BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/AO/98/2017-18]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED IN RESPECT OF SHRI SURESH SWAROOPCHAND MEHTA [PAN: ABAPM1691A] IN THE MATTER OF INDIAN OVERSEAS BANK.

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** initiated adjudication proceedings against Shri Suresh Swaroopchand Mehta ***(hereinafter referred to as "Noticee")*** for allegedly indulging in 'Self-Trades' in the scrip of Indian Overseas Bank ***(hereinafter referred to as "IOB/Scrip")*** during the last half an hour of trading (i.e. 03:00 pm to 03:30 pm) on expiry date of Future & Options (**F&O**) contracts, on December 26, 2013, and order book manipulation on November 28, 2013 and on December 26, 2013 to manipulate the price of the scrip in the cash market on National Stock Exchange of India Limited **(NSE)**. It is alleged that the Noticee indulged in such trading in order to impact the closing price at NSE so as to make profits in the derivative segment. Therefore, it was alleged that the Noticee has violated the provisions of Regulations 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 ***(hereinafter referred to as "PFUTP Regulations")***.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri S.V. Krishnamohan was appointed as the Adjudicating Officer **(AO)** by SEBI vide order dated November 05, 2015. Subsequently, the undersigned was appointed as Adjudicating Officer vide order dated September 15, 2017 to inquire into and adjudge under Section 15HA of the Securities and Exchange Board of India Act, 1992 ***(hereinafter referred to as "SEBI Act")***, the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated January 28, 2016 ***(hereinafter referred to as "SCN")*** was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ***(hereinafter referred to as the 'Adjudication Rules')*** read with Section 15-I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under section 15HA of SEBI Act, 1992, for the alleged contraventions.

4. Vide letter dated February 09, 2016, the Noticee filed reply to the SCN through his advocate, Thakordas & Madgavkar, Advocate & Solicitors. In the said reply, the Noticee denied the charges levelled against him. Further, the Noticee admitted that the facts and data with regard to trading details of the Noticee relied upon in the SCN are correct and not in dispute. Extracts of the submissions made by the Noticee are reproduced hereunder:-

   - *"It is denied that our Client has indulged in Market Manipulation as alleged. As far as the trades are concerned they are not denied. Our Client has executed the trades as is permissible law.*
   - *The data given in the Annexure 1 of the SCN and summary of price volume data during the various time periods in the scrip of IOB on December 26,2013 in the Cash Segment on NSE is correct and not in dispute.*

- *The allegation is not sustained & is based on inferences. Manner to in what the trades are irregular and impermissible. It is also not pointed out the nature of alleged fraud.*
- *Execution of Self Trade by Arbitrage Trader was not the Prohibited & hence the Regulator is not entitled to make a grievance.*
- *Trades on 26/12/2013 Between 9.08 to 2.59 the noticee purchased shares in F & O Segment and short sold in cash segment resulting in loss before 3 p.m.*
- *Therefore corresponding trades have to be effected in F&O segment to cover-up the loss of the morning Session between 9 to 2.59.*
- *In view of the above the noticee acquired in F&O segment additional shares to make a profit which every arbitrage trader entitled to make.*
- *In order to avoid auction of short sale position in CASH segment the noticee acquire more shares in F&O segment.*
- *If the noticee did not continue to cover the position in cash segment since the price was rising the noticee would have suffered a huge loss in cash segment. To avoid this loss, the noticee bought additional shares in F&O segment.*
- *This is perfectly legitimate and cannot be equated with Market manipulation*
- *It is not pointed out in what manner the trades are irregular & impermissible.*
- *With regard to order Book Manipulation by the Noticee during the last half an hour of trade period 03:00pm to 03:30pm on the expiry dates of F & O contracts on November 28, 2013 & December 26, 2013 is submitted that this is common among the trading community & cannot constitute market manipulation.*
- *The Weighted average price is determined between 3 to 3.30pm & therefore placement and Cancellation cannot affect the price of the scrip.*
- *Every arbitrage trader has a right to have an order cancelled.*
- *The computation of gross profit of 16, 44,000 is correct. However the loss suffered in the cash segment and other transaction related charges is not considered (as per table given below) and hence the inference is not correct.*

Cash Segment									
Buy			*Sell*			*Gross*	*Expenses*		*Net*
Quantity	*Avg Rate*	*Volume*	*Quantity*	*Avg Rate*	*Volume*	*(+) Profit / (-) Loss*	*Brokerage*	*Transaction Charges*	*(+) Profit/(-) Loss*
3191100	*52.52*	*167591824*	*3191100*	*52.33*	*166996285*	*-595539*	*31911*	*65843*	*-693293*

F & O Segment										
Buy			*Sell*				*Gross*	*Expenses*		*Net*
Quantity	*Avg Rate*	*Volume*			*Avg Rate*	*Volume*	*(+) Profit/(-) Loss*	*Brokerage*	*Transaction Charges*	*(+) Profit/(-) Loss*
1244000	*50.89*	*63313000*	*Quantity*	*44000.00*	*50.24*	*2210400*	*1657400*	*12440*	*20148*	*1624812*
			Quantity Expired	*120000.00*	*52.30*	*62760000*				
								Total Profit Earned		***931519***

- *Allegation of market manipulation is not established since some of self trades Between 3 to 3.30 have been executed in open market this issue not considered.*

5. Vide letter dated April 04, 2016, an opportunity of personal hearing was granted to the Noticee on April 27, 2016. However, the Noticee failed to appear on the said date. In the interest of natural justice, Noticee was granted another opportunity for personal hearing on May 02, 2016. Vide letter dated 09.05.2016, the advocate of the Noticee requested for adjournment of the hearing.

6. On June 30, 2016 Shri Merchant Bharat B, Advocate, appeared for the personal hearing on behalf of the Noticee. The Learned Counsel submitted that the Noticee is a broker of long standing. The trades detailed in the SCN are arbitrage trades between Cash and Futures & Options segment. There is no dispute with regard to the data on trades as furnished in the SCN or the profit mentioned in para 15 of the SCN. Further, the Noticee submitted that the Self-trades were per-se not illegal at the relevant time.

7. Further, vide letter dated 15.07.2016, the Noticee filed the additional submissions as under:

A. "BACKGROUND OF THE NOTICEE

i) The Noticee is a Trader on the Stock Exchange since 1995 for over 20 years.

ii) The Noticee is also a registered Stock broker with SEBI under Regn. No. INBOl 1076735.

iii) *The Noticee is also holding the membership of Bombay Stock Exchange bearing No.610.*

iv) *In the subject transaction in the scrip of Indian Overseas Bank on the Cash Segment and the F&O Segment on 28.11.2013 the Noticee had transacted in his capacity as a Trader.*

v) *The Noticee is entitled to deal in shares in both the Segments viz. Cash Segment and F&O Segment.*

B. STATUS OF THE NOTICEE IN THE F & O SEGMENT

The Noticee is only a purchaser in the F&O Segment and therefore, no allegation of price manipulation can be made against the Noticee under the F&O Segment.

C. STATUS OF THE NOTICEE IN THE CASH SEGMENT

i) *The Noticee is both a Seller as well as a Buyer in the Cash Segment as detailed in the Table* ***Annexures I, & II*** *to the SCN and in the* ***Annexure I*** *hereto it is seen that the Noticee has suffered loss to the extent of Rs.5,161.70. the said loss occurred between 9 am and 2 pm and in the Annexure* ***II*** *hereto it is seen that the Noticee was suffering loss to the extent of Rs.4,15,008/- at 3 p.m.*

ii) *The Noticee attempted to purchase shares in the Cash Segment at a price higher than LTP but could not get the shares and therefore, had to buy additional shares in the F&O Segment.*

iii) *In view of non-availability of sellers in the Cash Segment the Noticee had to purchase additional shares higher than the LTP in Cash Segment and create buffer in F&O Segment the Noticee had acquired additional shares in F & O Segment to counter balance loss in Cash Segment. The Noticee was with a view to square up the trade in Cash Segment otherwise it would result in Exchange auction.*

iv) *Hence, the Noticee strategized to cover up the loss by indulging in the purchase of additional shares in the F&O Segment.*

v) *This was the only manner in which the Noticee could ensure his survival, otherwise there would be a default resulting in Auction by the Exchange and consequent loss to the Noticee. To obviate such an eventuality the Noticee* *had to indulge in acquiring by Self Trades shares in the F&O between 3 pm and 3.20 pm as reflected in Table**-Annexure III** hereto.*

vi) *For the convenience of the Honble Member, the Noticee has prepared a Table as **Annexure IV** hereto which shows that in the Cash Segment there was inter transactional time gap and there was no matching price or quantity. Clearly, these trades of the Noticee which could not be called Self-Trades as explained hereafter.*

vii) *Tables **Annexures III & IV** show that*

a) *There is a change in Market price until 15.17.01 pm and which remained constant till 15:21:05 at Rs.52.8 per share. Between 15.17.01 and 15.21.05 the price was constant and the transactions of Noticee did not have any impact on price of security or market.*

b) *There was a reduction in Market Rate for 50.45 at 2 pm to 50.3 at 3 pm despite the transactions of the Noticee.*

c) *There was an increase in price at from Rs.50.3 at 15.04.06 to Rs.52.80 15.16.14 during which the Noticee had not executed any transaction.*

d) *The Noticee had executed transaction at the Market Rate of Rs. 52.8 at 15.16.14 till 15.21.05 i.e. <u>after</u> the market rate had increased.*

viii) *This show that there was no impact on market price whatsoever on account of the transactions of the Noticee.*

D. ALLEGATIONS THAT THE NOTICEE INDULGING IN SELF TRADES IS - INDICATIVE OF MANIPULATION AND RESULTED IN VIOLATION OF PFUTP REGULATIONS 2003"

i) *This allegation is contained in para 7 of the SCN Extract of para 7 o<u>f SCN dated 28th Jan. 2016:</u>*

Noticee placed sell orders First at price higher than Last Traded Price (LTP) Subsequently within few seconds buy orders were paced at prices /above his sell order price to match with his own sell orders resulting in price increase through Self trades. Further, the buy Order Quantity was being fully disclosed to the market in order to display huge demand for the scrip while the sell order quantity disclosed is only 0% or lower) showing Lower Supply (refer Annexure -I)" *ii)* *It is the contention of SEBI that Self Trades are manipulative and therefore, violated of PFUTP Regulations 2003.*

iii) *In reply to the SCN the Noticee has tabulated the cited Regulations and their applicability to the subject transactions to show that the said transactions could not be held to be manipulative in the absence of any proven intention to manipulate market or perpetrate a fraud on the market or on the law.*

iv) *These Self Trades are only confined to Cash Segment. However, the SCN does not specify so..*

v) *It is submitted that on the date of the said transactions Self Trades were permissible and not banned. It is only recently that such Self Trades have been banned which was effective later on.*

vi) *It is the submission of the Noticee that on account of*

a) inter transaction time gap,

b) mismatch of quantity the transactions could not be described as Self Trades. Attached herewith is ***Annexure IV*** *hereto.*

vii) *From the Table it is seen that only in respect of 4 transactions only there was simultaneity in matching price and quantity being transactions for sale of purchase of 1128053 shares on 28th Nov. 2013. All other transactions did not meet the parameters for Self Trades as seen from Table* ***Annexure IV*** *hereto.*

viii) *Hence, the contention of SEBI is not tenable.*

ix) *Moreover, it is respectively submitted that –*

a) Every Self Trade unless there is a concomitant intention and an adverse effect on the market which is proven is not a penalisable transaction. Generally the Self Trade is considered to be not a bona fide transaction since it can create or convey false impression of liquidity in the market or the turnover in the market. It is to be pointed out that these transactions are not in the nature of arbitrage transaction since in this case the Buyer or Seller are the same, it is stated that for the record that the scrip of Indian Overseas Bank is comprised in F&O Segment and hence it is a liquid scrip where self trade won't be having any impact on price or movement of security.

b) These Self Trades which do not result in change in beneficial ownership are permissible under even in UK Security Law (please see para 3.2 of the article published by Mr. Ajay Shah).

x) ***a)*** *A perusal of the above shows that before penal action is levied / imposed the Regulator ought to reasonably demonstrate adverse effect of Self Trades on the price (in this case it is only Rs.1.30 paise increase i.e. between 15.16 pm and 15.21 pm only i.e. for 5 minutes).*

b) *The Noticee had executed 4 self trades at the Market Rate covering 1128053 shares in the Cash Segment when the average total volume was 2988511 shares during 15.07 and 15.21 pm.*

c) *The Regulator ought to consider the object of indulging in Self Trades by the Trader viz. to cover up for the loss in the Cash Segment.*

xi) In this case there is no intention to defraud or to manipulate the market, the Self Trades were indulged in only Cash segment which resulted in a loss and only to cover up the loss that the shares were purchased in F&O Segment.

xii) Thus, the Noticee did not impact the market or the volume.

xiii) In fact he suffered a loss at 3 pm.

xiv) Looking to these expiating circumstances the Regulator ought to have considered that Self Trades though held to be illegal or manipulative ought to be understood on a case by case basis since there was no law at the relevant time declaring the Self Trades as per se illegal and ***prescriptive.***

xv) Looking at these issues it is respectfully submitted that a permissible trading activity could not be subject of levy of penalty.

E. STATE OF THE MARKET BEFORE 28.11.2013 AND AFTER

i) Historic price Data would show that over a period of one month prior to the trades on 28.11.2013, price was between Rs.48 to 53.

ii) During this period, volume was between 560638 to 6039260 with delivery quantity of 135199 to 1445760.

iii) After trades on 28.11.2013, trading in the scrip volume tapered off to pre 28th November 2013 levels with delivery quantity of 121828 to 1178455 and with a price band from 50 to 53.

iv) This will show that there has been no impact on the market which would have induced others to follow in the scrip of IOB since the subject transactions *were only personal to the Noticee to avoid incurring losses on 28.11.2013. Had the Noticee executed not Self Trades that would resulted in losses resulting in Exchange Auction.*

F. MERE GENERATON OF PROFIT IN THE F&O SEGMENT CANNOT BE HELD TO BE THE BASIS FOR LEVY OF PENALTY ON THE EXTENT OF PROFIT MADE IN THE F&Q SEGMENT WITHOUT CONSIDERING THE TRANSACTIONAL LOSS IN THE CASH SEGMENT.

i) *Hereto annexed and marked* ***Annexure VI & VfI*** *are Tables reflecting trading in Cash Segment & F&O Segment showing net profit / loss in each Segment.*

ii) *Admittedly SEBI has not considered the transactional loss suffered by the Noticee in the Cash Segment as detailed in the Table* ***Annexure VIII*** *hereto.*

iii) *Omission to consider, the loss, expenses and charges in the Cash Segment has vitiated the demand.*

iv) *This could affect the nature and extent of penalty and the same would have to be recomputed in the event it is held that the Self Trades despite the expiating circumstances are indeed penalisable.*

G. COMPUTATION OF PROFIT IN THE SCN IS INCORRECT.

i) *Computation of profit in the Show Cause Notice (para 7) shown is Rs. 16,44,000/-. This is not accurate as can be seen from the* ***Table Annexure IX*** *hereto. This shows that over all profit made by the Noticee was only Rs.931519 lakhs.*

ii) *This is seen from Table hereto*

H. IN THE ABSENCE OF THE GUIDELINES AND IN VIEW OF PERMISSIBLE NATURE OF TRADING ACTIVITY SEBI WHILE IMPOSING PENALTY MUST LOOK AT THE TRANSACTIONS ENTERED INTO BY THE NOTICEE FROM THE POINT OF VIEW OF THE NOTICEE HIMSELF AND THE MITIGATING CIRCUMSTANCES NECESSITATING THF EXECUTION OF TRANSACTIONS IN THE CASH SEGMENT AND F&Q SEGMENT.

(a) ***.***

i) Between 9.30 and 3 pm on 28.11.2013 the Noticee acquired shares in the F&O segment hoping that he would make the profit at the end of the day since this was a Settlement day and the market trend as understood by him could persuade him to acquire the shares in the F&O segment. During this period the Noticee has acquired 1040000 shares in the F&O Segment and sold 521000 shares in the Cash Segment resulting in loss at 3 pm of Rs.4.15,008/-.

ii) Therefore at 3 pm the Noticee had hardly ½ hour to make the up loss and therefore was obliged to place large orders in F&O segment to make up the loss and create a buffer. IOB being a liquid scrip the Noticee apprehended that there would be anti player who could enlarge the loss by preventing him from buying shares in the Cash segment by manipulating price and thereby prejudice his position.

iii) The Noticee was aware that the Settlement would be made at 3:45 pm and therefore unless he indulged in purchasing shares in F&O Segment he could not make up the loss and would suffer at an Auction in Cash Segment.

iv) In the circumstances, in the minimal time available at hand the Noticee had to indulge in the activity in buying shares in F&O Segment.

v) As a result it is seen that there is no violation of Sec. 11AA of SEBI Act or PFUTP Regulations.

vi) In this case, there several judicial pronouncements hold that Self Trades being manipulative are illegal and/or fictitious. The attention is invited to the judgement of the Honble SAT in the following cases:

    i) Systematic Shares & Stocks India Ltd. v/s SEBI – Trades were beneficial owner and admitted sol.

    ii) Anita Dalai Vs. SEBI – Self Trades are illegal and ought to result in positive action.

    iii) Tramuthi Intl. Finance Ltd. Vs. SEBI – such trades are fictitious because buyer and the seller are the same.

(b) The following are the mitigating circumstances which ought to be considered.

    i) Intention of Noticee was not to manipulate price or quantity.

    ii) Objective was only to cover up the loss in trading on 28.12.2013 in Cash segment.

iii) *In a single day transaction, there has been no charge against Noticee for any other trades for executing in Self Trade in the scrip nor price manipulation.*

iv) *Computation of profit made by SEBI is not accurate*

v) *This is the first proceeding against Noticee even though he has been a functioning as broker/traders for last 20 to 23 years and has had a clear record in terms of trading and in terms of compliance and which background ought to have considerable weightage.*

vi) *Self Trades are admitted and total quantity is 11 lakhs only as compared to what is stated in the Show Cause Notice.*

vii) *The SCN does not reflect transactions or quantity specific charge or elucidate impact on market empirically beyond quoting price increase of Rs. 1.30. The actions of other traders is not shown in the Scrip which could constitute violation of PFUTP Regulation 2003. Mere increase of Rs. 1.30 and volume cannot be given a Macro colour when the trades were confined to a single Trader at a micro level. SEBI must show Macro impact to justify penalty under PFUTP Regulation 2003.*

viii) *In view of these mitigating circumstances, it is respectfully submitted that for obvious and personal reasons Self Trades were executed and there was no manuplation of price. They were not executed as part of a scheme of manipulation by Noticee with the aid of other players for manipulating the aggregate volume and price. This is justified by post 28th December movement of price.*

ix) *In the result, this shows clear lack of malafides in the Noticee and forthright and transparent explanation being given in respect of trades which are admitted and not disputed*

I. MEANING OF FRAUD

For the convenience of the Honble Member the Noticee has enclosed as ***Annexure X*** *the extract relevant pages of advanced law lexicon - 3rd Edn. Indicating the definition of fraud and the legal meaning attributable to the same.*

Fraud implies the deceit on the counter party and/or a fraud on the provisions of law by Evading and not avoiding the provisions of law.	*In the present case, no counter party is shown affected or deceived. Likewise, no statutory provisions are shown to be violated in specific terms there is no analysis transaction-wise impact of regulations on the transactions to indicate violations thereof. Mere narration of the provisions of the regulations cannot justify the levy of penalty. Since the action threatened is quasi criminal in nature involving levy of penalty the charges must be regulations specific supported by evidence and not reflect a mere narration.*
	The Noticee has every right in a regulatory Frame work if so arranged his affairs to ensure that he does not suffer a loss without Violating statutory provisions or without Purported a fraud on the counter party or on the Market. It is to be pointed out that IOB scrip in the IOB being listed in the F&O seg.is a liquid scrip and therefore Noticee could have had every apprehension for and intervening anti clear to make sure that the Noticee would not suffer or loss.

8. The undersigned has been appointed as the Adjudicating Officer vide order dated September 15, 2017 in place of the erstwhile Adjudicating Officer Shri S. V. Krishnamohan. Therefore, another opportunity of hearing was granted to the Noticee for making additional submissions, if any. On October 31, 2017 Shri Merchant Neerav Bharat, Advocate, and Shri Ankur Kumar Mehta appeared on behalf of the Noticee as his authorised representatives (ARs). The ARs primarily reiterated the contents of earlier submissions of the Noticee. Further, vide letter dated November 13, 2017 the Noticee filed additional written submissions in the matter. The contentions raised by the Noticee are as under.

1. *First and foremost the factual backdrop of the Noticee's identity must be appreciated by the Ld. A.O., SEBI. The Noticee is an individual market participant. He is a day trader and arbitrageur. He has been trading as a day-trader and arbitrageur for the over the last 10 years. The Noticee has been active on both the Bombay Stock Exchange ("BSE") and the National Stock Exchange ("NSE"). However, as far as the present proceedings and SCN are concerned, the trades of the Noticee (which data the Noticee does not dispute) were solely on the NSE. The Noticee has been trading in both the cash segment and in the futures and options segment (i.e. the*

derivatives segment) of the NSE for a considerable period of time. The Noticee has on different occasions witnessed the following situations, as far as his trading results and performance are concerned (at the end of different trading days which may include settlement days in the F&O segments also) in his experience over the last 10 years trading on the NSE:

i. *Profits in the cash segment and losses in the futures segment;*
ii. *profits in the future segment and losses in the cash segment;*
iii. *losses in the cash segment and losses in the futures segment;*
iv. *profits in the cash segment and profits in the future segment.*

2. *Accordingly, the Noticee has been witness to all sorts of situations as far as his profits and losses are concerned in the course of his trading activity and experience over the years, to the best of his ability. His trading activity includes arbitrage as well as regular intra-day trading in respect of a scrip.*

3. *The Noticee submits that 'arbitrage' is the judicious use of price differences in different stock exchanges / segments of stock market (such as the cash and derivatives segments), that arbitrage is officially permitted and arbitrage opportunities are quoted in leading financial publications, and it is done by literally hundreds of brokers and that such arbitrage transactions have no effect on prices except eliminating inter- exchange / inter-segment short-term mispricing and further that the practice of arbitrage cannot be construed to be market manipulation in any way whatsoever. In fact in the judgment of Rakhi Trading Pvt. Ltd. v S.E.B.I. (dated 11th October 2010) the Hon'ble S.A.T., in relation to arbitrageurs and the practice of arbitrage on the stock markets has noticed its prevalence in the derivatives market and has observed as follows:*
"4. ... We take note of the fact that investors trade in derivatives for three broad purposes: hedging, speculation and arbitrage. ... arbitrageurs take offsetting positions in two or more instruments to lock in a profit."

4. *The present SCN and proceedings concern the Noticee's trading activity on 26 December 2013. On this day, the Noticee has traded on both segments of the NSE (cash and derivatives, i.e. futures).*

5. *Further, on this day, the Noticee has made a profit on the futures / derivatives segment of approximately Rs. 16.24 lac. It is denied that the profits on the derivatives segment are Rs. 16.44 lac, as alleged in paragraph 15 of the SCN. The SCN has omitted to consider the brokerage expenses and statutory / transaction taxes in the futures segment which actually reduces the Noticee's profit on the NSE derivative segment (F&O) to Rs. 16.24 lac. This is in addition to the basic error and omission in the SCN that the SCN itself is silent on the losses suffered by the Noticee in the cash segment.*

6. *The Noticee submits that the SCN has failed to establish any transgression / violation of any SEBI regulations by the Noticee insofar as:*
   a. *The SCN has failed to adopt a consistent 'client-wise' and 'segment-wise' approach that is holistic and complete in nature qua the Noticee (i.e. all transactions of the Noticee on 26 December 2013 have not been considered in totality);*
   b. *The SCN, on the contrary, is contradictory, as it refers to trading and activity in one segment (derivatives-segment) independent of the other (cash-segment), especially when the Noticee, who has been trading in both segments, is admittedly the same person, and was using the same client code as well;*
   c. *Accordingly the SCN has, in isolation, only recorded / noticed the outcome of trading (i.e. profits) earned by the Noticee in one segment (the futures segment, in paragraph 15 of the SCN) but has failed to notice the losses suffered by the Noticee in the cash segment of the same market in respect of the same scrip and suffered on the same day. It is known to SEBI that the Noticee was trading in both cash and F&O segments on 26 December 2013 and hence the silence with regard to the losses suffered in the cash-segment by the Noticee is perverse and illogical and without reason and renders the notice liable to be withdrawn.*
   d. *As stated earlier, on 26 December 2013, on the cash segment of the NSE, the Noticee suffered a loss of approximately Rs. 7 lac. A tabulation of the profits and losses of the Noticee on 26 December 2013 across both segments is hereto annexed and marked* ***Annexure 1.***

e. *As the trades have not been denied on both segments, further, the relevant broker bills (as they are extremely voluminous and bulky) have not been annexed hereto. A summary of the bills is hereto annexed and marked* ***Annexure 2.***

f. *Accordingly the allegation in the SCN that the total profit made by the Noticee being Rs. 16.24 lac is patently incorrect as the Notice is silent and bereft of any mention of the losses (despite, strangely, noticing the Noticee's trades on that very day on the cash segment). This omission also ought to render the SCN defective, as it fails to appreciate the complete set of facts relevant to the Noticee's trading on 26 December 2013.*

g. *As is typical for a day trader like the Noticee, the key part of his trading practice / conduct and also his principal aim is to square off his trades at the end of every day in the scrip in each segment that he chooses to trade in without either taking delivery of shares or paying for the shares (i.e. intra-day trading).*

7. *The second charge levelled against the Noticee in the SCN concerns alleged -order-book manipulation" in view of deletion of certain orders by the Noticee. As far as this alleged order-book manipulation is concerned, the Noticee submits that the deletion of the orders, as stated in the Annexure 2 to the SCN, is:*

   a. *Routine practice and commonly practiced by market participants. It is not usually penalised by SEBI, least of all in cases involving liquid scrips such as IOB;*

   b. *Necessary, and in line with the trading philosophy and pattern adopted by the Noticee.*

   c. *Had the trades not been deleted, (especially those that involved partial execution of orders) the Noticee could be visited with a substantial financial liability towards the exchange.*

   d. *Insignificant insofar as it concerned a limited volume of trades' partial deletion was adopted by the Noticee in order to fulfil his day-trader aim and objective of squaring off of positions at the end of the day.*

   e. *In this case it was very miniscule in nature with only 6 instances in totality despite there being over a thousand trades being executed on 26 December 2013.*

f. *The Noticee was compelled to increase his volumes as a means to close out his positions and nothing more.*

g. *The Noticee had been trading in desperation and anxiety to square off the positions taken by him before 2.59 pm on 26/12/2013 which was arbitrage-related trades. The positions taken by the Noticee were typical arbitrage positions with nothing exceptional about them to suggest them being violative of any SEBI regulations / rules.*

8. As far as disclosure of trades to the market is concerned (to display huge demand for the scrip) as alleged, the Noticee submits as follows:

a. *This is a normal market practice and it is discretionary on a trader to disclose (i.e. hide) the size of his order or to reveal it fully to the market;*

b. *No malicious intention can be attributed to the Noticee from his alleged failure to disclose trades.*

c. *Irrespective of disclosure of shares, the trades between parties remain the same;*

9. As far as self-trades are concerned, the Noticee submits that the SEBI's grievance in this regard is unjustified:

a. *Self-trades were permissible and legitimate on 26 December 2013;*

b. *Self trades by an arbitrageur were not prohibited;*

c. *Self-trades did not lead to profits / losses and had no effect on the Noticee's profits / losses.*

10. As aforementioned, the SCN is restricted to the trades in the Indian Overseas Bank "IOB" scrip on 26 December 2013 only. SEBI has provided the Noticee with data of his trading in IOB scrip of that day. In this light, the Noticee submits that the following two tables depict:

a. The trades executed by the Noticee in IOB on 26/12/2013 in both segments, Cash segment trading (referred to as "EQ") and Derivatives segment trading (referred to as "F&O") (Table 1);

b. The volatility of the scrip price of IOB in absolute & percentage terms (Table 2).

TABLE 1						
TABLE SHOWING TRADES BY THE NOTICEE IN IOB SCRIP ON 26/12/2013.						
Scrip	*Buy Qty*	*Buy Rate*	*Sell Qty*	*Sell Rate*	*Total Volume*	*% of Total Volume*
IOB (EQ)	*3191100*	*52.52*	*3191100*	*52.32*	*6708891*	*47.57%*
IOB (F&O)	*1244000*	*50.90*	*1244000*	*52.23*	*7788000*	*15.97%*

TABLE 2 *VOLATILITY OF THE PRICE OF IOB SCRIP ON 26/12/2013 (INTRA-DAY PRICE MOVEMENT OF IOB SCRIP ON 26/12/2013)*						
Scrip	*Prev. Day Close*	*Opening Price*	*High Price*	*Low Price*	*Close Price*	*Price Fluctuation % (Intra-day)*
IOB (EQ)	*49.95*	*50*	*52.80*	*49.70*	*52.30*	*6.20%*
IOB (F&O)	*50.05*	*49.90*	*52.60*	*49.85*	*52.30*	*5.50%*

c. *From the tables above it is seen that the fluctuation of price of the scrip of IOB was as follows:*

i. *In the Cash-segment (EQ):*

1. *In intra-day trading the volatility of the price (the fluctuation) was 6.20 % and;*
2. *The fluctuation of price from the previous day's closing to the closing on 26 December 2013 was 5.70%.*

ii. *In the Derivatives-segment (F&O):*

1. *In intra-day trading the volatility of the price (the fluctuation) was 5.50 % and;*
2. *The fluctuation of price from the previous day's closing to the closing on 26 December 2013 was 5.20%.*

d. *Accordingly, it is far-fetched and is impossible to suggest that the fluctuation witnessed by the scrip IOB on 26lh December 2013 was in any way abnormal, unusual and unreasonable so as to impute or even infer any wrongdoing qua the Noticee including inter alia to suggest that the Noticee engaged in any form of market manipulation of the price of the IOB scrip, as is alleged.*

e. *Moreover, the prices have stayed within the normal trading band despite the volumes of trades entered by the Noticee. No abnormality of prices has been observed.*

f. *Moreover, the trade-data provided by SEBI shows:*

   i. *On two other settlement days from the data provided by the NSE, the IOB Scrip price fluctuations were greater in absolute and in percentage terms than the price fluctuation observed on the date of the Noticee's trades i.e. 26 December 2013, which was the settlement day (settlement days i.e. last Thursdays) for December 2013.*

   ii. *This data is in the table 3 below:*

TABLE 3 *PRICE FLUCTUATIONS & VOLATILITY ON THE SETTLEMENT DAY IN OCTOBER 2013, DECEMBER 2013 AND JANUARY 2014.*						
Settlement Date	*Prev. Close.*	*Open Price*	*High Price*	*Low Price*	*Close*	*Fluctuation / Volatility (%)*
31 October 2013	*50.55*	*46.95*	*51.35*	*46.75*	*51*	*9.09%*
26 December 2013	*51.75*	*49.90*	*52.60*	*49.85*	*52.30*	*5.30%*
30 January 2014	*43*	*42.55*	*44.85*	*42.40*	*42.85*	*5.70%*

g. *It is therefore, clear from the Table 3, above, that the fluctuations observed on 26 December 2013 are absolutely normal and less than the volatility / fluctuation observed on 31 October 2013 and on 30 January 2014. Accordingly, it is evident that the trade-data itself belies the charge that the Noticee has been involved in any market manipulation of the price of the scrip. Moreover, the Noticee has not traded in the scrip of IOB on 31^sl^ October 2013 and 30^th^ January 2014.*

11. *Further, in connection with the submission of the Noticee denying having manipulated the market in the scrip of IOB, as is alleged in the SCN, the Noticee further submits that:*

   a. *The fact that he traded on a single day only and did not continue to trade in this scrip is another indication that the Noticee had no malafide intentions at all whatsoever and has singularly traded in this scrip on a single day, i.e. 26 December 2013.*

b. There is no trading pattern (as explained below) suggested that shows any influence on the price of the IOB scrip that can be attributable in any way to the Noticee's trading activity.

12. *In addition to the above, the Noticee's trading pattern on 26 December 2013 has also been ignored by the SEBI. Analysis of the Noticee's trading pattern shows that:*

a. The Noticee had open positions on the both segments of the market, which was typical of an arbitrage trader, at 2:59 pm. These needed to be closed by 3:30pm when the stock markets close the day's trading. This pressurised the Noticee and placed him under duress and spurred him on to increase his trading activity in order to fulfil his objective to eventually settle all outstanding positions by the end of day.

b. Further, in this connection, the Noticee would like to point out that:

i. *On 26th December 2013, at 3:00pm the Noticee had outstanding positions on NSE Cash segments to the extent of 1042872 shares. Which consist of 32% of total volume 3191100 shares of the Noticee during the day, it was necessary for the Noticee to settle these positions by 3.30pm. So by 3:22pm, the Noticee had settled all majority (i.e. of its outstanding cash-segment trading positions. Only 32254 numbers of shares was outstanding against the total volume during day 3191100 which is 1% (Approx) of total volume of traded by the Noticee.*

ii. *This also justifies the increase in the Noticee's trading volumes in the last thirty minutes on 26 December 2013.*

iii. *The price (fluctuation) has remained within the band of 1.5% for a significant period of time before and after the Noticee's majority of trades had got settled.*

iv. *Market movements in the scrip of IOB continued without any substantial activity from the Noticee's side after 3:22pm (excepting his limited trading as explained above).*

v. *The Noticee did not exhibit any signs of a 'market manipulator'. He only sought to trade to achieve settlement of all his outstanding positions.*

vi. *Accordingly, the mere trading on one day within a limited range of fluctuation of 2-3% cannot be construed to be manipulative in nature, especially considering amongst other factors such as:*

1. *the high liquidity of the scrip;*
2. *the total equity available to be traded (roughly 285 crores equity shares);*
3. *the market capitalisation i.e. Rs. 1,400 crores;*
4. *the fundamentals of IOB as a bank/company having not changed during this period.*

vii. *Hence, the charge that the scrip price has been manipulated is incorrect and cannot be sustained because the price discovery mechanism has acted normally and without any influence from the Noticee.*

13. *Further, the Noticee submits that there has been no inducement of any other person at all and it is incorrect for the SCN, without any supporting evidence at all to make a bald assertion that the Noticee had induced others into trading on the scrip of IOB.*

14. *Lastly, the Noticee submits that apart from his conduct and behaviour - the nature of the scrip has also to be borne in mind. The scrip of IOB, i.e. Indian Overseas Bank, a leading listed PSU-bank, is a highly liquid scrip with almost 285 crore equity shares. The total trading volume constituted barely 0.2396 % of the total equity / market capitalised equity of IOB. Moreover, the fluctuations of price, despite the volumes being high, are insignificant and within a trading band of 15%, which does not suggest any abnormality for the 3-month averages and accordingly no signs of 'market manipulation' are present.*

15. *Ultimately, the Noticee submits that this is an incorrect frame of the charge against the Noticee. The Noticee reiterates that the total profit made by the Noticee should have been taken into account in the SCN. The total profit made by the Noticee on 26/12/2013 is Rs. 9.31 lac, which is a meagre profit. The Noticee submits that for this meagre profit, in a liquid scrip like IOB, his trades on 26/12/2013 cannot be construed to be market manipulation and is in fact only a normal market practice and which is a typical scenario seen with any day-trader, arbitrageur and/or market*

participant. There is nothing exceptional to suggest manipulation of any kind in this scrip.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the replies to the SCN, submissions of the Noticee, and the documents available on record. The issues that arise for consideration in the present case are:

   a) Whether the Noticee has violated the provisions of Regulations 3 (a) to (d), 4 (1) and 4 (2) (a), (b), (e) & (g) of SEBI PFUTP Regulations, 2003?

   b) Whether the Noticee is liable for monetary penalty under Section 15HA of SEBI Act, 1992?

   c) If yes, then what should be the quantum of monetary penalty?

10. Before moving forward, it is pertinent to mention here the relevant provisions of SEBI PFUTP Regulations, 2003, alleged to have been violated by the Noticee:-

    "Regulation 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."

"Regulation 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;

(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;

(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;"

11. I note that the allegation levelled against the Noticee is that he has indulged in the price manipulation in the scrip of IOB by entering into 'Self Trades' during the last half an hour (i.e. between 03:00 PM to 03:30 PM) on expiry date of F&O contracts on December 26, 2013 and also indulged in order book manipulation by repeatedly placing and deleting orders on November 28, 2013 and December 26, 2013 in the cash market to impact the closing price at NSE. It is alleged that the Noticee indulged in such trading in order to impact the closing price at NSE so as to make profits in the derivative segment.

12. I note that the Noticee has stated the definition of 'fraud' under Law Lexicon, however the definition of fraud under the provisions of Regulation 2(1)(c) of PFUTP Regulations, includes *"any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-*

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price".

Further, Regulation 4 of PFUTP Regulations, deals with many activities which are considered to be manipulative and unfair trade practices, and the same has been elaborated in para 10 above of this order. Hence the activities of the Noticee has to be seen in the background of the provisions of SEBI Act and the rules and regulations made thereunder.

13. Before going into merits of the case, it is relevant to describe the "Self-Trades". Self-trades are those kinds of trades where the seller and the buyer in a particular trade remains the same person and no actual beneficial ownership of such transactions is changed. In respect of self-trading, the Hon’ble Securities Appellate Tribunal (**SAT**) in the matter of ***Shankar Sharma Vs. SEBI (Appeal No. 14 of 2009 decided on October 28, 2009)*****,** observed as follows-

" ….. …. It is thus *clear that the appellant was on both sides. He was the buyer as well as the seller. The buy and sell orders were put into the system at almost the same time. Such trades have been executed in large quantities while dealing with the shares of different companies. We have no hesitation to hold that these trades were fictitious as there was no change in the beneficial ownership of the shares traded and it was the appellant on both sides of the trades. How can a person buy from himself and sell to himself. Such trades are only meant to create artificial volumes and they disturb the market equilibrium". Therefore, taking into consideration the above position of law, I am of the firm opinion that the Noticee had indulged in the said fictitious trades which are per se illegal and only meant to artificially create the volumes in the scrip".*

14. Also, the similar findings were made by the Hon'ble SAT in the case of ***Krupa Soni & Ors. v/s SEBI (Appeal No. 32/2013) decided on January 24, 2014*** holding that- *"On perusal of pleadings and hearing the oral submissions, we note that the self trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip. This in turn gives a totally wrong signal to the members of the public who may invest in the hope of making some gains but ultimately land up with losses.*

15. It is important to mention that in series of cases, self-trades were held to be illegal by the Hon’ble SAT. It is pointed out that in aforesaid case of *Krupa Soni & Ors.,* the total executed self-trades by the appellant were to the extent of 1,82,942

shares which constituted 7.60% of Krupa Soni Group's trades and 3.26% of the total market volume in the scrip**.** In other words, the self-trades which are around 3% of the total market volumes in a particular scrip, has been considered as substantial having impact upon volumes in the scrip. Here, I am also inclined to refer to a judgment of the Hon'ble SAT in case of ***Angel Broking Pvt. Ltd. V/s SEBI (Appeal No. 46/2014) decided on October 01, 2014*** whereby penalty imposed by SEBI on the appellant for indulging in self trades was upheld by Hon'ble SAT.

16. In the instant case, the Noticee has not denied the self trades. The only contention is that it was not illegal at the relevant point in time. This contention is negated by various judgments of the Hon'ble Tribunal some of which are stated above.As regards the volume of self- trades, it is observed from the records that the Noticee had indulged in 'Self Trades' for <u>21,31,440 shares forming 44.64 % of the market volume traded during the last half an hour on December 26, 2013</u> and the same formed 66.81% of the Noticee's buy quantity and 79.86% of the Noticee's sell quantity during the said period. The details of such substantial self-trades is being discussed in later part of this order.

17. As regards the reason for indulging in such trades that too in the fag end of the settlement of the derivative segment, the Noticee denied any involvement in the manipulation. It is important here to mention that to find out the "intention" behind commission of any manipulative / unfair / fraudulent trades/activities, attending circumstances have to be taken into account. The Hon'be SAT in the case of *Ketan Parekh Vs. SEBI* (Appeal No. 2 of 2004) decided on July 14, 2006 held that –"… *in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available"*.

18. In other words, the manipulative intent can only be derived from the circumstance / modus operandi used by the person in case specific.

19. Now, as regards the facts and circumstances attending the case, the trading pattern adopted by the Noticee while executing self-trades in the scrip of IOB, is being examined hereunder.

20. A summary of price volume data during the various time periods in the scrip of IOB on December 26, 2013 in the cash segment on NSE is as follows:

Patch Time	Price at the beginning of the patch	Low price during the patch	High price during the patch	Price at the end of the patch	Market Volume	As % of Total Vol
9:08:00 to 14:59:59	50.00	49.70	51.40	51.00	1934280	29%
15:00:00 to 15:30:00	51.00	50.30	52.80	51.00	4774440	71%
15:30:01 to 15:58:25	52.30	52.30	52.30	52.30	171	0%
Total Volume (9:08:00 till 15:58:25)					6708891	100%

21. As per the above table a total of 47,74,440 shares of IOB forming 71% of the day's volume in cash segment i.e. the major part of the day trading on December 26, 2013 was traded during the last half an hour of day's trade (i.e. 03:00 pm to 03:30 pm).

22. A summary of the buy and sell quantity of the Noticee in the scrip of IOB during the period 3:00 pm to 3:30 pm on December 26, 2013, the expiry date of Future & Options contracts is given hereunder.

Expiry Date	Buy Client Name	Total	% age of Mkt Vol	Sell Client Name	Total	% age of Mkt Vol
December 26, 2013	Suresh Swaroopchand Mehta	3190537	66.825	Suresh Swaroopchand Mehta	2669101	55.904

23. Details of the Self trades executed by the Noticee (Where both buy client and sell client is Suresh Swaroopchand Mehta) during the last half an hour on December 26, 2013 is given hereunder:

Buy Order Number	Buy Order Time	Buy Order Limit Price	LTP at Buy Order Entry	Buy Order Original Volume	Buy Order Disclose Volume	Sell Order Number	Sell Order Time	Sell Order Limit Price	LTP at Sell Order Entry	Sell Order Original Volume	Sell Order Disclose Volume	Trade Price	Total Traded Qty
2013122636320527	15:04:06	50.45	50.3	5000	0	2013122636318875	15:04:00	50.3	50.35	5000	0	50.3	438
2013122636507114	15:16:14	52.8	52	48000	0	2013122636390821	15:08:47	52.8	50.4	500000	50000	52.8	21902
2013122636507946	15:16:17	52.8	52	500000	0	2013122636390821	15:08:47	52.8	50.4	500000	50000	52.8	236852
						2013122636405429	15:09:45	52.8	50.35	500000	50000	52.8	250000
2013122636509305	15:16:23	52.8	52	500000	0	2013122636390821	15:08:47	52.8	50.4	500000	50000	52.8	241246
						2013122636405429	15:09:45	52.8	50.35	500000	50000	52.8	215605
2013122636520157	15:17:01	52.8	52.1	500000	0	2013122636519453	15:16:57	52.75	52	500000	50000	52.75	449361
2013122636529465	15:17:36	52.8	52.5	500000	0	2013122636405429	15:09:45	52.8	50.35	500000	50000	52.8	34256
						2013122636528309	15:17:32	52.8	52.1	500000	50000	52.8	387693
2013122636537718	15:18:10	52.5	52.4	100000	0	2013122636531748	15:17:45	52.5	52.65	78000	0	52.5	3526
2013122636578763	15:21:05	52.8	52	500000	0	2013122636575857	15:20:52	52.8	51.6	500000	50000	52.8	290561
Grand Total				**26.53 lac**						**30.83 lac**			**2131440**

(Order disclosed Volume 0 denotes full order quantity being disclosed to market)

24. From the above table it is observed that Noticee executed 'Self Trades' (Where he is both the buyer and seller simultaneously) for 21,31,440 shares forming 44.64 % of the market Volume traded during the last half an hour on December 26, 2013 and the same formed 66.81% of the Noticee's buy quantity as well as 79.86% of the Noticee's sell quantity during the last half an hour.

25. It is observed from the above tables that the Noticee placed sell orders first at prices higher than Last Traded Price (LTP). Subsequently, within few seconds, buy orders were placed at prices/ above his sell order price to match with his own sell orders resulting in price increase through Self trades. Further, the buy order quantity was being fully disclosed to the market (*buy order disclosed Volume 0 denotes full order quantity being disclosed to market*) in order to display huge demand for the scrip, while the sell order quantity disclosed is only 10% or lower) showing lower supply.

26. For example, Noticee had placed the sell order no. 2013122636390821 at 15:08:47 at Sell order Price of 52.80 for 5 lacs shares (i.e. Rs 2.40 higher than LTP of Rs 50.40). This order has remained in the system till 15:16:14. Subsequently, the Noticee placed Buy order no. 2013122636507114 at 15:16:14 at 52.80 for 48000 shares. This order swept all the available sell order book in the range Rs.52.05 to 52.80 for 48000 shares (of which the last trade has matched with the above sell order no. 2013122636390821 to the extent of 21902 shares). This established the price of Rs.52.80. Further, to match with his own partially executed above referred sell order no. 2013122636390821 and unexecuted sell order no. 2013122636405429 the client had placed 2 buy orders (buy order no. 2013122636507946 and 2013122636509305 for 5 lac each @ 52.80 at 15:16:17 and 15:16:23) which matched for a quantity of 9,43,703 shares. For the balance unexecuted sell order quantity of 34,395 shares (10 lacs – (21902 + 943703), 34,256 shares have matched with his own partially executed buy order no. 2013122636529465. Thus, the client had matched 99.98% (9,99,861 shares) of his sell order quantity of 10 lacs shares with his own buy order quantity through the above referred sell and buy orders. It is seen that the above pattern has been repeated across all the orders in the above table wherein 21,31,440 shares (forming 80.34 % of the buy order quantity and 69.13% of sell order quantity) have matched orders placed by the Noticee.

27. Considering the above trading pattern of the Noticee, I am of the view that such trading by the Noticee on December 26, 2013, in such huge volume at almost same time cannot be a matter of coincidence and cannot be in the ordinary course of business strategy, but, the orders were placed in the system in accordance with a plan to get these matched with his respective buy/sell orders, causing no change in ownership of shares and to create misleading appearance of trading in the scrip of IOB.

28. As seen from the above that 44.64% (21,31,440 shares) at NSE was the contribution of the Noticee towards total market volume in the last half an hour by way of 'Self-Trade' in the scrip of IOB, therefore, taking into account the aforesaid judgment of Hon'ble SAT in the Krupa Soni case (wherein around 3% of the total market self-trades were considered as substantial creating misleading appearance of trading), the present case is more grave in nature in terms of total market volume of self-trades. Moreover, one cannot ignore the fact that such substantial volume to the total market was a result of trading in the last half an hour only. Entering in such large number self-trades, cannot be considered mere coincidence in the facts and circumstances of the present case. Such trades are nothing but the result of deliberate matching of buy and sell orders in the fag end of the expiry date of the derivative contracts so as to achieve the goal of influencing the price of the scrip in the derivative segment.

29. Hence, I find that the Noticee had indulged in the trading in the scrip of IOB by repeatedly placing sell orders at prices higher than LTP and thereafter placing buy orders to match with his own sell orders to execute 'Self-trades' resulting in creation of artificial volumes in the market and manipulation of closing price in the scrip on December 26, 2013. The contention of the Noticee that IOB was a liquid scrip and these manipulation is not possible cannot be accepted given the nature of the trading activity carried out by the Noticee.

30. Further, it is observed that the Noticee had indulged in the order book manipulation by repeatedly placing and deleting orders on the expiry dates of F&O contracts on November 28, 2013 and December 26, 2013.

31. The details of orders placed by Suresh Swaroopchand Mehta on November 28, 2013 is as under:

Patch Time	Buy Order Qty Placed	Buy Orders Qty deleted	Buy Trades Executed No. of shares	Sell Order Qty Placed	Sell Order Qty deleted	Sell Trades Executed No. of shares
3:00 pm to 3:30 pm	1,50,000 (4 orders)	10014	1,39,934	2,07,299 (3 orders)	67,365	1,39,934
9:30 am to 2:59 pm	9,00,000 (9 orders)	9,00,000	0	4,00,000 (4 orders)	4,00,000	0

32. From the above table, it is observed that Buy order quantity of 10,014 shares (forming 6.68 % of the buy order quantity placed) and Sell order quantity of 67,365 shares (forming 32.50 % of the sell order quantity placed) was deleted during 03:00 PM to 03:30 PM. Similarly Buy order quantity of 9 lac shares (100% of the buy order quantity placed) and Sell order quantity of 4 lac shares (100% of the sell order quantity placed) was deleted during 09:30 AM to 02:59 PM.

33. Details of the Noticee's Buy order quantity and Sell order quantity deleted on November 28, 2013 is given hereunder.

<u>Deleted buy order during the Period 3:00 PM to 3:30 PM</u>

Buy Order No	Buy Order Time	Buy Order Limit Price	Buy LTP prior to Order Entry	Buy Order Orig Vol	Buy Order Disclosed Vol	Total Traded Qty	Order Deleted Time	(Unexecuted) Qty deleted
2013112836638093	15:19:48	52	51.9	20000	0	9986	15:20:43	**10014**

(Order disclosed Volume 0 denotes full order quantity being disclosed to market)

<u>Deleted sell order during the Period 3:00 PM to 3:30 PM</u>

Sell Order No	Sell Order Time	Sell Order Limit Price	Sell LTP prior to Order Entry	Sell Order Orig Vol	Sell Order Disclosed Vol	Total Traded Qty	Order Deleted Time	(Unexecuted) Qty deleted
2013112836612453	15:17:58	52.45	51.4	100000	10000	70000	15:24:06	30000
2013112836613907	15:18:04	52.45	51.4	100000	10000	62635	15:24:05	37365
Total				2 lac	***Sell Order Qty Deleted 67,365 shares***			

Deleted buy order during the Period 9:30 AM to 2:59 PM

Buy Order No	Buy Order Time	Buy Order Limit Price	Buy LTP prior to Order Entry	Buy Order Orig Vol	Buy Order Disclosed Vol	Order Deleted Time
2013112835724848	13:46:27	51	51.1	100000	0	13:46:30
2013112835734888	13:47:39	48.2	51	100000	0	13:47:47
2013112835744418	13:48:36	48.2	51.15	100000	0	13:48:51
2013112835747755	13:48:56	48.2	51	100000	0	13:49:12
2013112835748145	13:48:59	48.2	51	100000	0	13:49:12
2013112835776899	13:52:45	48.3	51.1	100000	0	13:53:00
2013112835777428	13:52:48	48	51.1	100000	0	13:53:00
2013112835777947	13:52:52	47.2	51.1	100000	0	13:53:00
2013112835778526	13:52:56	46.5	51.1	100000	0	13:53:00
	Buy order Quantity Deleted 9,00,000 shares					

(Order disclosed Volume 0 denotes full order quantity being disclosed to market)

Deleted sell order during the Period 9:30 AM to 2:59 PM

Sell Order No	Sell Order Time	Sell Order Limit Price	Sell LTP prior to Order Entry	Sell Order Orig Vol	Sell Order Disclosed Vol	Order Deleted Time
2013112835766061	13:51:30	52.8	51.1	100000	0	13:51:48
2013112835766549	13:51:34	53.5	51.1	100000	0	13:51:48
2013112835766878	13:51:37	54	51.1	100000	0	13:51:48
2013112835767543	13:51:43	55	51.1	100000	0	13:51:47
	Sell order Quantity Deleted 4,00,000 shares					

(Order disclosed Volume 0 denotes full order quantity being disclosed to market)

34. From the above table it is observed that the Noticee had not executed any trades (buy or sell trades) but however placed buy and sell orders for large quantity (1 lac shares per order) which were subsequently deleted within a very short span of time (within few seconds). The complete order quantity was being disclosed in respect of the above orders so as to imply large demand and supply for the shares.

35. The details of orders placed by Suresh Swaroopchand Mehta on December 26, 2013 is as under:

Patch Time	Buy Order Qty Placed	Buy Orders Qty deleted	Buy Trades Executed No. of shares	Sell Order Qty Placed	Sell Order Qty deleted	Sell Trades Executed (no. of shares)
3:00 pm to 3:30 pm	36,54,436 (26 orders)	3,81,073	31,90,537	32,65,960 (16 orders)	5,96,859	26,69,101
9:30 am to 2:59 pm	2500563 (10 orders)	25,00,000	563	23,42,049 (152 orders)	17,24,049	5,21,999

36. From the above table, it is observed that Buy order quantity of 3,81,073 shares (forming 10.43 % of the buy order quantity placed) and Sell order quantity of 5,96,859 shares (forming 18.28 % of the sell order quantity placed) were deleted during 03:00 PM to 03:30 PM. Similarly Buy order quantity of 25 lac shares (100% of the buy order quantity placed) and Sell order quantity of 17,24,049 shares (forming 73.61% of the sell order quantity placed) were deleted during 09:30 AM to 02:59 PM.

37. Details of the Noticee's deleted Buy order quantity and Sell order quantity on December 26, 2013 is given hereunder.

Deleted buy order during the Period 3:00 PM to 3:30 PM

Buy Order No	Buy Order Time	Buy Order Limit Price	Buy LTP prior to Order Entry	Buy Order Orig Vol	Buy Order Disclosed Vol	Total Traded Qty	Order Deleted Time	(Unexecuted) Order Qty deleted
2013122636506025	15:16:10	52	51.25	500000	0	129927	15:16:30	370073
2013122636515564	15:16:43	51.5	52	11000	0	0	15:17:42	11000
Total				***511000***	***Buy Order Qty Deleted 381073***			

(Order disclosed Volume 0 denotes full order quantity being disclosed to market)

Deleted sell order during the Period 3:00 PM to 3:30 PM

Sell Order No	Sell Order Time	Sell Order Limit Price	Sell LTP prior to Order Entry	Sell Order Orig Vol	Sell Order Disclosed Vol	Total Qty Executed	Order Deleted Time	(Un executed) Qty Deleted
2013122636519453	15:16:57	52.75	52	500000	50000	449361	15:17:12	50639
2013122636528309	15:17:32	52.8	52.1	500000	50000	387693	15:17:41	112307
2013122636552872	15:19:11	52.5	52.25	120000	0	51572	15:19:17	68428
2013122636556353	15:19:26	52.5	52.3	48000	0	0	15:19:29	48000
2013122636575857	15:20:52	52.8	51.6	500000	50000	290561	15:21:15	209439
2013122636582850	15:21:22	52	52.25	250000	26000	143009	15:21:29	106991
2013122636602641	15:22:49	51.9	51.9	100000	10000	98945	15:28:17	1055
Total				***20.18 lac***	***Sell Order Quantity Deleted 596859 shares***			

38. From the above tables, it is also observed that the Noticee had placed buy orders disclosing the complete order volume to the market, however deleting the order from the system, immediately after few seconds without executing the desired/intended quantity. In respect of sell orders it is observed that the Noticee was placing order for large quantity however, disclosing approx 10% of the sell order volume to the market in majority of the orders and deleting the same after partial execution. The above pattern of order placement was done with a view to display huge buy demand *vis a vis* the sale with a view to attract investors at a higher price in the market during the period 3:00 to 3:30 PM.

Deleted buy order during the Period 9:30 AM to 2:59 PM

Buy Order No	Buy Order Time	Buy Order Limit Price	Buy LTP prior to Order Entry	Buy Order Orig Vol	Buy Order Disclosed Vol	Executed Qty	Order Deleted Time	Order Qty Deleted
2013122633487065	09:21:25	48.05	50	200000	0	0	09:21:27	200000
2013122634524246	11:12:00	50.2	51.25	300000	0	0	11:12:02	300000
2013122634525053	11:12:06	50.2	51.3	500000	0	0	11:12:07	500000
2013122635370746	13:03:03	48.2	50.6	500000	0	0	13:03:14	500000
2013122635867868	14:13:00	48.2	50.65	500000	0	0	14:13:01	500000
2013122635869907	14:13:16	48.2	50.65	500000	0	0	14:13:38	500000
Total				***25 lacs***	***Buy Order Qty deleted* 25,00,000 shares**			

Deleted sell order during the Period 9:30 AM to 2:59 PM

Sell Order No	Sell Order Time	Sell Order Limit Price	Sell LTP prior to Order Entry	Sell Order Orig Vol	Sell Order Disclosed Vol	Total/ Partially Executed Qty	Order Deleted Time	(Un executed) Order Qty Deleted
2013122633503893	09:22:37	50	50.05	2000	0	1614	09:28:07	386
2013122633507972	09:22:56	50	49.95	2000	0	0	09:28:07	2000
2013122633514239	09:23:27	49.95	49.9	2000	0	1785	09:28:07	215
2013122633519088	09:23:50	49.95	49.95	1000	0	0	09:28:06	1000
2013122633674951	09:36:45	50.35	50.4	4000	0	0	09:40:43	4000
2013122633677415	09:36:57	50.3	50.3	4000	0	45	09:40:43	3955
2013122633678029	09:36:59	50.3	50.3	4000	0	0	09:40:43	4000
2013122633867355	09:54:41	50.7	50.7	4000	400	0	09:55:09	4000
2013122633888590	09:56:39	50.75	50.7	4000	400	0	09:56:43	4000
2013122633944073	10:02:39	50.9	50.8	24000	2500	0	10:25:58	24000
2013122634295776	10:42:26	50.8	50.7	2659	0	0	10:42:39	2659
2013122634442923	11:02:02	51.2	51.2	20000	0	2281	11:02:07	17719

2013122634503208	11:09:24	51.25	51.2	4000	0	0	11:09:31	4000
2013122634552035	11:14:59	51.35	51.35	4000	0	3520	15:09:11	480
2013122634559854	11:15:46	51.35	51.3	4000	0	0	11:16:21	4000
2013122634625967	11:24:10	51.2	51.15	4000	400	0	13:37:17	4000
2013122634677732	11:29:48	51.1	51.1	4000	400	100	13:37:16	3900
2013122634687345	11:30:55	51.05	51.1	4000	400	100	13:37:16	3900
2013122634696542	11:31:52	51.1	51	4000	400	0	13:37:16	4000
2013122634731669	11:35:54	52	50.9	4000	0	0	11:35:56	4000
2013122634790158	11:43:16	50.9	50.9	4000	400	137	13:37:16	3863
2013122634943386	12:01:12	50.7	50.7	4000	400	0	12:01:15	4000
2013122635063943	12:16:46	50.4	50.4	4000	0	0	12:16:52	4000
2013122635087027	12:19:56	52.7	50.35	50000	0	0	12:26:51	50000
2013122635130984	12:26:31	50.45	50.35	4000	400	400	12:26:49	3600
2013122635176641	12:33:09	50.5	50.5	4000	0	0	12:33:22	4000
2013122635212754	12:38:53	50.7	50.55	4000	0	0	12:39:45	4000
2013122635262612	12:46:36	50.65	50.65	4000	0	74	12:46:38	3926
2013122635322709	12:55:35	50.65	50.65	4000	0	54	13:00:11	3946
2013122635371332	13:03:09	52.8	50.6	500000	0	0	13:03:12	500000
2013122635450236	13:15:34	50.55	50.65	8000	800	2000	13:16:12	6000
2013122635532848	13:27:03	50.4	50.35	20000	2000	14	13:27:51	19986
2013122635551108	13:29:15	50.4	50.35	4000	0	0	13:30:21	4000
2013122635559663	13:30:30	50.4	50.35	8000	0	50	13:30:32	7950
2013122635677132	13:45:45	50.7	50.7	4000	0	3296	13:46:02	704
2013122635681400	13:46:24	50.7	50.75	4000	0	0	13:46:26	4000
2013122635691410	13:47:49	50.7	50.7	4000	0	1900	13:48:34	2100
2013122635868447	14:13:05	52.8	50.65	500000	0	0	14:13:12	500000
2013122635958506	14:25:57	52.8	51.05	500000	50000	0	14:44:41	500000
2013122636109817	14:44:35	50.8	50.85	4000	0	2240	14:44:38	1760
Total				***1743659***	***Deleted Sell Order Qty =*** **1724049 shares**			

39. An analysis of the order placed during the period 9:30 to 2:59 similar pattern as observed during the period 3:00 to 3:30 pm has been followed by the Noticee to show false demand in the market by disclosing the buy order volumes fully and partially disclosing the sell orders volumes. The above pattern of order placement was done with a view to display huge buy demand vis a vis the sale with a view to attract investors at a higher price in the market during the period 3:00 to 3:30 PM. Further, the fact that orders for large quantity were being placed well below/away from the last traded price and deleted immediately before the same are executed, indicate that the Noticee had no intention to execute the trades but

to create an impression of false demand to the general public to lure them to place orders for the scrip.

40. I have carefully gone through the submissions made by the Noticee and I note that trade details/ order placement / trading pattern provided to the Noticee alongwith the SCN is not disputed by the Noticee. However, the Noticee has contended that he is a day trader and arbitrageur. His trading activity includes arbitrage as well as regular intra-day trading in respect of a scrip. He further submitted that execution of self trades by arbitrage trader was not the Prohibited and every arbitrage Trader have has a right to have an order cancelled. I am unable to agree with the submission of the Noticee that the trading strategy was for the purpose of taking arbitrage. I am of the view that the Noticee is free to adopt any trading strategy but he has to ensure that whatever trading strategy he adopts, the same is in conformity with the regulatory framework and not to distort the market. As regards the submission of the Noticee that the alleged transactions took place as result of his arbitrage strategy, I am of the opinion that it is impractical to earn 'arbitrage' as the buyer and the seller in such self-trading remains the same person and no beneficial ownership of shares is thereby changed. Hence, the contentions of the Noticee are devoid of merit.

41. The Noticee has further contended that there is nothing to substantiate the charge that he has manipulated the price of the scrip of IOB. In view of the facts / material available, I note that the settlement price of the F&O contracts is the closing price of the scrip on the settlement day and the same is calculated based on the volume weighted average price during the last half an hour (i.e. 3:00 pm to 3:30 pm) on the cash segment. In other words, the larger the volume of particular trades, larger is the contribution of those trades to the closing price/settlement price. In the instant case, it is seen that on the settlement day, there was significant volume in the half an hour (71% on December 26, 2013) as compared to the total volume of the day. I note that during these particular patch, the trading activity of the Noticee was significant. The Noticee has purchased

66.83% and sold 55.90% of the total shares traded in the last half an hour on December 26, 2013. Accordingly, I find that the Noticee has traded significantly in the last half an hour of the settlement day on December 26, 2013.

42. The next point to be noted is that while the Noticee has traded significantly in the last half hours of the settlement date, it has primarily traded with himself i.e. self trades. The self trade quantities of the Noticee in the last half an hour on December 26, 2013 was 66.81% of his buy quantity and 79.86% of his sell quantity. Such high percentages of self trades and that too in such a short span (last half an hour) cannot be termed as normal trading activity by any standards.

43. It is pertinent to mention here that the demand and the supply forces determine the market price and consequent trading in the scrip. This is the major determining factor required for genuine investors for making an investment decision for buying or selling securities. I note that that these large buy/sale orders at below/above prevailing prices were placed mainly to give an impression of huge demand in the market participants and such orders were placed with the sole motive of distorting the market. Further, artificial demand in the scrip might have induced other lay investors to deal in the scrip. Therefore, it is evident from the facts of the case that the Noticee has thus manipulated the order book of the shares on November 28, 2013 and December 26, 2013 by deleting the buy and sell orders by giving a false impression in the market about the demand and supply in the scrip of IOB and thereby misled the market participants. On account of its various activities as narrated above, the Noticee acted in a fraudulent and manipulative manner.

44. With the above trading pattern (self-trades and order book manipulation) in the cash market, the Noticee had taken his positions in the derivatives (F&O) market during the month of December 2013. Derivative positions taken by the Noticee on the expiry date i.e. December 26, 2013 is stated below.

<table>
<tr><th rowspan="2">Client Name</th><th colspan="2">Nov & Dec , 2013 (Upto 25th)</th><th rowspan="2">Net Long shares in lacs as on (date)</th><th colspan="2">On Dec 26, 2013</th><th rowspan="2">Net Long on Dec 26, 2013</th></tr>
<tr><th>Buy</th><th>Sell</th><th>Buy</th><th>Sell</th></tr>
<tr><td>Suresh Swaroopchand Mehta</td><td>400000</td><td>400000</td><td>0 (Dec 2nd 2013)</td><td>1244000</td><td>44000</td><td>1200000</td></tr>
<tr><td colspan="7">Profit made by Suresh = 1.37 * 12,00,000 = Rs 16,44,000
Settlement price as on Dec 26, 2013 is 52.30; Suresh Acquisition Price = 50.93</td></tr>
</table>

45. From the table mentioned above it is seen that the Noticee, had taken his positions in derivatives market during the month of November and December 2013. As on December 02, 2013 he had no positions and the fresh positions were taken only on expiry day of December 2013 (i.e. December 26, 2013) and he had a net long position to the extent of 12 lacs shares in the scrip of IOB on December 26, 2013.

46. On the expiry date of F & O contracts on December 26, 2013 the acquisition price of the Noticee in the derivatives market was Rs.50.93 and the settlement price of the contract was Rs.52.30. Hence, the Profit made by the Noticee on derivatives segment is (52.30 – 50.93) * 12,00,000 = Rs.16,44,000.

47. The Noticee has admitted that he made the profit in derivative segment and he earned the net profit of Rs. 16,24,812 after considering the brokerage expenses and statutory transaction taxes. Further, the Noticee has claimed that he incurred the net loss of Rs. 6,93,293 in cash segment on 26.12.2013 and hence the overall profit made by him in derivative segment on December 26, 2013 was only Rs.9,31,519.

48. In view of the aforesaid findings regarding the trading activities of the Noticee such as creation of artificial demand, placing of buy as well as sell orders/ order book manipulation in the derivatives settlement date, it is concluded that the Noticee with malafide intention had executed such large ‘Self Trades’ and order book manipulation with an intent to create misleading appearance of trading without intention to change the ownership of such securities. The actions were to

distort the market so as to make profits in the derivative segment on the expiry day of F&O contracts on December 26, 2013.

49. In view of the fact that the Noticee had executed large 'Self Trades' and indulged order book manipulation with an intent to create misleading appearance of trading without intention to change the beneficial ownership of such securities to make profits in the derivative segment on the expiry day of F&O contracts on December 26, 2013 and order book manipulation on November 28, 2013, I find that the Noticee's trading activity certainly is in the nature causing possible adverse impact and thus disturbing the equilibrium of the scrip of IOB.

50. The Hon'ble Supreme Court in its Order dated April 26, 2013 in the matter of ***N. Narayanan vs Adjudicating Officer, SEBI,*** has laid down that "*Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality"*

51. Further, In the matter of ***SEBI v. Kishore R. Ajmera,*** the Hon'ble Supreme Court observed that *"the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light"*

52. Therefore, in view of the forgoing, I find that the Noticee indulged in 'Self-Trades' during the last half an hour in the cash market at NSE in the scrip of IOB without intention of change of beneficial ownership but intended to operate in order to make profits in the derivative segment on the expiry date of F & O contracts on December 26, 2013. Further, the Noticee had also indulged in order book manipulation by repeatedly placing and deleting orders by creating false and misleading appearance of trading in the scrip of IOB on November 28, 2013 and December 26, 2013. Therefore, I am of the view that on account of such manipulative activities and trading practices, the Noticee had violated the provisions of Regulation 3 (a) to (d), 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003.

53. The aforesaid violation of the SEBI PFUTP Regulations by the Noticee attract monetary penalty under Section 15HA of the SEBI Act, 1992, which reads as follows at the relevant time:

<u>"Penalty for fraudulent and unfair trade practices."</u>

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher, –*

54. While determining the quantum of penalty under Section 15HA, it is important to consider the factors stipulated in Section 15J of SEBI Act, which reads as under:-

"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

Explanation – *For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA <u>shall be and shall always be</u> deemed to have been exercised under the provisions of this section."*

55. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

56. It is noted that the material available on record do not specify the specific loss suffered by the investors due to such 'Self Trades'/ order book manipulation. The Noticee has traded in the scrip of IOB on November 28, 2013 and December 26, 2013. The net profit earned by the Noticee on December 26, 2013, in the derivatives segments was Rs. Rs.9,31,519 as submitted by him after considering loss in cash segment, the brokerage expenses and statutory transaction taxes. Except this, no other quantifiable unfair / disproportionate gain was shown to have been acquired by the Noticee in such trading, however, I cannot ignore the gravity of violations involved in the matter.

57. The series of activities such as addition and deletion of orders and hiding the sell quantity while fully disclosing the quantity of buy orders and the attending circumstances like large number of trades on the settlement date and that too at the fag end clearly indicate that the Noticee was trying to artificially generate interest in the scrip as well as to manipulate the price in the scrip. Though the Noticee has contended that the same was nothing but trading strategy however in view of the facts and circumstances of the present case, it cannot be accepted. This is more so as such an activity would distort the market and SEBI as the Regulator in such a situation cannot remain a mere spectator. Hence, the violations committed by the Noticee attracts monetary penalty.

ORDER

58. After taking into consideration the nature and gravity of the charges established and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose the penalty of Rs.27,94,557/- (Rupees Twenty Seven Lakhs Ninety Four Thousand Five Hundred Fifty Seven Only) on the Noticee viz. Shri Suresh Swaroopchand Mehta in terms of Section 15HA of the SEBI Act, 1992 for violation of Regulation 3 (a) to (d), 4 (1), 4 (2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities

Market) Regulations 2003. The penalty amount is equivalent to three times of the amount of profit made by the Noticee as a result of the violations committed by him.

59. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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)	

60. In terms of Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 06, 2018
Place : Mumbai

Biju. S
Adjudicating Officer