BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DP/2022-23/23695]

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

In respect of:

Kuber Dealcom Pvt. Ltd

(PAN: AAECK5111B)

2B Grant Lane 8th Floor

Kolkata 700012

In the matter of

A.F. Enterprises Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of A.F. Enterprises Ltd. (hereinafter referred to as "**company**") during the period of May 23, 2014 to April 29, 2015 (hereinafter referred to as "**Investigation Period**") to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") by Kuber Dealcom Pvt. Ltd. (hereinafter referred to as "**Noticee"**). It was observed that during the investigation period, price of the scrip of the company rose from Rs. 255 to a high of Rs. 648 and closed at low of Rs. 17.65.

2. The price movement of the scrip of the company at BSE Limited (hereinafter referred to as "**BSE**") during and after the investigation period is summarized under:

Period	Dates		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.)	Total no. of shares traded during the period (avg. daily vol.)
Before Investigation Period	**Feb 25, 2014 to May 22, 2014**	The scrip got listed on BSE with effect from May 23, 2014.					
During Investigation Period	**Patch-I May 23, 2014 to Feb 03, 2015 (Price rise)**	**Price**	255 (23/05/2014)	472.6 (03/02/2015)	246.7 (30/5/2014)	472.7 (03/2/2015)	11098 (693.62)
		Vol	2114 (23/05/2014)	8700 (03/02/2015)	1 (13/05/2014)	8700 (03/2/2015)	
	Patch-II Feb 4, 2015 to June 9, 2015 (Price rise)	**Price**	472.3 (04/02/2015)	446.60 (09/06/2015)	382 (28/4/2015)	648 (9/6/2015)	14,75,592 (17,995.02)
		Vol	6500 (04/02/2015)	1,29,842 (09/06/2015)	520 (23/04/2015)	1,29,842 (9/6/2015)	
	Patch-III Jun 10, 2015 to April 29, 2016 (Price fall)	**Price**	438 (10/06/2016)	17.65 (29/04/2016)	17.65 (21/4/2016)	438 (10/6/2015)	62,17,522 (31401.62)
		Vol	16505 10/06/2016)	50 (29/04/2016)	1 (09/12/2015)	267781 (28/09/2015)	
After Investigation Period	**April 30, 2016 to July 29, 2016**	**Price**	17.3 (2/5/2016)	11.18 (29/7/2016)	6.87 (7/7/2016)	17.3 (2/5/2016)	39,57,622 (63,832.61)
		Vol	155	28403	6 (24/05/2016)	276986 (24/06/2016)	

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI had appointed Ms. Geetha G. as the Adjudicating Officer under Section 15I of SEBI Act read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "**Rules**"), vide communique dated May 25, 2022 to enquire into and adjudge under Section 15HA of SEBI Act, the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a) and (e) of PFUTP Regulations by the Noticee. Upon transfer of Ms. Geetha G, vide communique dated September 19, 2022, Shri Amit Kapoor was appointed as the Adjudicating Officer. Subsequently, vide communique dated October 06, 2022, the undersigned was appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice dated November 04, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under section 15HA of SEBI Act for the alleged violation of the provisions of SEBI Act and PFUTP Regulations. The SCN, *inter alia*, alleged the following:

4.1. It was observed that Noticee had traded in the scrip of the company only in the month of Feb 2015 during the investigation period. Noticee had purchased 11,423 shares during the month of February 2015. On Feb 3, 2015, Noticee had put 5 buy orders for total 1300 shares (4 orders for 200 shares each at Rs. 472 and 1 order for 500 shares at Rs. 472.6). The first order was placed at Rs. 472 when LTP was 451 on Jan 20, 2015. However, the sell orders were available at the price of Rs. 472 to 473. Prior to February 03, 2015, the scrip had traded on January 20, 2015 at Rs. 451.

4.2. It was observed from the trade and order log that Noticee had contributed Rs.21.00 to positive LTP i.e. 4.66% of market positive LTP in one trade during patch-1 of the investigation period.

4.3. Prior to the aforesaid 4 buy orders of Noticee for 200 shares each, sell order no. 1422934200004166400 for 1,000 shares at rate Rs. 472 was placed by one Shri Aman Mehta at 12:02:40.702793. The aforesaid 4 buy order of the Noticee resulted in 4 trades for 200 shares at Rs. 472 each, raising the LTP by Rs. 21 (4.66%). **<u>Noticee had undertaken following trades on February 03,2015 :</u>**

Order No.	Counter-party client Name	Order time	Counter-party order time	Trade rate	Order rate	Counter-party order Rate	Quantity
1422934200004166406	Aman Mehta	12:35:50	12:02:41	472	472	472	200
1422934200004166407	Aman Mehta	12:36:09	12:02:41	472	472	472	200
1422934200004166408	Aman Mehta	12:36:17	12:02:41	472	472	472	200
1422934200004166408	Aman Mehta	12:36:23	12:02:41	472	472	472	200

4.4. It was observed there does not appear any business rationale on the part of Noticee in buying shares of a highly illiquid scrip by raising the last traded price by Rs. 21 (4.66%). Noticee further failed to reply despite an opportunity given to it for seeking it's rationale behind buying shares at Rs. 21 higher than the last traded price.

4.5. As per information available in public domain, Noticee and Vighnaharta Infra Developers Pvt. Ltd. (hereinafter referred to as '**Vighnaharta'**) (one of the suspected entity (buyer) before SEBI during the period of investigation period) are connected through common director i.e. Surendra Sharma (DIN 03127194).

4.6. It was observed that immediately after the said trades, preferential allottees started offloading shares at such increased rate. The connected entities viz. Vighnaharta, Noticee along with Vindyavasini (another suspected entity) were the counterparties to the shares offloaded by the preferential allottees namely, Geeta Devi Dangayach, Upaben Nitinbhai Patel, Mohammad Arshad Khan on February 03, 2015. In fact, it was observed that the entire buy quantity of 11,423 shares by Noticee has been from the preferential allottees during the period from February 03, 2015 to February 23, 2015. It was also observed that the entire buy quantity of 4,300 shares by Vighnaharta has been from the preferential allottees during the period from February 03, 2015 to February 10, 2015. It was further observed that out of the total buy quantity of 99,110 shares by Vindyavasini., 99,063 shares were from the preferential allottees during the period February 03, 2015 to March 23, 2015.

4.7. It was thus alleged that the purchase transactions done by Noticee on February 03, 2015 was instrumental in raising the price of the scrip by 4.66% (Rs.21) of the total market positive LTP during Patch-I (May 23, 2014 to February 03, 2015) when the price rose from Rs. 255 to Rs. 472.70, so as to enable preferential allottees to exit at such increased price.

4.8. Therefore, it was alleged that the Noticee created a misleading appearance of trading through small orders/trades and manipulated the price of the scrip upwards to enable the preferential allottees to exit at such manipulated price in violation of Section 12 A (a), (b), (c) of SEBI Act, Regulation 3 (a), (b), (c), (d), Regulation 4(1), 4 (2)(a) and 4 (2) (e) of PFUTP Regulations.

5. The SCN was served on the Noticee through Speed Post Acknowledgment Due (**SPAD**) and digitally signed email. However, Noticee did not file any reply to the SCN.

6. Vide Notice of personal hearing dated December 02, 2022, Noticee was granted an opportunity to appear for the hearing on December 19, 2022. However, Noticee failed to appear for the personal hearing. Subsequently, vide Notice of personal hearing dated December 19, 2022, Noticee was granted a final opportunity of personal hearing on December 28, 2022.

7. Vide email dated December 27, 2022, Noticee sought adjournment of the personal hearing granted to it. Subsequently, vide notice of personal hearing dated December 28, 2022, Noticee was granted final opportunity of hearing on January 05, 2023. However, Noticee did not appear for the said hearing as well.

8. In absence of any reply from the Noticee, I am constrained to proceed in the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND EVIDENCE

9. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
   - **I. Whether Noticee has violated Section 12 A (a), (b), (c) of SEBI Act, Regulation 3 (a), (b), (c), (d), Regulation 4(1), 4 (2)(a) and 4 (2) (e) of PFUTP Regulations?**
   - **II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?**
   - **III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?**

10. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations:

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:—

(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;

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

I. Whether Noticee has violated Section 12 A (a), (b), (c) of SEBI Act, Regulation 3 (a), (b), (c), (d), Regulation 4(1), 4 (2)(a) and 4 (2) (e) of PFUTP Regulations?

11. From the material available on record, it is noted that SCN and hearing notices sent via SPAD and digitally signed emails were duly served upon the Noticee. Notices were delivered at –2B Grant Lane, 8th Floor, Kolkata 700012 and through digitally signed email on surendra.1973sharma@gmail.com. However, the Noticee neither submitted reply to the SCN nor appeared for the three hearings granted to it. In this regard, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated December 08, 2006 in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that,

"*... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

12. I also observe that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that,

"... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

13. From the material available on record, it is noted that it has been alleged that the Noticee created a misleading appearance of trading through small orders/trades and manipulated the price of the scrip upwards to enable the preferential allottees to exit at such manipulated price.

14. The investigation revealed that the Noticee contributed Rs. 21 to the positive LTP i.e. 4.66% of the market positive LTP in one trade.

NAME	All trades			LTP Diff. >0			LTP Diff. < 0			LTP Diff. =0		% of Positive LTP to Total Market Positive LTP
	Sum of LTP diff	Sum of Quantity	No of trades	Sum of LTP diff	QTY traded	No of trades	Sum of LTP diff	QTY traded	No of trades	QTY traded	No of trades	
Kuber Dealcom Private Limited	21.00	1300.00	5.00	21.00	200.00	1.00	0.00	0.00	0.00	1100.00	4.00	**4.66**

15. From the trade log and the investigation report, it is noted that price of the scrip of the company opened at Rs. 255 at BSE i.e. on May 23, 2014 and touched high of Rs.472.7 and closed at Rs.472.6 on Feb 03, 2015.

16. From the analysis of trade and order log it was observed that the scrip of the company was thinly traded. Between May 23, 2014 to Feb 3, 2015, only 55 trades took place. Out of these 55 trades, 20 trades have contributed to positive LTP of Rs. 242.20 with net positive contribution to LTP of Rs. 217.70. The details are as follows:-

Trading Month	Days trades happened	No of trades	No. of shares (Qty)	Trades by Suspected entities as buyer / seller		LTP contribution
				Buyer	Seller	
May 2014	May 23	15	2114	5	15	2.00
	May 30	2	50	1	0	5.00
June 2014	June 9	1	100	1	0	7.00
	June 13	1	1	0	0	53.80
	June 24	1	100	1	0	7.20
Oct 2014	Oct 31	1	5	1	0	16.50

Nov 2014	Nov 11	1	5	1	0	17.30
	Nov 12	1	6	1	0	6.20
	Nov 14	1	4	1	0	15.10
	Nov 17	1	1	0	1	19.25
	Nov 24	1	1	0	1	15.65
Dec 2014	Dec 17	1	2	0	0	21.00
	Dec 18	3	6	0	0	-11.00
	Dec 19	1	2	0	0	0.00
Jan 2015	Jan 20	1	1	0	0	21.00
Feb 2015	Feb 3	23	8700	5	0	21.70
		55	11098	17	17	217.70

17. It is noted that the investigation report has not found any connection of Noticee with the Director /Promoter of the company or the preferential allottees of the scrip of the company. From the trade log, it is further observed that one Mr. Aman Mehta was the only counterparty to the LTP trades of the Noticee. However, Investigation has not brought any connection of the Noticee with Mr. Aman Mehta. It is further observed that the counterparty orders were already existing in the system before the orders were put by the Noticee. Further, investigation has alleged that the Noticee pushed the price of the scrip upwards to enable the preferential allottees to exit at such manipulated price.

18. As already mentioned above, the scrip was thinly traded and the time difference between the buy order and sell order in the aforesaid trades is substantial which shows such trades were not pre-planned to engage into the price manipulation. I note that Investigation has not brought any connection between the buyer and seller.

19. In this regard, I refer to the judgment of Hon'ble Securities Appellate Tribunal (SAT) dated January 16, 2020 in the matter of Nishith M Shah (HUF). v SEBI (Appeal No. 97 of 2019) wherein, it observed that,

"*If trading in miniscule amount leads to an increase in the price of the scrips one can presume or infer that the trading is manipulative but such trading cannot happen unilaterally. There must be evidence to show collusion between the buyer and the seller. In the instant case there is none. The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and the buyer… the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a sine* *quo non... in the absence of any finding of collusion between the buyer and the seller the charge contributing to the LTP cannot be sustained".*

20. In Jagruti Securities Limited vs Securities and Exchange Board of India (Appeal No. 102 of 2006 decided on October 27, 2008) and in Vikas Ganeshmal Bengani vs Whole Time Member, SEBI (Appeal No. 225 of 2009 decided on February 25, 2010) the Tribunal held that:

    "*the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a sine quo non. We are in the entire agreement with the aforesaid decisions and reiterate that in the absence of any finding of collusion between the buyer and the seller the charge contributing to the LTP cannot be sustained…"*

21. I note that the investigation report has not brought anything on record that there was collusion between the Noticee and the counterparty of its trade which resulted in the LTP increase. I observe that there is no confluence of factors like meeting of mind or pattern of trading like synchronized, circular, reversal, self-trades brought out by the investigation. Therefore, in the absence of any evidence with respect to the same, I am constrained to give benefit of doubt to the Noticee.

22. Further, reliance is placed on the order dated September 30, 2003 of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of KSL & Industries Ltd. Vs. SEBI (Appeal No. 9/2003), wherein it was held:

    "*I have carefully considered the Respondent's submissions on the charge that the Appellant had violated the provisions of regulation 4 and 6 in the light of the provisions of FUTP Regulations. But I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained. I fully agree … that allegation of 'fraud' can not survive on mere conjectures and surmises*."

23. It is observed that the allegation against the Noticee is that it had placed buy orders at higher price than prevailing LTP in an illiquid scrip and contributed to higher LTP and instrumental in artificial increase in the price of the scrip and therefore, enabling the preferential allottees to make an exit on an inflated price.

24. In the extant matter, no proceedings have been initiated against the counter party of such trades and relevant preferential allottees. In view of the foregoing and the guidance I derive from the above referred orders of Hon'ble SAT, I find that it is difficult to accept that the Noticee manipulated the price in the scrip and created a misleading appearance of trading in the scrip for the want of establishing connection as detailed above. In view of the same, I am of the view that this is not a fit case for imposition of monetary penalty on the Noticee.

ORDER

25. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee and Show Cause Notice dated November 04, 2022 without imposition of any monetary penalty. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 10, 2023
Place : Mumbai

SAHIL MALIK
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER