

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act,
1992

In respect of:

Sl. No.	Name of the Noticee	PAN
1	Himadri Acharya Bhaduri	AKVPB4984B
2	Atul Sharma	BCAPS7959F

In the matter of M/s. Action Financial Services (India) Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading in the scrip of Action Financial Services (India) Ltd. (hereinafter referred to as “**Action/Company**”) for the period from March 01, 2009 to July 22, 2015 (hereinafter referred to as “**Investigation Period**”).
2. In the course of investigation, it was observed that the Company was incorporated on October 01, 1992. The Company is a registered stock broker of BSE and also a registered merchant banker as well as a depository participant.

3. While analyzing the trading activities in the scrip of Action, it was observed during the Investigation Period that the price of the scrip opened at Rs.18 on March 02, 2009 and increased to a high of Rs.50.60 on March 23, 2011. Though the price of the scrip fell to Rs.19.70 on October 07, 2011, the price of the scrip further increased to 45.25 on February 09, 2012 and thereafter fell to close at Rs.6.60 on July 22, 2015.
4. It was revealed during the investigation that Mr. Himadri Acharya Bhaduri (hereinafter referred to as **“the Noticee no.1”**) and Mr. Atul Sharma (hereinafter referred to as **“the Noticee no. 2”**) had traded in the scrip of Action during the Investigation Period and have contributed to the Last Traded Price (hereinafter referred to as **“LTP”**) of the scrip of Action during the Investigation Period, by 15.45% and 14.99% respectively, and thereby have contributed to market positive LTP of the scrip.
5. Investigation observed that the Noticee no. 1 has contributed Rs.19.85 to positive LTP through 21 buy trades over 03 trading days. It has also been observed that out of 21 trades executed, in 18 trades, the Noticee no. 1 had placed buy orders for 01 share only even though sell orders for larger quantities were available in the market. Further, in respect of the balance 03 trades, the buy orders placed by him were the first orders of the respective trading days and they were placed at prices higher than the LTP.
6. Similarly, in respect of the Noticee no. 2, investigation revealed that he has contributed Rs.19.25 to positive LTP through 16 buy trades and all the buy orders have been placed for a quantity of 01 share each. It has also been observed that out of the 16 buy trades executed by the Noticee no. 2, in 11 such trades, he had placed each time buy order for only 01 share though sell order/s were available for a larger quantity on the exchange platform. The investigation further revealed that the Noticee no. 2 has entered into self-

trades for 01 share each on three occasions and the said self-trades executed by the Noticee no. 2 has also contributed to Rs.4.70 of positive LTP.

7. Based on the aforesaid findings in the investigation, it was alleged that trading in the scrip of Action by the Noticee no. 1 and the Noticee no. 2 did not appear as genuine trades. There apparently was no bona-fide intention to buy the shares of Action for the reason, that despite availability of sell order with sufficient quantities in the market, the two Noticees have placed buy orders only for 01 share and that too at a rate higher than the LTP. It has also been alleged that Mr. Atul Sharma, i.e., Noticee no. 2 executed 03 self-trades at a rate higher than the LTP. Based on the above, it is alleged that both the Noticees were instrumental in establishing a price of the scrip higher than the LTP. Thus, the two Noticees have allegedly contributed to the increase in price of the scrip by placing buy orders only for 01 shares in each of their trades at a price higher than the LTP and thereby have manipulated the price of the scrip, so as to artificially create a misleading appearance of trading in the scrip of Action. Such acts of trading in the scrip of Action by the two Noticees in an abnormal manner have been alleged to be in violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **“PFUTP Regulations”**).

SHOW CAUSE NOTICE, REPLY AND HEARING

8. Based on the above findings, a Show Cause Notice dated January 09, 2018 (hereinafter referred to as **“SCN”**) was issued to the two Noticees viz:- Mr. Himadri Acharya Bhaduri and Mr. Atul Sharma (hereinafter collectively referred to as **“the Noticees”**), calling upon them to explain as to why suitable directions shall not be issued against them under Sections 11(1), 114(b) and 11B of the SEBI Act.

9. I note that in response to the SCN issued to Noticee no. 1, a written reply dated January 29, 2018 has been received from one Mr. S.A. Bhaduri, who has identified himself as the son of Mr. Himadri A. Bhaduri (Noticee no.1). In the said reply, the following submissions have been made:
- That his father, Mr. Himadri A. Bhaduri, died on August 17, 2016. He was a retired small retail investor and was earning his livelihood through trading in stock market.
 - That people generally do manipulation for profit but his father did not make any meaningful profit in the scrip of Action. As per the SEBI SCN, he had traded for only 21 shares of Action.
 - That his father bought 01 stock in each trade which was normal trading since market lot of the scrip might have been 01 share.
 - That according to his information, his father neither knew the counterparties to these trades nor knew the Noticee no. 2, Mr. Atul Sharma.
 - That for the trades mentioned in the SCN, the sell order rates were higher than LTP and also contributed to increase in LTP. If buying 01 share can cause increase in price, then the price of any scrip can be increased by buying 01 share.
 - That he thinks that his father did not have any intention of manipulation, but if unknowingly he broke any rule, he begs pardon on behalf of his late father.
10. I note that no reply has been received from the Noticee no. 2 in response to the allegations made in the SCN.
11. I also note that opportunity of personal hearing was granted to the Noticees on February 21, 2019, however, no one attended the said hearing.

ISSUES FOR CONSIDERATION AND FINDINGS

12. I have considered the SCN dated January 09, 2018, response received so far and all other relevant material available on records and based on the same, I proceed to frame the following issue for consideration in this case:

ISSUE: Whether the acts of the Noticees are in breach of Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (a),(e) of PFUTP Regulations?

13. Before I proceed to examine as to whether in the facts of the matter, the aforesaid violations as alleged in SCN stand established or not, it would be proper to peruse the relevant provisions of PFUTP Regulations, which are produced herein under for ready reference:

SEBI (PFUTP) Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices-

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*
- (e) any act or omission amounting to manipulation of the price of a security;*

14. As noted in the beginning of this order, the price of the scrip of Action witnessed an increase from Rs.18.00 on March 02, 2009 and reached a high of Rs.50.60 on March 23, 2011. Thereafter, the price of the scrip fell to Rs.19.70 on October 07, 2011 and again rebounded upward to Rs.45.25 on February 09, 2012. I note that Noticee no. 1 and 2 have placed buy orders for only 01 share at a time at prices higher than the prevailing LTP and thereby have contributed to the rise in the price of the scrip. It is also noted from the records that investigation in the matter was initiated pursuant to a reference received from the Department of Income Tax (hereinafter referred to as **“DIT”**), wherein it has been stated that in Penny Stocks, entities such as operators, shares brokers and promoters of a company are resorting to unfair methods and are misusing the stock market mechanism for the purpose of providing/generating bogus LTCG.

15. Moving on to the trades executed by the Noticees, from the perusal of the SCN, details of such manipulative trades as executed by the Noticee no. 1 during the investigation period are as under:

Table- 1

Trade date	Trade time	Buy order time	Sell order time	Buy order rate	Sell order rate	Buy order qty.	Sell order qty.	Traded qty.	LTP	Trade rate	LTP Cont.
31-Jan-12	10:25:31	9:15:27	10:25:31	35.15	35.15	1	150	1	33.50	35.15	1.65

Trade date	Trade time	Buy order time	Sell order time	Buy order rate	Sell order rate	Buy order qty.	Sell order qty.	Traded qty.	LTP	Trade rate	LTP Cont.
31-Jan-12	11:26:12	11:26:12	11:17:20	35.10	35.10	1	10	1	34.00	35.10	1.10
01-Feb-12	9:18:47	9:15:25	9:18:47	36.75	36.75	1	100	1	35.00	36.75	1.75
01-Feb-12	10:05:31	10:05:31	10:04:46	36.50	36.50	1	190	1	35.50	36.50	1.00
01-Feb-12	10:11:34	10:11:34	10:11:26	35.80	35.80	1	300	1	35.50	35.80	0.30
01-Feb-12	11:59:46	11:59:46	10:10:49	36.00	36.00	1	25	1	35.80	36.00	0.20
01-Feb-12	12:06:11	12:06:11	10:04:46	36.50	36.50	1	190	1	35.80	36.50	0.70
01-Feb-12	12:44:28	12:44:28	10:04:46	36.50	36.50	1	190	1	35.80	36.50	0.70
01-Feb-12	12:57:51	12:57:51	10:04:46	36.50	36.50	1	190	1	35.25	36.50	1.25
01-Feb-12	14:18:58	14:18:58	10:04:46	36.50	36.50	1	190	1	36.00	36.50	0.50
01-Feb-12	14:34:23	14:34:23	10:04:46	36.50	36.50	1	190	1	35.50	36.50	1.00
01-Feb-12	14:38:46	14:38:46	9:23:15	36.70	36.70	1	100	1	35.50	36.70	1.20
02-Feb-12	9:27:35	9:15:01	9:27:34	38.50	38.00	1	50	1	36.70	38.50	1.80
02-Feb-12	9:27:52	9:27:52	9:27:43	38.50	38.50	1	50	1	38.00	38.50	0.50
02-Feb-12	9:38:29	9:38:29	9:38:18	37.80	37.80	1	200	1	37.50	37.80	0.30
02-Feb-12	9:41:00	9:41:00	9:38:40	38.00	38.00	1	22	1	37.00	38.00	1.00
02-Feb-12	9:47:29	9:47:29	9:38:40	38.00	38.00	1	22	1	37.50	38.00	0.5
02-Feb-12	9:57:38	9:57:38	9:56:59	37.80	37.80	1	160	1	36.50	37.80	1.3
02-Feb-12	10:43:59	10:43:59	10:28:30	37.70	37.70	1	22	1	36.50	37.70	1.2

Trade date	Trade time	Buy order time	Sell order time	Buy order rate	Sell order rate	Buy order qty.	Sell order qty.	Traded qty.	LTP	Trade rate	LTP Cont.
02-Feb-12	11:53:34	11:53:34	10:28:30	37.70	37.70	1	22	1	37.50	37.70	0.2
02-Feb-12	11:55:55	11:55:55	10:28:30	37.70	37.70	1	22	1	36.00	37.70	1.7
Total LTP Contr.											19.85

16. From the details of trades executed in the scrip of Action by the Noticee no. 1 as listed out in the above table, it is observed that the Noticee no. 1 has executed 21 trades for 01 share each on 03 trading days during January 31, 2012 to February 2, 2012. It is also observed that the Noticee no. 1 has contributed to positive LTP by Rs.19.85 by way of executing trades at prices higher than the last traded price of the scrip of Action.

17. I note from the reply received on behalf of the Noticee no.1, from his son Mr. S.A. Bhaduri stating that the Noticee no.1 has died on August 17, 2016 and in support of which, a copy of death certificate issued by the Kolkata Municipal Corporation has been furnished on August 20, 2019. Further, Mr. S. A. Bhaduri, in the said reply has denied the allegations made in the SCN and has submitted that his father, the Noticee no. 1, was a small retail investor and was earning his livelihood through trading in stock market. It has been submitted that the Noticee no.1 had not made any profit out of the trades executed in the scrip of Action as mentioned in the SCN. It has further been submitted that placing trades for 01 share was not prohibited and further small quantity of shares executed by his father could not be said to be capable of influencing the price of shares of Action.

18. I have gone through the allegations made in the SCN, reply received on behalf of the Noticee no. 1 and the relevant material available on records. It is a matter of fact that the Noticee no. 1 has executed 21 trades for 01 share each on 03 trading days and trades executed by the Noticee no. 1 in such manner have resulted in contribution to positive

LTP by Rs.19.85. From the details of his trades enumerated in the above table, I note that out of 21 trades executed by the Noticee no. 1, there are only 03 trades wherein the buy orders have been placed by the Noticee no. 1 prior to the sell orders. Thus, for the remaining 18 trades, buy orders by the Noticee no.1 have been placed after the sell orders were already placed in the trading system. It makes it apparent that Noticee no. 1 was mostly matching his buy orders with the sell orders already placed by the counterparties at a price higher than the LTPs. The decision to buy at a price higher than LTP that too, repeatedly and through multiple buy orders on a single day as can be observed from the aforesaid table, indicate the frequent trading in the securities market. This observation is also supported from the reply filed on behalf of the Noticee wherein it has stated that the Noticee no. 1 had association with the securities market as he was earning his livelihood from trading in stock market. Keeping the said submission in the mind, on analyzing the trades of the Noticee no. 1 as depicted in the above table, one gets the following impressions:

- (a) The Noticee no.1 has executed 21 trades in the scrip of Action over the period of 03 trading days and was placing buy orders for 01 share each time he placed an order even though sell orders for larger quantities were available in the system.
- (b) The Noticee no.1 has placed/ matched his buy orders at higher prices than the LTP on almost all occasions during the 03 days of his trades as a result of which, price of the scrip moved upward with every trade of the Noticee.
- (c) It is noted that only on 03 occasions the Noticee no.1 had placed his buy orders prior to the sell orders. In rest of 18 instances, buy orders have been placed after the sell orders were placed in the system. From the pattern of the orders placed/ executed, it has been observed that on most of the occasions, the Noticee no. 1 appears to have chased to match the pending sell order and has placed buy order for 01 shares only to match the pending sell order thereby contributing positively to the LTP. In all the 21 trades, the Noticee No.1's trades have successfully matched

- the price of the sell orders by placing his buy order only for 01 share at a time which raises a strong suspicion on the intent of the Noticee to trade in the scrip as a genuine buyer.
- (d) It has also been found that the Noticee no.1 has placed multiple trades on the same day. For instance, it is noted that the Noticee no.1 has executed 02 trades on January 31, 2012, 10 trades on February 01, 2012 and 09 trades on February 02, 2012. The pattern of trades executed by the Noticee no.1 in the scrip of Action, which did not have a strong fundamentals to attract investors to trade in its scrip and more particularly, his conduct in executing 21 trades for 01 share each over a period of 03 days, by no standard can be held to have been executed in normal course of trading in a scrip. The submission made on behalf of the Noticee that he had been trading in shares to earn his livelihood does not justify as to why and under what prudence, the Noticee no. 1 had traded in the shares of a company which did not enjoy a good prospect and as to how the trading in the shares of Action for only 01 shares at a time, at prices higher than LTP was beneficial in earning his livelihood.
- (e) As pointed out above, the Noticee no.1 has executed multiple trades in a single day and with each of his trade, he has successfully contributed to the LTP. From the pattern of intra-day trades executed by the Noticee and the reply filed on behalf of the Noticee, I find no explicable reason justifying the placing of a buy order or matching his buy order with existing sell order at a price higher than the LTP of the scrip of Action.
- (f) I further observe that out of 21 trades executed by the Noticee no.1, only for 03 trades, the Noticee has placed his buy order prior to the sale order. Whereas in the rest of the 18 trades, where sale orders have been placed first in the system, the time taken to match sell orders with a subsequent buy order placed by the Noticee, ranges from 8 seconds to 5 hours. For example, on February 01, 2012, I find most

of the sell orders have been placed very early in the trading sessions and were pending for long hours for want of buy orders. The Noticee no.1, without observing the fact that there is no liquidity in the scrip of Action during the entire morning session and sale orders were pending for execution for quite long time as no buyer is available at that price, decided to match the price of the seller by placing buy order for 01 share and thereby decided to execute trades at a price higher than the LTP. Such an unusual trading behavior of the Noticee no.1, if considered keeping in mind the reference received from DIT, indicates the fraudulent intent of the Noticee no.1 to manipulate the share price of Action and accordingly, trades were placed to create a misleading appearances in the price of the scrip of Action.

(g) As observed earlier, the shares of Action have not witnessed any major corporate announcements, other than declaration of routine financial results. The records do not contain any news about the company which could be attributed for strongly inducing an individual to trade in the scrip, that too with a price higher than LTP on a repeated basis.

19. In view of the foregoing observations, the explanations offered on behalf of the Noticee no.1 by his son are not convincing. Nevertheless, considering the fact that the Noticee no. 1 has died on August 17, 2016 and the SCN in the matter was issued on January 09, 2018, I note that the instant proceedings against the Noticee no.1 have become infructuous. Hence, the same is not being proceeded with.

20. Moving on to the Noticee no. 2, it is observed from that the SCN that he has also been alleged for violations similar to the Noticee no.1 namely, not acting as a genuine trader, has contributed to the LTP and his acts of trading in the scrip has caused/created misleading appearance of trading in the scrip of Action. The Noticee no. 2 has also indulged in executing self-trades in the scrip of Action. The details of trades and self-

trades executed by the Noticee no. 2 in the scrip of Action are presented in Table -2 and Table -3 respectively hereunder:

Table- 2

Trade date	Trade time	Buy order time	Sell order time	Buy order rate	Sell order rate	Buy order qty.	Sell order qty.	Traded qty.	LTP	Trade rate	LTP Cont.
13/10/2011	11:36:32	11:36:32	10:11:23	22.05	22.05	1	100	1	21.00	22.05	1.05
21/10/2011	14:43:31	14:43:31	11:48:48	25.25	25.25	1	10	1	24.25	25.25	1.00
24/10/2011	12:57:29	12:57:29	11:09:56	25.00	25.00	1	100	1	24.00	25.00	1.00
26/10/2011	16:59:49	16:59:49	16:52:47	24.65	24.65	1	100	1	23.50	24.65	1.15
31/10/2011	15:26:12	15:26:12	10:22:02	25.15	25.15	1	100	1	24.00	25.15	1.15
02/11/2011	10:02:09	10:02:09	09:37:01	27.60	27.60	1	10	1	26.40	27.60	1.20
03/11/2011	09:38:29	09:38:29	09:27:16	28.85	28.85	1	10	1	27.55	28.85	1.30
26/12/2011	09:43:14	09:39:39	09:43:14	22.50	22.50	1	50	1	21.45	22.50	1.05
27/12/2011	09:23:14	09:23:14	09:15:02	23.60	23.60	1	100	1	22.50	23.60	1.10
28/12/2011	09:18:24	09:18:24	09:15:02	24.60	24.60	1	199	1	23.45	24.60	1.15
29/12/2011	09:21:55	09:21:55	09:20:14	25.60	25.60	1	10	1	24.45	25.60	1.15
02/01/2012	09:57:01	09:45:14	09:57:01	27.00	27.00	1	1	1	25.75	27.00	1.25
04/01/2012	11:37:21	11:37:21	09:27:55	25.50	25.50	1	84	1	24.50	25.50	1.00
Total LTP Contri.											14.55

Table- 3

Trade date	Buy client PAN No.	Sell client PAN No.	Buy order Time	Sell order Time	Trd . Rate	Buy order rate	Sell order rate	Trd .qty	Buy order qty	Sell order qty	LTP contr.
12-Oct-11	BCAPS7959F	BCAPS7959F	15:25:10	15:23:39	21.00	21	21.00	1	1	1	1.00
01-Nov-11	BCAPS7959F	BCAPS7959F	15:23:27	14:38:35	26.40	26.4	26.40	1	1	1	2.40
09-Nov-11	BCAPS7959F	BCAPS7959F	09:18:16	09:18:21	27.80	27.8	27.80	1	1	1	1.30
Total LTP Contri.											4.70

21. I note from the records that there is no reply received from the Noticee no. 2 in response to the SCN. The Noticee no. 2 has also, for reasons best known to him, preferred not to

avail the opportunity of personal hearing and accordingly has not appeared before me on the scheduled date of hearing.

22. From the trades executed by the Noticee no. 2 in the scrip of Action as mentioned in Table -2 & 3, it is observed that the Noticee no. 2 has executed 16 trades for 01 share each during October 12, 2011 to January 04, 2012. It has been alleged in the SCN that the aforesaid trades of the Noticee no. 2 have resulted in contributing to positive LTP of Rs.19.25., as the Noticee no. 2 was always placing his buy orders at a price higher than the LTP thereby caused increase in price of the scrip. Moreover, the Noticee no. 2 has also indulged in execution of 03 self-trades on 03 trading days contributed to positive LTP of Rs.4.70, as highlighted in the Table -3.

23. I have gone through the allegations made in the SCN and the material available on record. From the perusal of the trades executed by the Noticee no. 2, it is noted that out of 13 trades executed by the Noticee no. 2, it was only 02 trades wherein the buy orders have been placed prior to the sell orders and in the remaining 11 trades executed by the Noticee no. 2, the Noticee has placed his buy orders after the sell orders were already placed in the system.

24. From the details of trades executed by the Noticee no. 2 as presented in the above Table 2 & 3, following have been observed:

(a) The Noticee no. 2 has executed 13 trades in the scrip of Action and has placed buy order only for 01 share in each of his trades even though sell orders for greater quantities were available in the trading system.

(b) The Noticee no. 2 has placed/ matched his buy orders at prices higher than the LTP on almost all occasions during the period. The buy orders of the Noticee no. 2 have

been placed only after the sale orders were placed in the system, except for two occasions, i.e., on December 26, 2011 and on January 02, 2012, when the buy orders were first placed by him prior to the sell orders.

- (c) From the pattern of the orders placed/ executed, it has been observed that on most of the occasions, the Noticee no. 2 appears to have chased to match the pending sell orders and accordingly has placed buy order for only 01 share only to match a sale order so as to contribute to LTP. In all the 13 trades, the Noticee no. 2's trades have successfully attempted to match the price of the sell orders by placing a buy order only for 01 share at a time. This trading behaviour on the part of the Noticee no. 2 raises a bonafide suspicion on the true intent of the Noticee no. 2 and also on the genuineness of his trade.
- (d) It is also found from the records that out of 13 trades as mentioned in Table -2, on two occasion, i.e., on October 31, 2011 and December 26, 2011, the trades executed by the Noticee no. 2 was the only trade executed in the share of Action in the entire day. Similarly, on 03 occasions, it has been observed that the total volume of shares traded in the scrip was mere 03 shares and out of that, 01 share was executed by the Noticee no. 2. It is also noted that on November 02, 2011, there was only 02 shares traded in the scrip out of which, trading in 01 share which resulted in contributing to the LTP by Rs. 1.20, was the trade executed by the Noticee no. 2. It is also observed from the trade executed on October 31, 2011 that the sell order was placed at 10:22:02 hrs. and remained pending till the Noticee no.2 matched the pending sale order by placing his buy order at 15:26:12 hrs. The sell order on that date remained pending for execution for more than 5 hours and no buyer was available to show any interest for the same for 5 hours. The Noticee no. 2 suddenly came in the system and placed buy order for only 01 share and matched the price of the pending sale order, which manifests the

malicious intention of the Noticee no. 2 not to place order as a genuine buyer but only with an objective to disturb the market equilibrium or to create a misleading appearance in the trading of the scrip by way of such unusual trading behaviour.

(e) Considering the pattern of trades executed by the Noticee in the scrip of Action, a company which did not have a strong fundamental to attract investors to trade in the scrip and more particularly, considering the fact that each trade has been executed just for 01 share without any intention to genuinely buy the scrip of Action, further persuade me to record that the orders placed by the Noticee no. 2 in the scrip of Action were with a motive to contribute to the LTP of the scrip. Therefore, the Noticee no. 2's trading activities in the scrip of Action cannot be held to be trades executed in normal course of trading in a scrip. As observed earlier, most of the sell orders have been placed very early in the trading sessions and were pending in the system for long hours in the absence of any corresponding buy orders. The Noticee no.2, overlooking the fact that there is no liquidity in the scrip of Action, where sale orders have remained pending for execution for quite long time as no buyer was available at that price, went ahead with his buy orders for 01 share each time and matched the price asked by the seller and thereby executed trades at a price higher than the prevailing LTP.

(f) As regards self-trades executed by the Noticee no. 2, I find that the Noticee, by executing self-trades on 03 occasions have contributed Rs. 4.70 as LTP in the scrip of Action. Since, the Noticee no.2 has not filed any reply and has preferred not to avail opportunity of personal hearing granted to him, no explanation is available to justify his indulgences in self-trades and his act of placing order at a price higher than the LTP for 01 share on repeated basis. In the absence of any explanation justifying the execution of self-trades and further keeping in mind the pattern and behaviour of the Noticee while executing trades as shown in Table-3, I am constrained to hold that the

self-trades executed by the Noticee were also executed only to contribute to the artificial price rise in the scrip of Action in the same manner as his other trades were executed for no reason, at a price higher than the LTP

25. As noted earlier, the share of Action has not witnessed any major corporate announcements other than declaration of routine financial results. The records do not contain any news about the Company which could be attributed as reason to induce investors to buy the shares of the company. Moreover, even if the Noticee no.2 had any inducement to invest in the share of the Action, his action of placing buy order of 01 share repeatedly that too at a price higher than LTP on a repeated basis reflects the malicious motive of the Noticee no. 2 to manipulate the price of the scrip. The Noticee no. 2 has chosen not to file any response to the allegations made in the SCN and has not appeared before me to furnish any explanation for executing such trades in the scrip of Action. The Noticee no. 2 by preferring not to file any reply or to explain his case in person, has not made any effort to dispute the allegations made in the SCN. In this regard the observation of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of *Sanjay Kumar Tayal & Ors. Vs. SEBI* (in appeal No. 68/2013) decided on February 11, 2014, is relevant and same is referred hereunder:-

"29. We see no merit in above contentions. As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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 levelled against them in the show cause notices....."

26. As pointed out above, the Noticee no. 2 has contributed to positive LTP of Rs.19.25 in the scrip of Action through 16 trades spread across 16 trading days. The Noticee no. 2 has executed singular trades for 01 shares each on each of these 16 trading days, in a manner to increase the LTP thereby aiding in rise in price of the scrip. Further, Noticee no. 2 has

also executed 03 self-trades for 01 share each thereby contributing to positive LTP of Rs.4.70. The Noticee no. 2 has not furnished any justification for executing such trades. Considering the facts of the case as discussed above, I have no hesitation in concluding that the way the trades in Action scrip have been executed by Noticee no. 2 was only with an intent to manipulate the price of the scrip of Action and the said trades have been executed only to create an artificial and misleading appearance to the trades in the scrip in a fraudulent manner. Hence, such trades cannot be considered as genuine trades executed in the normal course of trading in the securities market.

27. In this regard, in order to find out as to what constitutes an artificial and manipulative trade, it is apt to refer to the order of the Hon'ble SAT in the matter of *Ketan Parekh v. SEBI (Appeal No. 2 of 2004 decided on 14.07.2006)* and the observation of the Hon'ble SAT is as under;

“.....Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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 because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.

28. In the instant matter also, the Noticee no. 2 has placed buy orders on a continuous basis and matched the sale orders pending in the system for which apparently no buyers were

available in the market. The way the Noticee has conducted his trading activities in the share of Action as exhibited in foregoing paragraph, makes it evident that the Noticee has traded in a manipulative manner so as to cause artificial price rise in the scrip thereby harboring an intention to defeat the market mechanism. Further, I also find it apt to rely on the observations of Hon'ble Supreme Court in the matter of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753, wherein, the Hon'ble Supreme Court has held that Regulation 4(1) of PFUTP Regulations in clear and unmistakable terms has provided that “no person shall indulge in a fraudulent or an unfair trade practice in securities” and while referring to its own judgment in the case of *SEBI v. Shri Kanhaiyalal Baldevbhai Patel and Ors* (2017) 15 SCC 1, have further held that:

“31 Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the ‘unfair trade practice’ may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of ‘unfairness’ appears to be broader than and includes the concept of ‘deception’ or ‘fraud’.....

.....Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market.”

29. Hon'ble Supreme Court, in the above case has appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market

is not a platform for any fraudulent or unfair trade practice. Hon'ble Court has further observed that *"The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market."*

30. In the end, I can sum up my observations by stating that the trading pattern of Noticee no.2 clearly indicates that the Noticee has been responding to the sellers call by placing buy orders of only 01 share on different days so as to match the sell price without any genuine interest to buy the shares of Action. This is clearly evident from his act of placing buy orders for only 01 share despite there being sufficient quantity available for sale in the system. The Noticee by placing buy orders for such a small quantity over a period of time on a repeated basis, notwithstanding the fact that the company's fundamentals and credentials did not support a price rise, have been instrumental in artificially increasing the price of the scrip through their trading pattern. Looking at the unusual pattern of trades executed by the two Noticees in the scrip of Action, it is felt appropriate to refer to the following observations of the Hon'ble SAT in *Pan Asia Advisors Limited v. SEBI (Appeal No. 126 of 2013, decided on October 25, 2016)*, where, while interpreting the expression 'fraud' under the PFUTP Regulations, 2003, the Hon'ble SAT has observed that *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not."*

31. In view of the above observations of the Hon'ble SAT, I find that the charge of fraud is established if a person or persons by their acts have led the investors to believe in something which is not true and thereby induced them to deal in securities irrespective of the fact as to whether any investor has actually become a victim of such fraud or not.

Further, in Ketan Parekh case (Supra), the Hon'ble SAT observed that *'if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required.'* The trades executed by the Noticee no. 2 over a period by placing order for only 01 share each at a time, and at a price higher than LTP on a continuous basis, in the scrip of a company which did not enjoy a good fundamentals, leave no doubt in my mind that the trades executed by the two Noticees were not executed as a genuine buyers interested in the scrip of Action so as to acquire its shares. In view of the aforesaid, I hold that the trades were executed with an aim to establish a price higher than the LTP and to artificially create a misleading appearances of trading in the scrip of Action. I, therefore hold that the Noticee no.2 has been actively engaged in manipulative trades and have knowingly contributed to artificial increase in the price of the scrip of the Company so as to mislead the investors of securities market. Thus, clearly the acts of the Noticee no. 2 are in violation of the provisions of PFUTP Regulations as charged in the SCN

DIRECTIONS:

32. In view of the fact that the Noticee no. 1 has expired on August 17, 2016, as observed earlier in paragraph 19, the instant proceeding stands abated against the Noticee no. 1 and accordingly, the SCN issued against the Noticee no. 1 is disposed of without any direction.
33. As regards to the Noticee no. 2, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and Section 11B of the SEBI Act, hereby issue the following directions:
- Noticee no. 2, Mr. Atul Sharma is restrained from accessing the Securities Market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of 06 months from the date

of this order. It is clarified that during the period of restraint, the existing holding of the Noticee no. 2 including units of mutual funds, shall remain frozen.

34. The Order shall come into force with the immediate effect.

35. A copy of this order shall be forwarded to the Mr. S.A. Bhaduri (son of Noticee no.1) and Noticee no. 2, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Date: August 28, 2019

Place: MUMBAI

-Sd-

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA