BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/2021-22/15508

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

In respect of:
Mr. Sunil Purohit

In the matter of TASC Pharmaceuticals Ltd

BACKGROUND

1. SEBI had passed Adjudication order bearing reference no. NB/AO-15/2010 dated March 31, 2010 in respect of Mr. Sunil Purohit (hereinafter referred to as "**Noticee"**) in the matter of Tasc Pharmaceuticals Ltd (hereinafter referred to as **"TASC/ Scrip"**) imposing penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 15HA of the SEBI Act upon Noticee for violations of regulations 4(1), 4(2) (a), 4(2) (b) and 4(2) (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations"**).

2. The Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), vide order dated March 7, 2016, while setting aside the adjudication order dated March 31, 2010 restored the matter to the file of adjudicating officer (hereinafter referred as "**AO**") for passing fresh order on merits and in accordance with the law against the Noticee. The SAT observed that:
"In the light of judgment of the Apex Court in the case of SEBI vs Roofit Industries Ltd, reported in (2016) 194 Comp. Cas. 186 (S.C.) counsel for the parties state that the orders impugned in the respective appeals be quashed

and set aside and the matters be restored to the file of the adjudicating officer for passing fresh order on merits and in accordance with the Law. Accordingly, orders impugned in the said respective appeals are quashed and set aside by restoring the matters to the file of the adjudicating officer so as to pass fresh order on merits and in accordance with the law. All contentions of both parties are kept open"

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to aforementioned order of SAT the undersigned was appointed as adjudicating officer vide Order dated February 01, 2021 to inquire into and adjudge under Section 15HA of SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated to the undersigned by communiqué dated February 5, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing reference no. CFD/DCR/NB/BV/184846/2009 dated November 24, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('hereinafter referred to as "**Adjudication Rules"**), to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA of the SEBI Act for the alleged violations of regulations 4(1), 4(2) (a), 4(2) (b) and 4(2) (g) of the PFUTP Regulations.

5. SEBI conducted an investigation and observed that Noticee has traded thorugh the broker M/s Ajmera Associates P Ltd, in the scrip of TASC during the period September 17, 2003 to December 05, 2003 (hereinafter referred to as **"Investigation Period**").

6. SCN alleged that during investigation period, Noticee, M/s Mansukh Stock Brokers Ltd, Mr. Adolf Pinto, M/s DPS Shares & Securities P Ltd, M/s NCJ Shares & Stock Brokers Ltd and M/s Bharti Thakkar India Securities P Ltd(Hereinafter referred to as **"Group")** has entered into circular trades for 2,19,935 shares amongst themselves which constituted 4.89% of the total

volume traded on exchange during IP. The details of circular/reversal trades among the Group entities in BSE are given below:

Name of the broker/(Subbroker)	Name of the clients	No of Days Traded During the period/ No of days Done circular Trading	Circular reversal buy Qty (No of Orders)	Circular trading % to market buy	Circular/reversal sell Qty (No. of Orders)	Circular trading % to market sell	Gross circular Qty(% to total trading of broker)	% of circular trading by client to total market (buy+sell)
Uttam Financial Services Ltd.	Own	44/40	85050(45)	2.35	58975(25)	1.63	144025	1.61
Bharti Thakkar India Securities Pvt. Ltd.	Prem Thanvi	42/40	63935(39)	1.77	75500(42)	2.09	139435(24.12)	1.55
Adolf Pinto	Own	16/16	25150(13)	0.69	24550(11)	0.68	49700(59.06)	0.55
Ajmera Associates Pvt Ltd.	**Sunil Purohit**	**11/11**	**154100(10)**	**0.42**	**20250(14)**	**0.56**	**35650(40.95)**	**0.39**
NCJ Shares and Stock Brokers Ltd.	Own	30/11	15000(13)	0.41	20260(16)	0.56	35260(15.37)	0.39
DPS Shares & Securities Pvt. Ltd.	Jignesh Shah	12/11	15400(8)	0.42	20400(11)	0.56	35800(70.89)	0.40
Total circular/reversal trading by group			**219935**		**219935**			**4.89**
Total trading in scrip (IP)			**36097140**		**3609710**			

a. From the above table, it is referred that the circular trading during the period exhibited patterns as A>B>C>D>E>F>A or A>B>D>A or A>C>E>A or A>D>E>A and other combinations of these patterns.

b. Further, during IP time difference between buy orders and sell orders for the trades executed by the Noticee and others in the group was within the range of 0 to 60 seconds. Therefore, it is alleged that these trades, prima facie, tantamount to synchronized trades.

c. In the view of above, it is alleged that Noticee had created artificial volumes in the TASC by placing orders on your own account through circular trades, which influenced the price indirectly.

7. In the view of the above it has been alleged that Noticee had acted in concert with other entities in the group to create artificial volumes in the TASC which led to manipulative, fraudulent and unfair trades practice. Thereby, Noticee violated regulations 4(1), 4(2)(a), 4(2)(b), 4(2)(g) of PFUTP regulations.

8. Pursuant to the aforementioned order of Hon'ble SAT dated March 7, 2016 and the consequent appointment of the undersigned as AO, Noticee was granted an opportunity to file a reply within 14 days by the letter dated July 15, 2021. Subsequently, *vide* letter dated August 02, 2021, Noticee sought inspection of documents relied upon and fresh opportunity of hearing. Accordingly, Noticee was given opportunity of inspection by the letter dated August 13, 2021. In this regard, I note that inspection of only those documents, which have been relied upon in the matter, shall be provided.

9. *Vide* email dated September 17, 2021, Noticee sought KYC documents, price volume data, trade log data, order log data and copy of the investigation report along with annexures. In this regard, I note that inspection of only those documents, which have been relied upon and relevant to the Noticee in the present matter, has been provided. Pursuant to this, Noticee, *vide* email dated September 20, 2021, decided not to avail the opportunity of inspection since AO is relying upon only those documents which enclosed with the SCN and which had already been provided to the Noticee. *Vide* email dated September 22, 2021, Noticee was granted an opportunity of hearing on October 26, 2021. Also, Noticee was also given an opportunity to file a reply, if any, latest by October 15, 2021. Accordingly, *Vide* letter dated October 20, 2021, Noticee filed his written submission.

10. The hearing was conducted on October 26, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, the

authorized representative of the Noticee appeared before me through video conference and made submission on the lines of the letter dated October 20, 2021.

11. The key submissions of the Noticee has been summarised below:-

a. Noticee contended that there is inordinate unexplained delay in the adjudication proceedings. The alleged trade belong to the year 2003. For the purpose of present adjudicating proceeding communication dated May 06, 2021 has been issued after an inordinate delay of more than 5 years from the date of aforesaid Hon'ble SAT's order dated March 07, 2016. This caused a high prejudice to the case of the Noticee. In this regard reliance has been placed on

    i. Hon'ble SAT order:

        1. Ashok Shivlal Rupani vs SEBI (Appeal Nos 417 and 440 of 2018, Date of Decision: August 22, 2019)
        2. Rajeev Bhanot vs SEBI (Appeal No. 396/2018, date of decision July 09, 2021)

    ii. Hon'ble Supreme Court:

        1. SEBI vs Ashok Shivlal Rupani (Civil Appeal No. 8444-8445 of 2019, order dated November 15, 2019).

b. Noticee submitted that the request for inspection of trade log data, order log data, copy of investigation report has not been acceded to. Therefore, natural justice has not been followed in the present matter. In this regard, reliance has been placed on various orders of SAT:

    i. Mr. Vikas Gourihar Narnavar vs Adjudication Officer, SEBI (Appeal No. 281 of 2009, Date of Decision June 15, 2010)
    ii. Dhirajbhai vs. Sanghvi HUF vs SEBI (Appeal No. 414 of 2018, Date of Decision : February 19, 2020)

c. In the said Order, the Hon'ble SAT had not given any liberty to SEBI that SEBI may issue the Notice of hearing/ communication after a delay of 5 years. This highly prejudices the case of the Noticee as justice delayed is justice denied. For this purpose, Noticee placed reliance on the various order of SAT. They are mentioned as follow:

i. Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018, dated August 22, 2019).
ii. Rajeev Bhanot vs SEBI (Appeal No. 396/2018, dated July 09, 2021)

d. Noticee submitted that in the matter of Mr. Ashlesh Gunvantbhai Shah (Appeal No. 169, 171, 172, 231, 264, 266, and 277-281 of 2019, Order dated January 31, 2020), SAT specifically deals with the allegation of violation of PFUTP regulations, and drop the allegation made in the SCN. As per Noticee present case is no different from for the case dealt in aforesaid orders.

e. Noticee denied that he had executed any trade in the scrip of TASC. Noticee stated that he is unable to recollect that he had ever opened any trading accounts with Southern Shares and Stock Ltd and Ajmera Associates Pvt. Ltd., and requested to enquire the KYC documents and Ledger Accounts with the Member Broker so that it can be ascertained that he had executed any trades in any scrip with the said Brokers. Noticee reserves his right to cross examine the said Member Broker during the course of the proceeding. In the year 2015, when Noticee came to know about passing of several Orders against him by SEBI, Noticee lodged a Police Complaint before the Senior Inspector, MRA Marg Police Station against the Brokers.

f. Noticee pointed out some discrepancy in the trade data provided along with SCN. Also, SCN alleged large number of synchronized/circular/reversal trades by Noticee but does not contain any detail or even summary of trades allegedly carried out by the Noticee. For this purpose, Noticee placed reliance on SEBI adjudicating officer's order dated June 30, 2021 in the matter of M/S KRBL Ltd.

12. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS:-

13. The issues that arise for consideration in the present case are :
    a. Issue No. I: Whether Noticee is in violation of Regulation 4(1), 4(2) (a), 4(2) (b) and 4(2)(g) of the PFUTP Regulations?
    b. Issue No. II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?
    c. Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?

Issue No. I Whether Noticee is in violation of Regulation 4(1), 4(2) (a), 4(2) (b) and 4(2) (g) of the PFUTP Regulations?

14. Before moving forward the relevant clauses of PFUTP Regulations are reproduced as under:

    PFUTP Regulations:

    4. Prohibition of manipulative, fraudulent and unfair trade practice

    (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;

    (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

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

15. Before considering the issue on merits, there is a preliminary issue of delay raised by the Noticee. It is a matter of fact that the matter has arisen at present subsequent to the order of Hon'ble SAT dated March 7, 2016. I note that even though impugned trades took place in the year 2003, an order was passed by SEBI on March 31, 2010. This was subsequently remanded to SEBI on March 7, 2016. Further, the appointment of the undersigned has been communicated by the *vide* communique dated February 5, 2021. Therefore, I am of the view that, as seen from material before me, this delay is attributable to procedural issues. However, I note that there is no limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a SCN. Further, I note that Noticee failed to show that what prejudice has been caused to him due to the delay in the issuance of SCN. For this purpose reliance has been placed on the order in the matter of **M/s. Adamina Traders Private Limited vs SEBI** (Appeal No. 331 and 366 of 2020, dated November 12, 2020), wherein SAT held that "*We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside*".

16. In the view of the above, I am of the view that the preliminary objection of the Noticee related to delay is not tenable. I note that it would not be appropriate to dismiss violation of law merely because of delay in proceedings with respect to the present adjudication proceedings.

17. Noticee contended that he has not been provided the original trade log and order log which contain the details of the alleged trades by Noticee in the scrip of TASC. In this regard, I note that complete original trade log and order log pertaining to Noticee's transactions in the scrip of TASC are not available on record. Therefore, efforts were made to obtain the relevant trade log and order log from BSE. BSE, *vide* its email dated December 24, 2021, informed that the order log pertaining to the investigation period is not available in their system. Trade log has been sent by the BSE *vide e*mail dated December 24,

2021 which is the same as provided in the form of annexure to the Noticee. However, I note that when trade log, provided by the BSE, has been compared with annexure send along with the SCN, I found that there are discrepancies in the document supplied to Noticee in the form of annexure.

18. I note that few stock broker and their clients including Noticee alleged to have created artificial volume through circular and synchronized trades. I note, from the material available on record, that no details of any connection amongst the entities have been established on record. Further, I note that in the absence of specific information of the alleged transactions undertaken by the Noticee, it is difficult to arrive at a conclusion as to how many shares were traded by Noticee and how much volume was generated, which was alleged to have contributed to synchronized/circular/reversal of trades. I note that, it is not possible to state with certainty that Noticee had executed synchronized/circular/reversal of trades. Also, investigation period pertains to the year 2003-04. In this regard, reliance has been placed on the order of Learned Adjudicating Officer bearing reference number MC/ST/2021-22/12406 dated June 30, 2021, wherein learned AO has disposed of the matter and held that *"allegation could not be established due to absence of trade log/trade data*." Further, Hon'ble SAT while disposing off the appeal filed by: Mr. Adolf Pinto(110 of 2009), Ms. Gillian Pinto(111 of 2009), Kenneth Pinto (112 of 2009), M/s. Galaxy Broking Ltd.(148 of 2009), Mr. Kapil Bhuptani (217 of 2009), M/s.Sanchay Fincom Ltd.(226 of 2009), M/s. Vijay Bhagwandas &Co.(11 of 2010), held that, "*It appears to us that the basic data now placed before us is not the trade and order logs and the details given therein have been collected from different sources and collated in the form of charts. The error pointed out by the appellants could have crept in at the time of putting details in the form of charts. Another grievances of the appellants is that they had never been furnished with copies of the trade and order logs from which it could be established whether the trades executed by them were circular in nature*."

19. In the view of the above facts and circumstances, I am of the view that in totality of circumstances and material available on record, the allegation

against Noticee of executing synchronized / circular / reversal of trades in the scrip of TASC., in violation of Regulation 4(1), 4(2) (a), 4(2) (b) and 4(2) (g) of the PFUTP Regulations cannot be established.

20. In the view of the above, issue II and Issue III do not merit any consideration.

Order

21. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against the Noticee, *vide* SCN bearing Ref. No. CFD/DCR/NB/BV/184846/2009 dated November 24, 2009 are disposed of.

22. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: March 23, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer