty	No. of Trade	LTP impact	Qty Traded	No. of Trade	LTP impact	Qty Traded	No. of Trade	Qty Traded	No. of Trade	
1	**Asiatic Portfolio Limited**	**-278.35**	**427596**	**17532**	**1414.95**	**126760**	**3696**	**-1693.30**	**98899**	**3722**	**201937**	**10114**	**6.76**
2	…	-1231.35	66746	6299	378.30	12093	1407	-1609.65	25702	2577	28951	2315	6.43
3	…	-584.35	142475	6884	236.75	15413	668	-821.10	34771	1949	92291	4267	3.28
4	…	-356.95	3955597	10926	314.00	695806	1080	-670.95	542619	2252	2717172	7594	2.68
5	…	-143.80	88273	4348	352.45	20224	801	-496.25	18786	1133	49263	2414	1.98
6	…	-181.25	95085	1843	64.05	19357	237	-245.30	14912	632	60816	974	0.98
7	…	-112.30	1293837	2527	75.10	279105	308	-187.40	158638	519	856094	1700	0.75
8	….	-147.30	14336	914	18.00	1089	46	-165.30	3074	308	10173	560	0.66
9	…	-114.00	8987	611	26.60	528	33	-140.60	2221	194	6238	384	0.56
10	…	-112.05	61840	1410	16.55	4230	79	-128.60	28538	499	29072	832	0.51

	top 10 entities total	-3261.70	6154772	53294	2896.75	1174605	8355	-6158.45	928160	13785	4052007	31154	24.59
	remaining entities	3244.25	22404791	270257	22128.30	5501639	55567	-18884.05	4103749	52407	12799403	162283	71.09
	market total	-17.45	28559563	323551	25025.05	6676244	63922	-25042.50	5031909	66192	16851410	193437	95.68

**Some names excised for the sake of confidentiality*

From the trading details of the Noticee (Asiatic Portfolio Limited/Noticee No. 2), the following was observed: -

- *The Noticee (Asiatic Portfolio Limited) had a negative LTP contribution of Rs -1693.30 in (6.76% of market negative LTP) 3722 trades with a trading volume of 98899 shares.*
- *Upon further analysis, it was observed that, in 897 trades (contributing to Rs -345 to negative LTP i.e. 1.38% to market negative LTP) sell orders were placed before buy orders. However, out of 897 trades, in 28 trades, the sell orders were not placed at the prevailing buy order prices.*
- *Further, in respect of 2825 trades (contributing Rs-1348.30 i.e. 5.38% of market negative LTP), sell orders were placed after buy orders. However, out of 2825 trades, in 1829 trades, the sell orders were not placed at the prevailing buy order prices.*

Sell order qty	***Available buy order quantity***	***No. of trades***	***Traded quantity***	***Negative LTP Contribution***	***% to Market -ve LTP***
1	1	279	279	-135.65	0.54
1	2 to 9	219	219	-171.85	0.69
1	10 and above	840	840	-645.60	2.58

2	*1 to 1000*	*130*	*211*	*-65*	*0.26*
3-5	*1 to 5000*	*427*	*1,275*	*-204.10*	*0.82*
6 -9	*1 to 3500*	*92*	*446*	*-37.75*	*0.15*
10 and above	*1 to 15000*	*1735*	*95629*	*-433.35*	*1.73*
Total		***3722***	***98899***	***-1693.3***	***6.76***

v. *The trading pattern of the Noticee (Asiatic Portfolio Limited) for patch 2 was further analysed and following was observed:*

vi. *Based on the trading analysis, it was observed that the Asiatic Portfolio Limited contributed Rs. -1259.95 to negative LTP i.e. 5.03% of total market negative LTP, by placing sell orders ranging between 1-9 shares in 1987 instances, despite buy orders being available for a larger quantity in the range of 1 to 5000 shares, during the period October 03, 2013 to July 30, 2014. Trading pattern of the Noticee shows that its intention was not to sell shares but to decrease the price through contributing to negative LTP by repeatedly placing sell orders of miniscule quantity (1 to 9 shares each).*

vii. *Thus, the Noticees (MBL Company Limited and Asiatic Portfolio Limited) indulged in an act which allegedly resulted in creation of false or misleading appearance of trading in the securities market and amounted to manipulation of the price in the scrip of CMEL.*

Noticee No. 1's reply and hearing

7. The Noticee No. 1 vide letter dated April 02, 2021, submitted the following reply to the said SCN which is reproduced, *inter alia,* below:

i. *The present proceedings have been initiated for the transactions carried out by us way back in the year 2013-2014 i.e. after a gap of almost 7 to 8 years. Presently, we do not have all the material, information, and records readily* *available with us so as to verify the contents of SCN and we do not remember the facts of the relevant period so as to clarify doubts arising therein.*

In our humble submission, the transactions referred to and relied upon for making allegations against us are almost 7 to 8 years old. However, no justification or reasons for issuance of SCN after such a long gap from the date of transactions has been mentioned in the SCN. We would like to submit that issuance of SCN after reasonable period of time is bad in law and deserves to be withdrawn at the threshold itself. In this regard, we would like to draw your kind attention to Order passed by Hon'ble Securities Appellate Tribunal in the case of H B Stockholdings (Appeal No. 114 of 2012) wherein Hon'ble Tribunal took cognizance of following factors:

- *Human memory has a short shelf life and allowing matters to go on for years together serves no purpose rather it risks loss of evidence such as important documents may get destroyed while the issue gathers dust.*
- *In some situations, the reputation of the innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going.*
- *Inordinate delay in conducting inquiries hangs like Damocles' sword on market players and has a rather demoralising effect on them when they are ultimately exonerated of all the charges.*

We submit that aforesaid observations are relevant in the present proceedings initiated against us particularly since already 7 to 8 years have passed after we transacted in the scrip of CMEL. We submit that it is a settled principle of law that has been propounded and confirmed time and again by different High Courts and Supreme Court of India that long inordinate delay in initiation of proceeding causes prejudice and thereby is in gross violation of principles of natural justice. We submit with humility that on this ground alone the present proceeding qua us be withdrawn in limine.

ii. On plain reading of said Show Cause Notice dated 23.03.2021; we understand that the allegations of 'fraudulent' practice is made against us on *the basis that we contributed to negative Last Traded Price (LTP) while selling shares of CMEL. Further, it also alleged that our intention was not to sell shares but to decrease the price through contributing to negative LTP by repeatedly placing sell orders of miniscule quantity. In this regard, we submit with humility that said charge alleged against us is based on peripheral possibilities and random probabilities. Such an approach by credible organization is unfair, unwarranted, and bad in law. In this regard, we submit as under:*

(i) At the outset, we submit that we have dealt in the scrip of CMEL in compliance with all the relevant provisions of securities law as applicable to us from time to time. Thus, we are a bit perturbed to have received your aforesaid SCN wherein inter-alia it has been alleged that we have committed 'fraud' in securities market.

(ii) We submit with humility that we have dealt in scrip of CMEL in the normal course of our trading activity and the same was very much within our financial and risk bearing capacity. We had no intention or purpose to manipulate the price while dealing in scrip of CMEL, as alleged or otherwise.

(iii) We submit that we have dealt in scrip of CMEL in absolutely fair and transparent manner. We believe that there has been no grievance by any investor, broker, stock exchange or any other agency concerned in the matter. Therefore, allegation of SEBI that our transactions in the shares of CMEL are 'fraudulent' in nature and we are alleged to be in violation of SEBI Act and SEBI (PFUTP) Regulations is unfair and unwarranted.

V. Without prejudice to what is stated aforesaid, on preliminary observation of the SCN, we would like to state as under:

(i) W.r.t. allegation of execution of trades at variance to LTP, we respectfully submit that none of the trades are alleged to have registered a new high price or new low price. Hence, all trades were executed at a price which was already established / recorded in the market.

(ii) In the SCN it is alleged that out of our total sell of 460246 shares of CMEL, 46288 shares are alleged to have contributed negatively to LTP and 69149 shares have contributed positively to LTP. It is pertinent to note that 344809 shares are traded at LTP. However, the allegation in the SCN only pertains to negative contribution to LTP.

(iii) In this regard, we submit that out of our total sell of 460246 shares, only 46288 shares are alleged to have violated PFUTP Regulations i.e. to say 344809 shares sold did not violate PFUTP Regulations. Thus, out of total shares sold by us, only 10.05% of shares are alleged to be below LTP, 15.02% of shares are alleged to be above LTP and 74.93% shares are at LTP. Further, the total no. of shares i.e. 46288 shares allegedly contributing negatively to LTP, becomes even more negligible if compared to overall shares traded during the whole investigation period.

(iv) Thus, no allegation of any price manipulation can be alleged against us.

8. The Noticee No. 1, vide letter dated April 26, 2022, submitted the following additional reply to the said SCN which is reproduced, *inter alia,* as under:

i. ***Submission on the alleged Charge of Negative Contribution to the Last Traded Price "LTP"***

(i) It is pertinent to mention that during the Investigation Period there is no adverse inference drawn against us w.r.t our Acquisition (Buy) of shares. They are inter-alia stated to be within the preview of Law.

(ii) In the SCN it is alleged that out of our total sell of 460246 shares of CMEL, 46288 shares are alleged to have contributed negatively to LTP and 69149 shares have contributed positively to LTP. It is pertinent to note that 344809 shares are traded at LTP. However, the allegation in the SCN only pertains to negative contribution to LTP.

(iii) It is pertinent to mention that that our 46288 shares are alleged to have contributed negatively to LTP have been sub categorized as mentioned below:

Sell order qty	Available buy order quantity	No. of trades	Traded quantity	Negative LTP Contribution	% To Market -ve LTP
1	1	525	525	-621.20	4.05
1	2 to 9	81	81	-102.35	0.67
1	10 and above	365	365	-466.75	3.04
2	1 to 2500	27	48	-22.70	0.15
3-5	1 to 331	66	196	-40.35	0.26
6-9	1 to 200	21	113	-9.25	0.06
10 and above	1 to 5450	1475	44960	-621.55	4.05
	Total	**2560**	**46288**	**-1884.15**	**12.28**

In the said allegation, SEBI has stated that we contributed Rs. -1262.6 (Rs 1884.15 - Rs 621.55) to negative LTP i.e. 8.23% (12.28% - 4.05%) of our total negative LTP, by placing sell orders ranging between 1-9 shares in 1085 instances, despite buy orders being available for a larger quantity in the range of 1 to 2,500. Hence, sale of shares wherein our sell quantity is 10 and more i.e. in case 1475 trades is excluded from allegation. Further, in this regard, it is submitted as under:

(a) Our sale of shares comprising of 1 quantity wherein even the buy quantity available in market is 1 should be excluded from the allegation as we can only sell the number of shares of which buyers are available in the market i.e. to say that buy order of only 1 share were available in correspondence to our sale order of 1 share. In fact, the cumulatively amount for our sell quantity of 10 and more share corresponding to which 1 to 5450 buy orders of shares were available in market has resulted into the negative LTP contribution of Rs -621.20.

(b) The aforesaid sale of CMEL shares have been made across various days in NSE and BSE. We square off position during the day itself as we tend to earn marginalized/minimal profit from our Jobbing activity.

(c) Allegations have been made against us on our contribution to negative LTP. However, the fact that we have also contributed to positive LTP and allegation should be leveled against us after netting off the positive and the negative LTP.

(iv) Pertinently, out of our total sell of 460246 shares, only 46288 shares alleged to have violated PFUTP Regulations i.e. to say 344809 shares sold did not violate PFUTP Regulations. Thus, out of total shares sold by us, only 10.05% of shares are alleged to be below LTP, 15.02% of shares are alleged to be above LTP and 74.93% shares are at LTP. Further, the total no. of shares i.e., 46288 shares allegedly contributing negatively to LTP, becomes even more negligible if compared to overall shares traded during the whole investigation period.

ii. It is pertinent to mention that we do not have any relation with CMEL its Promoters, Director and/or Key Managerial Personnel and nothing in this regard is alleged in the SCN.

iii. ***Orders by SEBI in similar matters***

(i) We would like to draw your kind attention to following Orders of SEBI wherein the direction imposed on entities w.r.t similar allegation of 'LTP contribution' was revoked:

Sr. No.	*Date of Order*	*Particulars of Order*
i.	*06.09.2017*	*SEBI's Order in respect of Shyam Vyas, Bharat Bagri and Sumitra Devi Agrawal in matter of First Financial Services Ltd. (Ref: WTM/SR/SEBI/EFD- DRA3/71/09/2017)*
ii.	*19.09.2017*	*SEBI's Order in respect of JMS Financial Services Ltd and Sanjay Shah in matter of Pine Animation Ltd. (Ref: SEBI/WTM/MPB/EFD-1-DRA-III/28/ 09/2017)*
iii.	*21.09.2017*	*SEBI's Order in respect of Bharat Bagri HUF and Anr in matter of Kailash Auto Finance Ltd. (Ref: SEBI/WTM/MPB/EFD-DRA-1/31/2017)*
iv.	*05.10.2017*	*SEBI's Order in respect of Shyam Vyas in matter of Mishka Finance and Trading Ltd. (Ref: SEBI/WTM/MPB/EFD-1-DRA-III/50 / 2017)*

We request your honor to take cognizance of aforesaid and humbly submit that similar view ought to be taken on captioned subject matter.

iv. ***Denials of alleged violation of law***

We vehemently deny alleged violation of provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3 (a), (b), (c), (d), Regulations 4(1), 4 (2) (a) and (e) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulation, 2003 and submit as under:

(i)We have not employed any manipulative or deceptive device with respect to our sale of shares of CMEL or neither have we acted in contravention to the provisions of SEBI Act or the rules or the regulations made thereunder. (Ref Section 12A(a) of SEBI Act, 1992)

(ii)We have not employed any device, scheme or artifice to defraud anyone while dealing in CMEL shares (Ref Section 12A(b) of SEBI Act, 1992)

(iii)While dealing in scrip of CMEL, we have not engaged in any act, practice, course of business which operates as fraud or deceit upon any person (Ref Section 12A(c) of SEBI Act, 1992)

(iv)We did not buy, sell or otherwise deal in CMEL scrip in fraudulent manner. We had placed order in shares of CMEL scrip in normal and ordinary course of our intra- day/jobbing activity which was in due compliance of all rules and regulation prescribed by regulator from time to time (Ref Regulation 3 (a) of PFUTP Regulations);

(v)While dealing in scrip of CMEL, we have not employed any manipulative or deceptive device or acted in contravention of the provisions of SEBI Act and Rules/Regulations made thereunder (Ref Regulation 3 (b) of PFUTP Regulations);

(vi) While dealing in scrip of CMEL, we have not employed any device, scheme or artifice to defraud anyone. Our buy and sell orders were meant for intra-day/jobbing which dehors any manipulative or fraudulent intent on our part (Ref Regulation 3 (c) of PFUTP Regulations):

(vii)We have not engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in

or issue of shares of CMEL. None of our trades were in contravention to the provisions of Rules/Regulations made thereunder (Ref Regulation 3 (d) of PFUTP Regulations);

(viii)As aforesaid, we repeat and reiterate that we have not bought, sold or otherwise dealt in shares of CMEL in fraudulent manner at all (Ref Regulation 4 (1) of PFUTP Regulations);

(ix) We have not indulged in any act which created false or misleading appearance of trading in scrip of CMEL. All our sale transactions were carried out on the trading terminals of the stock exchange in the normal and ordinary course of our trading/intra-day/jobbing activities and the same were within the parameters/guidelines of stock exchange (Ref Regulation 4 (2) (a) of PFUTP Regulations)

(x)We have not done any act or omission in the scrip of CMEL that amounts to manipulation of price of a security (Ref Regulation 4 (2) (e) of PFUTP Regulations);

v. ***Legal Submissions***

*(i)**Proceedings after long efflux of time is meaningless***

The present matter of the captioned SCN pertains to a period which is more than 7/8 years old from the date of transactions i.e. 2013-2014. However, no reasons are given for belatedly initiating present proceedings after an unexplained delay of more than 7/8 years. Hence, there is an inordinate delay in initiation of proceedings by SEBI. In this regard, we would like to draw your kind attention to the Orders of H B Stockholdings v. SEBI (Appeal No. 114 of 2012), Ashok Shivlal Rupani & Anr. v. SEBI (Appeal No. 417 of 2018), Mr. Rakesh Kathotia v. SEBI (Appeal No. 07 of 2016), Aditi Dalal v. SEBI (Appeal No. 143 of 2011) and State of Gujarat v. Patel Raghav Natha (AIR 1969 SC 1297).

(ii)Strict Proof required for a serious charge of fraud

We humbly submit that it is wholly untenable for any authority to arrive at a finding of 'fraud' solely on the basis that we dealt in scrip of CMEL. We would like to draw your kind attention to cases of R. K. Global v. SEBI (Appeal no. 158/2008 decided on 16.09.2010), Videocon International v. SEBI (2002) 4 CLJ 402 (SAT), Parsoli

Corporation v. SEBI (Appeal No 146/2011 decided on 12.08.2011) and Narendra Ganatra v. SEBI (Appeal No 47/2011 decided on 29.07.2011).

(iii)Compelling evidence required to charge someone of fraud

We would like to state that it is well-settled law that the taint of fraud cannot be charged merely on basis of preponderance of probability. In fact, compelling evidence should be brought on record by quasi-judicial entity for charging an entity for fraud. We submit that charge of SEBI (PFUTP) Regulation is serious charge and has to be backed by cogent evidence which is completely missing in present case. In this regard, we would like to draw your attention to the cases of Nandkishore Prasad v. State of Bihar (1978) AIR 1277, Bishundeo Narain & Anr v. Seogeni Rai & Anr (1951 AIR 280) and Ram Sharan Yadav v. Thakur Muneshwar Nath Singh (AIR 1985 SC 24).

9. In the greater interest of justice, trade log data of BSE for the scrip of CMEL for the IP which formed the basis of allegations levelled in SCN was provided to the Noticee No. 1 during instant proceeding. The said trade log data was sent to the Noticee No. 1 vide letter dated July 12, 2022, which was duly delivered to the Noticee No. 1. Thereafter, the Noticee No. 1 made further submission dated July 26, 2022 which is reproduced *inter alia* under:

   i. *At the outset, it is humbly submitted our transactions in CMEL were independent and totally in isolation to the transactions as carried out by other entities/person in scrip of CMEL. Pertinently, our sale of shares of CMEL was not concentrated but was spread across numerous months from March 2013 to July 2014. Hence, in view of the aforesaid, we state that no abnormality can be observed w.r.t. our trading in the scrip of CMEL.*

   ii. *The SCN has totally remained silent on the fact that we have bought as well as sold shares of CMEL during the investigation period. It is not that we have specifically sold shares only during the investigation period and more so during Patch - 2 of the investigation period.*

   iii. *In total we have bought 508774 shares and sold 508774 shares of CMEL during the investigation period. We have traded in patch - 1 as well, where* *there was price rise. It is pertinent to note that we have adopted similar trading pattern in Patch - 1 as well as in Patch - 2 of the investigation period. However, the allegation of price manipulation is only w.r.t. Patch - 2 of the investigation period.*

iv. *Our transactions in CMEL shares were at the then prevailing market price and had no impact on market equilibrium. Therefore, we fail to understand as to how our transactions are termed to be 'fraudulent' in nature. In our humble submission, since volume and price of CMEL was not affected due to our dealings in the said scrip, allegation of any manipulation in CMEL is not sustainable on facts and in law hence the same is erroneously made applicable in our case.*

v. *We state that we mainly carry out proprietary trades in various scrips as arbitrage/jobbing business through the dealers employed with us. During investigation period, we have traded in 850 scrips at BSE Cash, NSE Cash and NSE F&O.*

vi. *We have no nexus, connivance or collusion with CMEL or its Promoters, Directors, employees and any of its connected entities.*

vii. *CMEL scrip had been liquid throughout and highly traded. Thus, Appellant's execution of small trades and minor variation in price cannot disturb or impact the market equilibrium of CMEL shares on the Stock Exchange. The price and volume of CMEL share investigation period is not in much variance. Therefore, no adverse inferences ought to be drawn against us for carrying out trades which had no impact on the market.*

viii. *There is no investor loss or complaint in respect of our dealing in the scrip of CMEL.*

ix. *An arbitrage/jobbing transaction is normally carried out to take benefit of the intraday price fluctuations that happen in the scrips in the same exchange or price difference in the same scrip across exchanges. This is carried out only in the scrip which are reasonably liquid and have got a reasonable volume to enable the dealer to square off the position by end of the day.*

x. *That alleged negative LTP trades in patch – 2 are less than the high price during the day and high than the low price hence the quantity of LTP will not contribute to any artificial scenario and hence would not change the market equilibrium.*

xi. *The SCN has failed to take into account the totality of the facts and circumstances. For the amount of proprietary trades carried out by us, the amount of turnover generated by us, the alleged contraventions, even if they can be sustained, are quite insignificant; no harm or loss has been caused to any of the investors and the alleged contraventions are not material in nature and that in all the cases there has been substantial compliance with the provisions.*

xii. *We submit that we have executed the transactions in consonance with Rules & Regulations of the Respondent/Stock Exchange in the normal course of business.*

xiii. *W.r.t. allegation of execution of trades at variance to Last Traded Price (LTP), we respectfully submit that none of the trades are alleged to have registered a new high price or new low price. Hence, all trades were executed at a price which was already established / recorded in the market.*

xiv. *With respect to allegation of negative LTP trades; we would like to submit as under:*

- *With respect of allegation mentioned in the SCN w.r.t. Patch -2, we submit as under:*

Particulars	*Quantity of our sell trades during Patch - 2 of investigation patch- 2 of investigation period*	*Percentage of Overall sell by us during Patch*
Overall Sell	*460246*	*100*
Zero LTP	*344809*	*74.92*
Positive LTP	*69149*	*15.02*

Negative LTP	*46288*	*10.06*

- *During relevant time i.e. Patch - 2, our total sell trades of 3,44,809 shares (constituting 74.92% of our sell during relevant period) had no impact on LTP. This proves beyond reasonable doubt that we had no intent to manipulate price of CMEL (either upward or downward).*
- *Further, out of our total no. trades in CMEL i.e. 14,598 only 2,560 trades alleged to have violated PFUTP Regulations i.e., to say 12,038 trades did not violate PFUTP Regulations. Thus, out of my total no. of trades, 17.54% of trades are alleged to be below LTP and 82.46% trades are at LTP or above LTP.*
- *The aforesaid no. of shares and no. of trades which are alleged to be fraudulent i.e. contributing negatively to LTP becomes all the more minuscule when compared to overall shares traded and no. trades executed on the market during Patch - 2 of investigation period and the overall investigation period of the SCN.*
- *It can be clearly observed that the aforesaid shares sold are so insignificant that it can hardly be capable of disturbing the market so as to create artificial price/volume or misleading appearance of trading in said scrip.*
- *Hence, no adverse inferences be drawn against us in this regard.*

xv. *Further, w.r.t. the allegation of contributing negatively to LTP in Patch-2, we state that only 46288 shares out of our total sale of 460246 shares are alleged to have contributed negatively to LTP i.e. to say that 413958 shares were either traded at LTP or above LTP. Further, the aforesaid 46288 shares is very miniscule when compared to the total volume of trades executed during Patch - 2 i.e. 13237407 shares. The said shares i.e. 46,288 shares become all the more miniscule when compared to overall shares traded during the investigation period i.e. 39920170. Hence, no charge of any manipulation can be alleged against us. Further, on perusal of the trade log file, it is seen that* *none of the 3 parameters i.e. price, volume and time are in synchronization with the counter party trades. Besides, there is no relationship established with the counter party in the SCN.*

xvi. *W.r.t. allegation of execution of trades at variance to Last Traded Price (LTP), I respectfully submit that none of the trades are alleged to have registered a new high price or new low price. Hence, all trades were executed at a price which were already established / recorded in the market.*

xvii. *Our trades in Patch - 2, have also contributed to positive LTP also, hence the allegations that are our intention was to only negatively affect the price of the shares is not correct. Further, majority of our shares are traded at LTP. Hence, no adverse inferences be drawn against us in this regard.*

xviii. *It is pertinent to note that in Patch - 2 of the investigation period (price fall patch), the scrip of CMEL opened at Rs. 227/- with High of Rs. 259/-, Low of Rs. 175.05/- and closed at Rs. 208/-. From the aforesaid, it can be seen that there is no extreme price fluctuation in the scrip of CMEL during Patch 2 of the investigation period. Hence, no allegation of price manipulation can be alleged against us.*

xix. *It is pertinent to note that we have carried out arbitrage/jobbing transaction in CMEL as the scrip of CMEL was reasonably liquid and had reasonable volume to enable the dealer to square off the position by end of the day. We have on majority of the days of trading in CMEL (both during Patch - 1 and Patch 2) have squared off our position in CMEL during the day.*

10. On August 02, 2022, the hearing for Noticee No. 1 was conducted. Mr. Meit Shah attended the said hearing on behalf of the Noticee No. 1 as its Authorized Representative. During the hearing, the Authorized Representative reiterated the submissions made by the Noticee No. 1 in its replies to the SCN dated April 26, 2022 and July 26, 2022.

Noticee No. 2's reply and hearing

11. The Noticee No. 2 in its response to the SCN dated December 31, 2021, stated, *inter alia,* as under:

    i. *That Noticee had surrendered the membership of NSE and BSE long back in the month of March 2014. The email confirmation from both the Exchanges are attached herewith, we may further bring to your kind notice that Noticee had lastly traded on 21.03.2014 and 28.03.2014 on the platform of NSE and BSE respectively.*

    ii. *That present notice is highly belated as the trades in question are alleged to be executed 03.10.2013 to 28.03.2014. Thus, any action for the transactions done about 7 years backs is highly belated and does not call for any action.*

    iii. *That the Noticee further submits that the scrip mentioned in the SCN notice is a listed scrip on the platform of NSE and BSE. The trades were executed on the platform of NSE and BSE as per Rules and prescribed norms. In the entire notice, there is no mention of violation of any of the norms of trading by the Noticee. It is further pointed out that even the respective Exchanges had not served any Notice upon the Noticee for any such violation.*

    iv. *That observation in the notice under reply regarding contribution towards Negative LTP is farfetched and nothing but based upon assumption and presumption. The alleged pre investigation period is too small i.e. of one month only as compared to the alleged investigation period.*

    v. *That it is submitted that trades were duly by the undersigned are genuine trades done within the scope of Rules and Regulations of BSE and SEBI. It is submitted that observations regarding non-genuine trades, manipulative trades or manipulate the price is mis-founded and based upon assumptions and presumptions.*

    vi. *That it stated that trades at the platform of the Exchange are used to anonymous i.e. one party does not know the other contracting party. It is* *submitted that trades are settled at the platform of NSE and BSE by the mechanism setup by the respective Exchanges. It is further not the case that said platform is violated.*

12. For Noticee No. 2, hearing was conducted on July 12, 2022. In the said hearing, Mr. Lalit Gupta attended on behalf of the Noticee No. 2 as its Authorized Representative. In the course of hearing, the Authorized Representative of the Noticee No. 2 submitted *inter alia*:
    i. *Noticee has surrendered its membership of NSE and BSE in March 2014 and the SCN was issued after more than 7 years since the surrender of membership.*
    ii. *Noticee could not recall the reasons and details for the impugned trades which allegedly contributed to negative LTP.*
    iii. *Noticee had no intention to decrease price of the scrip of CMEL.*
    iv. *Exchanges did not convey any irregularities in their annual inspection of the Noticee.*

13. The trade log data of NSE for the scrip of CMEL for the IP which formed the basis of allegations levelled in SCN was sent to the Noticee No. 2 vide letter dated July 13, 2022 at its registered address which was confirmed by the Noticee No. 2. However, despite two attempts through SPAD, the same could not be delivered to the Noticee No. 2. Subsequently, the said trade log data forming the basis of the SCN were provided to the Noticee No. 2 vide online mode on November 15, 2022. Noticee No. 2 acknowledged the receipt of the said trade logs vide email dated November 15, 2022. Noticee No. 2 vide email dated November 20,2022 requested for further time to make his submissions. The Noticee No. 2 was given time till November 28, 2022 to make further submissions, if any, but the Noticee No. 2 did not file any submission.

14. I note that the principles of natural justice have been adhered to.

15. Accordingly, in the light of the allegations contained in the SCN, the submissions of the Noticees in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

ISSUES FOR CONSIDERATION

16. The issues arising for consideration in the instant proceedings are:

Issue No. I. Whether Sections 12A (a), (b) and (c) of the SEBI Act and Regulations 3 (a), (b), (c) and (d) and 4 (1), (2) (a) and (2)(e) of the PFUTP Regulations 2003 were violated by Noticees?

Issue No. II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15HA of the SEBI Act?

Issue No. III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

17. At this juncture, it is relevant to note the provisions of law applicable to the present proceeding which are provided below:

SEBI Act

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

*"***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;

(e)any act or omission amounting to manipulation of the price of a security;"

PRELIMINARY OBJECTION RAISED BY NOTICEES

18. Before going into the merits of the case, I would like to address the preliminary objection of the Noticees, specifically Noticee No. 1 who, *inter alia*, submitted that "*the issuance of SCN after reasonable period of time is bad in law and deserves to be withdrawn at the threshold itself*". In this context, I note that the Noticee No. 1 has referred to judgements of Hon'ble Securities and Appellate Tribunal (Hon'ble SAT) in the matters of **H B Stockholdings v. SEBI** (Appeal No. 114 of 2012), **Ashok Shivlal Rupani & Anr. v. SEBI** (Appeal No. 417 of 2018), **Mr. Rakesh Kathotia v. SEBI** (Appeal No. 07 of 2016) and **Aditi Dalal v. SEBI** (Appeal No. 143 of 2011).

19. In respect of the aforementioned contention of the Noticees, I note that even though SEBI Act has not prescribed any period of limitation for issuance of SCN, it has now become well settled that SCN has to be issued within reasonable time period. In this context, I find it pertinent to rely on the decision of Hon'ble Supreme Court in the case

of **Adjudicating Officer, SEBI v. Bhavesh Pabari (2019) SCC Online SC 294**, wherein it was held that: *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

20. In the present case, I note that the instant proceeding pertains to suspected price manipulation by the Noticees. In this regard, based on the material available on record, I note that the investigation in the scrip of CMEL was initiated on January 14, 2016 and was undertaken for a period starting from February 01, 2013 to October 22, 2014. The investigation involved a total 87 suspected entities/individuals, whose trading patterns were analyzed. I also note that the analyses were done in respect of three different time periods i.e. patch 1, 2 and 3 of IP. Further, email communication was done by concerned department of SEBI with NSE and BSE in respect of the trade logs of all the suspected entities. Further, based on the record available, it is also seen that the concerned department had carried out investigation in trading activities of 20 other scrips including the scrip of CMEL during the relevant period. Subsequently, the investigation was concluded in February 2021. After the conclusion of the investigation, Mr. Suresh B Menon, erstwhile AO was appointed as the AO vide communique dated February 18, 2021, and the SCNs were issued on March 23, 2021. I also note that the Noticee No.1 has not made any submissions regarding prejudice caused to it, if any, due to the alleged delay in issuance of SCN.

20.1. The Noticee referred to the judgment of Hon'ble SAT in the matter of **Aditi Dalal v. SEBI** (Appeal No. 143 of 2011) in his submissions. The relevant extracts of the aforementioned judgement are reproduced hereunder:

"One of the reasons why the impugned order in this set of three appeals needs to be modified and the appellants given only a warning is because of the inordinate

delay in issuing directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992.

…

Apart from the inordinate delay, we are otherwise satisfied that the merits of the case also require that the appellants to be only warned in the circumstances of the present case." (Emphasis supplied)

20.2. Further, I note that the Hon'ble SAT in the matter **H B Stockholdings v. SEBI** (Appeal No. 114 of 2012), which has been relied upon by the Noticee No. 1, has held that *"At the outset,* ***we make it clear that delay in itself may not be fatal in each and every case."*** (Emphasis supplied)

21. In this background, in the absence of any prejudice caused, the contention of the Noticees as already mentioned above cannot be accepted.

FINDINGS

22. Coming to the main issue at hand, in the SCN, it is alleged that the Noticees by repeatedly placing sell orders of miniscule quantity (1- 9 shares) below LTP created a false and misleading appearance of trading in the scrip of CMEL and manipulated the price of the scrip of CMEL during patch 2 of IP ("**relevant period**").

23. In this regard, I note that in the relevant period i.e., from October 03, 2013, to July 30, 2014, there was a decrease in the price of the scrip of CMEL from Rs. 226 to Rs. 208.35 with a net LTP of Rs. -17.45 and a market negative LTP of Rs. -25042.50 on NSE.

24. I also note that the Noticees were the top two sellers in the scrip of CMEL during the relevant period.

25. I observe that in scrip of CMEL during the relevant period, Noticee No. 1 had a negative LTP contribution of Rs -1884.15(12.28% of market negative LTP) on BSE and Noticee No. 2 had a negative LTP contribution of Rs -1693.30 (6.76% of market negative LTP) on NSE. From the analysis of the investigation report, the trading pattern of the Noticees pertaining to the execution of sell orders which contributed negatively to the LTP of the scrip of CMEL during the relevant period is tabulated below:

Table 1: Trading Pattern of Noticee No. 1 on BSE

Sell order quantity	No. of trades	Traded quantity	Negative LTP Contribution	% to Market -ve LTP
1	971	971	-1190.30	7.76
2	27	48	-22.70	0.15
3-5	66	196	-40.35	0.26
6-9	21	113	-9.25	0.06
10 and above	1475	44960	-621.55	4.05
Total	2560	46288	-1884.15	12.28

Table 2: Trading Pattern of Noticee No. 2 on NSE

Sell order quantity	No. of trades	Traded quantity	Negative LTP Contribution	% to Market -ve LTP
1	1338	1338	-953.1	3.81
2	130	211	-65	0.26
3-5	427	1275	-204.10	0.82
6 -9	92	446	-37.75	0.15
10 and above	1735	95,629	-433.35	1.73

Total	3722	98899	1693.3	6.76

26. I observe the following regarding the trades executed by the Noticees which contributed to negative LTP in the scrip of CMEL during patch 2 of the IP:

    26.1. Out of the total 2560 negative LTP trades executed by Noticee No. 1 on BSE in the scrip of CMEL in the said period, 1085 trades i.e., 42.38% comprised of minuscule quantities (1-9 trades). Along the same line, out of the total 3722 negative LTP trades executed by Noticee No. 2 on NSE, 1987 trades i.e., 53.38% comprised of minuscule quantities (1-9 trades).

    26.2. Noticee No. 1 contributed Rs. -1262.6 to negative LTP i.e., 8.23% of total market negative LTP in the scrip of CMEL during patch 2 of the IP, by placing sell orders ranging between 1-9 shares in the aforesaid 1,085 instances. Noticee No. 2 contributed Rs. -1259.95 to negative LTP i.e., 5.03% of total market negative LTP during patch 2 of the IP, by placing sell orders ranging between 1-9 shares in the aforesaid 1,987 instances.

    26.3. Noticee No. 1 had placed such sell orders in 1085 instances, despite buy orders being available for a larger quantity in the range of 1 to 2500. Similarly, Noticee No. 2 had placed sell orders ranging between 1-9 shares in the said 1987 instances, despite buy orders being available in the range of 1 to 5000 shares.

27. In this context, I note that the Noticees had placed repetitive sell orders of miniscule quantity (1085 sell orders by the Noticee No. 1 on BSE and 1987 sell orders by the Noticee No. 2 on NSE) below the LTP in the scrip of CMEL. Here, I refer the following decisions of the Hon'ble SAT:

    27.1. In **BP Comtrade Pvt. Ltd. v. SEBI** (Appeal No. 189-192 of 2020 order dated November 20, 2020), the was held that *"we are of the considered view that the nature / pattern of trading adopted by the appellants is not in the nature of what a rational investor would do.* ***A large number of sell orders were placed repeatedly on several trading dates at less than the LTP; it is illogical.*** *Therefore, the contention of the appellants that it was following momentum* *trading has no meaning as by placing a large number of orders below the LTP the appellants themselves were creating a momentum. Of course, we notice that a number of orders of the appellants were placed on or marginally above LTP, but that is the rational behaviour expected from a seller and no fault can be found for SEBI in not considering such trades as violative of the PFUTP Regulations. Appellants submission of a small list of trades in which they impacted LTP both positively and negatively on a few days also does not help the appellants since the overwhelming evidence is clearly towards placing sell orders below the LTP.* ***When such trades are done on a large number of occasions, such as 166 times, one cannot but come to the conclusion that such trades are manipulative in nature."*** (Emphasis supplied)

27.2. In **Shreenath Finstock Private Limited v. SEBI** (Appeal No. 186 of 2021 order dated March 22, 2021) it was held that *"Having heard the learned counsel for the parties and having perused the documents placed before us we are of the considered view that the pattern of trading conducted by the appellants clearly establishes an attempt to manipulate the price of the scrip of Nutraplus. While it can be argued that no law prevents a trader from placing orders for one share, placing such orders thousands of times repeatedly, as in the instant case, is clearly manipulative in nature****. A few such trades occasionally may not fall within the ambit of such manipulation as under Section 12A(a), (b), (c) of SEBI Act, 1992 and the PFUTP Regulations. But by no stretch of imagination, we can extend that benefit of doubt to the appellants herein who have indulged in such single share trades a large number of times (4497, 2446 and 1765 etc) times during a limited period. Therefore, irrespective of the connection by the appellants and others or providing exit to only three preferential allottees etc. partly only these appeals do not have any merit. Nor these issues are very relevant when it is clear that the pattern of trading conducted by the appellants were***

clearly of manipulative nature squarely falling under the provisions of the PFUTP Regulations." (Emphasis supplied)

28. Further, I note that the Noticees had placed these miniscule sell orders even when buy orders of higher quantities were available in the stock exchange for the scrip of CMEL. In this regard, I note the following decisions of the Hon'ble SAT:

    28.1. In the matter of **Tanuj Khandelwal v. SEBI** (Appeal No. 357 of 2020 order dated January 4, 2021) it was held that *"We also find that the appellant had no bonafide intention to sell because inspite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons."*

    28.2. In the matter of **Mrs. Kalpana Dharmesh Chheda v. SEBI** (Appeal No. 454 of 2019 order dated February 25, 2020), it was held that *"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.* ***The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher****. This behavior cannot be justified in terms of normal rational expectations of a seller."* (Emphasis supplied)

29. In light of the foregoing reasoning and judgments of the Hon'ble SAT, I note that the peculiar trading pattern adopted by the Noticees during patch 2 of the IP shows that such trades of miniscule quantity were manipulative in nature.

<u>Contention of Noticees</u>

30. I note that the Noticees, in their reply, have submitted various grounds as their defence for executing the aforesaid trades. I am recording my findings and observations on each of the abovementioned submissions in the following paragraphs.

i. Trades not considered holistically

31. The Noticee No. 1 has contended that its trades have not been considered holistically. It has been stated that there was a substantial number of other trades executed by Noticee No.1 in patch 2 of the IP which resulted in a positive LTP contribution of Rs. 987. I note that Noticee is trying to seek exoneration under the plea of having executed several other trades, some of which had positively contributed to LTP.

In this context, it is pertinent to note that Hon'ble SAT in the case of **BP Comtrade Pvt. Ltd. v. SEBI** (*supra*) held as follows:

"Of course, we notice that a number of orders of the appellants were placed on or marginally above LTP, but that is the rational behaviour expected from a seller and no fault can be found for SEBI in not considering such trades as violative of the PFUTP Regulations. Appellants submission of a small list of trades in which they impacted LTP both positively and negatively on a few days also does not help the appellants since the overwhelming evidence is clearly towards placing sell orders below the LTP. When such trades are done on a large number of occasions, such as 166 times, one cannot but come to the conclusion that such trades are manipulative in nature."

I note that the allegations at hand are specific to the trades indulged in by the Noticee in minuscule quantity resulting in negative LTP contribution to the scrip of CMEL. In view thereof, I hold that the trading pattern adopted by Noticee No.1 through 1085 trades which contributed a negative LTP of Rs -1884.15 in the scrip is manipulative in nature and therefore the contention of Noticee No. 1 cannot be accepted.

ii. **Trades which contributed to the negative LTP in the scrip constitute only a small portion of the total trades executed by Noticee No.1**

32. Noticee No. 1 has submitted that trades which contributed to the negative LTP in the scrip constitute a small portion of the total trades executed by him during patch 2 of the IP in the scrip of CMEL.

I note that the Noticee No. 1 admitted to the fact that out of the total shares traded, it had executed 10.05% of shares below the LTP. I further note that the findings of the investigation also brought out that in 1085 instances Noticee No.1 placed sell order in miniscule quantities (1-9 shares) and which had a contribution of negative LTP in the scrip. In this regard, I observe that even if a single trade is executed with a manipulative intent, it cannot be overlooked as it affects the normal trading mechanism and interests of genuine investors.

I find it pertinent to mention that an order was passed on February 28, 2020 by the Whole Time Member, SEBI ref no: WTM/MB/IVD/ID5/7095 /2019-20 against Noticee No.1 in the matter of alleged price manipulation of a scrip vis-à-vis number of trades which contribute to price manipulation. Further, the said order was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated May 26, 2022 (in Civil Appeal Nos. 4262-4263 of 2022) in the said matter affirmed the view that "*Thus, in view of the observation of Hon'ble SAT, I am of the view that manipulation in the scrip can be done by single share order placement method also, which has precisely happened in the present matter, in such a scenario, volume created by such trades/self-trades in the scrip is irrelevant/immaterial.*"

In view of the above, the submissions of the Noticee No.1 that only a small portion of the total trades executed by it had negative LTP contribution and therefore did not amount to price manipulation, cannot be accepted.

iii. **No connection with counterparties**

33. The Noticees have contended that as they do not have any relationship/connection with the CMEL and its promoter, director and /or KMP or with any of the counterparties, the instant proceeding against them is liable to be disposed of.

In this context, I note that the investigation has not brought out any connection between the Noticees and the counterparties. However, it is a fact that the Noticees have placed sell orders in smaller quantities despite having buy orders available in larger quantities.

In this context, I find it pertinent to refer to the judgment of the Hon'ble SAT in the matter of **Tanuj Khandelwal v. SEBI** (supra), which, *inter-alia*, held as follows:

> *"7. Having heard the learned counsel for the appellant and upon perusal of the impugned order we are of the opinion that the case of the appellant is distinguishable and consequently the decision in M/s. Nishith M. Shah HUF (supra), Rajesh Marchya (supra) and Mr. Jayant Indulal Sethna (supra) cases are not applicable and are distinguishable on facts. We find that except on three occasions the appellant only sold one share at a time on a daily basis. This trading pattern created misleading appearance with intention to manipulate the market if not the price.* ***Thus, even if there is no connection with the buyer the trading pattern shows a concerted effort to manipulate the market and therefore, we are of the opinion that the appellant was not acting as a genuine seller. We also find that the appellant had no bonafide intention to sell because in spite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons."*** (Emphasis supplied)

Therefore, this contention of the Noticee cannot be accepted.

iv. **None of the alleged trades in question has resulted in a new high price or new low price for the scrip of CMEL**

34. Noticee No.1 contended that none of the alleged trades in question has resulted in a new high price or new low price for the scrip of CMEL and hence, the trades were executed at a price which was already established/recorded in the market. The trading patterns of the Noticees wherein multiple sell orders were placed repeatedly on several trading dates at a price less than the LTP do not suggest that they were genuine trades. Therefore, the contentions of the Noticees cannot be accepted.

v**. Need to exclude trade of one share from the allegation**

35. Regarding Noticee No. 1's contention that its sale of shares comprising of 1 quantity where the buy quantity of share available in the market was only 1 should be excluded from the allegation, I note that the issue at hand pertains to repetitive selling of the miniscule quantity of scrip of CMEL below the LTP in the patch 2 of IP. As already discussed in previous paragraphs, the findings of the investigation brought out that the trading pattern displayed by the Noticee No. 1 i.e. placing sell orders in miniscule quantity in the scrip of CMEL had negatively contributed to the LTP in the scrip.

36. Therefore, the submissions of the Noticee No.1 in this context does not absolve it from the findings of the investigation.

vi. **Similar pattern adopted in patch 1 of IP**

37. The Noticee No. 1 has contended that it had adopted similar trading pattern in patch 1 and 2 of the IP. Despite that, the allegation of price manipulation against him has been made only for patch 2 of the IP.

    In this regard, I note nothing has been brought in the findings of the investigation or no material has been presented before me which allege price manipulation by the

Noticee No.1 during the patch 1 of the IP. I further note that except for making a submission/general statement, the Noticee No.1 has not submitted any material supporting his contentions. In view the above and in the context of allegations made in the SCN, I note that the consideration of the said contention of Noticee No.1 does not arise.

vii. Jobbing transaction

38. Noticees i.e. Noticee No.1 and Noticee No.2 have contended that their transactions in question were in the nature of jobbing/arbitrage transactions and therefore submitted that such trades are not manipulative. I note that trading below the LTP is not a violation of securities laws per se, but in the facts and circumstances of the matter where the said Noticee's frequent and consistent trading in small quantities contributed to negative LTP in the scrip of CMEL, leads one to reject the argument of the Noticees that they have traded in the normal course of trading or jobbing. Hence, this contention of the Noticees cannot be accepted.

39. I note that in its written submissions, Noticees have also referred to and quoted extracts from various orders passed by the Hon'ble Supreme Court, Hon'ble SAT and SEBI. These orders and judgments have been dealt with hereunder:

i. Orders by SEBI

39.1. I note that Noticee No. 1, has referred to the orders passed by SEBI in the matters of **First Financial Services Ltd** (WTM/SR/SEBI/EFD-DRA3/ 71/09/2017), **Pine Animated Limited** (SEBI/WTM/MPB/EFD-1-DRA-III/28/09/2017), **Kailash Auto Finance Limited** (SEBI/WTM/MPB/EFD-DRA-I/31/2017) and **Mishka Finance and Trading Limited** (SEBI/WTM/MPB/EFD-1-DRA-III/50/2017), to substantiate his contentions.

On perusal of the aforesaid orders, I find that the said orders emanate from a different set of factual matrices as in such cases the investigation found no adverse evidence in respect of violation of provisions of the PFUTP Regulations. Hence, I hold that the said orders are not relevant to the instant proceedings.

ii. Strict proof required for serious charge of fraud and Compelling evidence required to charge someone of fraud

39.2. I note that Noticee No. 1, placed reliance on the following orders passed by the Hon'ble Supreme Court and Hon'ble SAT to substantiate his arguments. Judgments of Hon'ble Supreme Court in **Nandkishore Prasad v. State of Bihar** (1978 AIR 1277) **Bishundeo Narain & Anr v. Seogeni Rai & Anr** (1951 AIR 280) **Ram Sharan Yadav v. Thakur Muneshwar Nath Singh** (AIR 1985 SC 24) and judgements of Hon'ble SAT in **R. K. Global v. SEBI** (Appeal no. 158/2008 decided on 16.09.2010), **Videocon International v. SEBI** (2002) 4 CLJ 402 (SAT), **Parsoli Corporation v. SEBI** (Appeal No 146/2011 decided on 12.08.2011) and **Narendra Ganatra v. SEBI** (Appeal No 47/2011 decided on 29.07.2011)

The Noticee No.1 quoting the said judgments, stated the following:

" We humbly submit that it is wholly untenable for any authority to arrive at a finding of 'fraud' solely on the basis that we dealt in scrip of CMEL"

" We would like to state that it is well-settled law that the taint of fraud cannot be charged merely on basis of preponderance of probability. In fact, compelling evidence should be brought on record by quasi-judicial entity for charging an entity for fraud"

In this context, I find it pertinent to refer to the judgment of the Hon'ble Supreme Court in **SEBI v. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, wherein, it was held as follows:

"6. 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.

….

14. To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities. *Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in Securities and Exchange Board of India Vs. Kishore R. Ajmera(supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified."* (Emphasis supplied)

I further note that the Hon'ble Supreme Court of India in **SEBI v. Kishore R Ajmera**, AIR 2016 SC 1079 held that "… *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*".

In this background, I note from the material on record that the Noticees, in the patch 2 of IP, were constantly placing sell orders in minuscule quantities in the scrip of CMEL even when there were buy orders of larger quantities available on the trading platform during the patch 2 of IP. The Noticees have indulged in such minuscule trade i.e. 1085 times on BSE by Noticee No. 1 and 1987 times on NSE by Noticee No. 2, during a limited period. Further I note that Noticee no.1 has not adduced any justifiable reasons for executing such trades of miniscule quantity. Given the abovementioned observations and findings, I note that the pattern and the nature of trading adopted by the Noticees cannot be justified.

40. In light of the observations made in the paragraphs above, it is clearly established that the trading pattern of the Noticees which involved placing of repeated sell orders, for negligible quantities, below the LTP is manipulative and fraudulent in nature.

41. Therefore, by executing such trades, the Noticees have violated the provisions of Section 12A(a), (b), (c) of the SEBI Act and Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (2)(e) of the PFUTP Regulations, 2003.

42. As it has been established that the Noticees have violated Section 12A(a), (b) and (c) and Regulations 3(a), (b), (c) and (d), 4(1), (2) (a) and (2)(e), the said Noticees are liable for payment of a monetary penalty in terms of Section 15HA of the SEBI Act. The text of the above said Section 15HA of the SEBI Act is reproduced below for reference: -

SEBI Act

*“***15HA. 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 of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

43. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard: -

SEBI Act

“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.”

44. I have taken note of the fact that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees or the loss suffered by investors because of such fraudulent trades executed by the Noticees.

45. I find that orders have been passed aginst Noticee No. 1 for violations of the provisions of SEBI Act, 1992 and PFUTP Regulations. I also consider that there is nothing on record to show that Noticee No. 2 was subjected to any other proceedings by the SEBI before the instant proceeding.

46. I note that the fraudulent trade practices adopted by the Noticees have affected the normal price discovery mechanism in the securities market and have prejudiced the interest of the investors. Such manipulative trades by the Noticees have violated the fundamental tenets of market integrity. I further note that both the Noticees were registered intermediaries during the relevant period. Registered intermediaries have better knowledge of functioning of the securities market and are expected to follow the securities laws in letter and spirit. Therefore, such fraudulent acts by the Noticees cannot be condoned.

47. I have taken note of various mitigating circumstances available on record. I note that the investigation has not established any connection between the Noticees and counterparties. I also note that the Noticee No. 2 has submitted that it has surrendered the membership of BSE and NSE in 2014.

48. I have considered the aforesaid factors while arriving at the penalty to be imposed on the Noticee.

ORDER

49. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, hereby impose the following penalties on the Noticees under Section 15HA of the SEBI Act, 1992 for the violation of the aforesaid provisions of laws:

Name of the Noticee	Violations established	Penalty
Noticee No.1/ MBL & Company Limited	Section 12A(a), (b), (c) of the SEBI Act and Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (2)(e) of the PFUTP Regulations, 2003.	Rs. 6,00,000/- (Rupees Six Lakh Only)
Noticee No.2/Asiatic Portfolio Limited	Section 12A(a), (b), (c) of the SEBI Act and Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) and (2)(e) of the PFUTP Regulations, 2003.	Rs. 6,00,000/- (Rupees Six Lakh Only)

50. I am of the view that the said penalty is commensurate with the violations to have been committed by the Noticees.

51. Noticees shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to Government of India*", payable at Mumbai or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

52. The said confirmation of e-payment made in the format as given in the table below should be sent to "The Division Chief, EFD1-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

53. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: December 30, 2022 **N HARIHARAN**

Place: Mumbai **ADJUDICATING OFFICER**