

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S.K. MOHANTY, WHOLE TIME MEMBER
ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF ANUKARAN COMMERCIAL ENTERPRISES LIMITED

In respect of:

Noticee No.	Name of the Noticee	PAN
1	Mr. Rajesh Chetanji Tawri	ABYPT5918K
2	Mountain View Developers Private Limited	AAFCM3624G
3	Mr. Aanad Balavantrai Boghani	AGIPB2369K
4	Mr. Kaushik Bipinchandra Dhanki	AJPPD6414R

(The above entities are individually referred to by their corresponding names/numbers and collectively referred to as “Noticees”)

Background:

1. Securities and Exchange Board of India (hereinafter referred to as **“SEBI”**) noticed an unusual movement in the price in the scrip of Anukaran Commercial Enterprises Limited (hereinafter referred to as **“Anukaran/the Company”**) and undertook an investigation relating to the trading activities in the scrip of *Anukaran*, to ascertain whether the unusual price movement so noticed in the scrip was normal or it was caused by unscrupulous acts leading to any possible manipulation of the price of the scrip of the *Company*. Accordingly, an investigation was carried out into the scrip for the period commencing from January 01, 2012 to January 06, 2015 (hereinafter referred to as **“investigation period”**). The investigation period has been divided into multiple patches, for convenience of analysis, however, the periods relevant for the present proceedings are Patch 1 (i.e. period of January 01, 2012 to November 23, 2012) and Patch 2 (i.e. period of November 27, 2012 to December 26, 2012).

- (i) The investigation undertaken by SEBI revealed the following:
- (ii) *Anukaran* was engaged in the business of dealing in chemicals in India and is also involved in trading in securities in the form of shares and debentures. The *Company* was incorporated in the year 1985, after which its name underwent several changes and its name was last changed to

Anukaran Commercial Enterprises Limited, in the year 2011. The shares of the *Company* were listed on BSE India Limited (hereinafter referred to as “**BSE**”).

- (iii) The price of the scrip in Patch 1 saw an abnormal rise, which was not supported by any corporate announcements or material changes in the business activities of the *Company*. In this period, the first trade was executed at INR 35.15 whereas the last trade was executed at INR 256.25 and the scrip witnessed a sharp increase in price by INR 221.20 with just 60 trades executed within a period of 43 trading days.
- (iv) During Patch 1, it is noticed that 16 entities **sold** the shares of *Anukaran* at a price higher than the last traded price (hereinafter referred to as “**LTP**”) and contributed to the positive LTP. The investigation further revealed that out of the said 16 sellers, top 03 sellers have contributed more than 65% to the market positive LTP variance of the scrip. The trading details of the scrip during Patch 1 are summarised as under:

Table No. 01

Sr .No.	Particulars	Details
1.	No. of trading days in patch 1	43
2.	No. of trades	60
3.	Total traded volume of shares	10,51,643
4.	Daily average volume of shares traded	24,457
5.	Value of the trades	1,07,76,283
6.	No. of buyers	22
7.	No. of sellers	16

- (v) Some of the sellers were noticed to be selling their shares in miniscule quantities, despite having sufficient quantities of shares in their respective demat accounts. These sellers were also on a continuous basis executing trades at a price higher than the LTP.
- (vi) The *Noticee no. 1* received 100 shares of *Anukaran* from the *Noticee no. 2* in an off-market transaction on October 29, 2012 at the rate of INR 82.87 per share.
- (vii) Upon receipt of shares, the *Noticee no. 1* sold 12 shares in 11 trades and all trades were executed at prices higher than the LTP. The *Noticee no. 1* despite having sufficient shares in his demat account sold 1 share repeatedly in all the 11 instances, except in 1 trade wherein he sold 2 shares.
- (viii) It is noticed that 43.58% of price rise in the scrip of *Anukaran* was on account of the sale of shares by the *Noticee no. 1* and on an average, the *Noticee no.1* has contributed to price rise of INR 8.02 for every share that he sold during the Patch 1 of the investigation period.
- (ix) Similarly, in Patch 2 of the investigation period (November 27, 2012 to December 26, 2012), the *Noticee no. 1* was again seen executing trades in very miniscule quantities wherein, he sold only 15 shares in 15 trades which caused contribution of INR 142.20 to the LTP, out of total LTP variance of INR 156.75 in the scrip. It is further seen even during the Patch 2 that 90.72% of price rise in the scrip of *Anukaran* was contributed on account of sell trades executed by the *Noticee no. 1*, and

on an average, the *Noticee no. 1* contributed to price rise of INR 9.48 for every share that he sold during the said Patch.

- (x) The *Noticee nos. 3 and 4* are seen to have indulged in short selling of shares of the *Company* and all such trades were executed at LTP but in miniscule quantities. The *Noticee nos. 3 and 4* sold 40 shares in 8 trades and 30 shares in 6 trades respectively which alleged to have contributed to INR 31.90 and INR 20.55 respectively to the LTP of the scrip.
- (xi) As per information unearthed, it was noticed that the off-market transfer of shares of the *Company* by the *Noticee no. 2* to the *Noticee no. 1* was not a genuine transfer and appear to have been transferred to facilitate the *Noticee no. 1* to execute trades manipulating the price of the scrip of the *Company*.

2. Based on the afore-stated findings as revealed in the course of investigation, a common Show Cause Notice dated March 19, 2018 (hereinafter referred to as “**SCN**”) was issued to the four *Noticees* alleging that *Noticee nos. 1, 3 and 4* executed their sale orders without any *bonafide* intentions to sell. It was further alleged against *Noticee no. 1* that inspite of sufficient quantities of buy orders being available in the system, he preferred to sell very small quantities of shares in each of his transactions on a repeated basis with a motive to cause artificial price rise in the scrip. It was further alleged that the off-market transfer of shares of the *Company* from *Noticee no. 2* to the *Noticee no. 1* was not a genuine transfer and was carried out only for the purpose of facilitating manipulation in the price of the scrip of the *Company*. Further, the act of short selling of small quantities of shares of the *Company* at prices higher than LTP by *Noticee nos. 3 and 4* is also alleged to have elements of manipulating the price of the scrip of the *Company* as the said acts of short selling cannot be treated as genuine and fair dealing in the securities of the *Company*.

3. The SCN therefore alleges that all the afore said acts on the part of the *Noticees* are in contravention of the provisions of regulations 3 (a), (b), (c), and (d) and 4(1), (2), (a), and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).

4. The SCN was served on all the *Noticees* through SPAD except for *Noticee no. 2*, on whom, the SCN was served by way of affixation at its last known address. In compliance with the principles of natural justice, the inspection of the documents relied upon in the SCN was granted to *Noticee nos. 3 and 4* on April 23, 2019 and also to *Noticee no. 2* on June 06, 2019.

5. The *Noticees* were informed about their personal hearing scheduled on April 30, 2019, however, *Noticee nos. 3 and 4* sought an adjournment of the personal hearing. On the said date, the authorized representative on behalf of *Noticee no. 1* appeared and made various submissions on his behalf. As the hearing remained part heard, another opportunity of personal hearing was granted on June 11, 2019

to all the *Notices* but again, a request for adjournment was moved on behalf of *Notice nos. 3 and 4*. The authorised representative for *Notice no. 2* filed a written reply and made submissions on the lines of the said reply while the authorised representative of *Notice no. 1* concluded his arguments. During the course of hearing, certain queries were posed to the authorised representatives advising them to furnish requisite information, however, till date no details have been furnished with respect to the queries so raised in the course of hearing. Further, in view of the requests received on behalf of *Notice nos. 3 and 4*, their personal hearing was fixed for March 24, 2020, which could not be conducted due to lockdown imposed on account of Covid-19. Accordingly, the personal hearing took place on August 05, 2020 and the same was followed by written submissions made on behalf of the said *Notices*, on September 16, 2020.

Reply and Consideration:

6. Before proceeding further, it would be imperative to highlight the submissions filed on behalf of the *Notices*. The *Notice no. 1* vide his replies dated April 30, 2019, May 03, 2019 and December 29, 2020, has responded to the allegations made in the SCN by stating as under:

- i. Trades were executed in normal course of trading to maximise the benefit.
- ii. No trades were executed with any intention to inflate the price.
- iii. He had purchased the shares from the *Notice no. 2* through a third person and the shares sold by the *Notice no. 2* to him was at a price lesser than the market price.
- iv. The transfer of shares from the *Notice no. 2* was basically to settle his dues with the third person.
- v. There is no allegation that the shares of the *Company* were sold in connivance with the buyers of such shares in order to increase the price. Further, there is no alleged connection with Promoter/Director of the *Company* or with other *Notices*. The burden of proof to show prior meeting of minds with other entities is on SEBI.
- vi. The SCN fails to establish the allegation of price manipulation against the *Notice no. 1*.
- vii. The alleged contribution of positive LTP of INR 96.35 during Patch 1 (43.58% of the total market positive LTP) and INR 156.75 during Patch 2 (90.72% of the total market positive LTP) is miniscule.
- viii. The buy orders, at prices higher than the LTP, were already present in the system when the trades were executed by the *Notice no. 1*.
- ix. Though the buy orders resulted in execution of trades, no allegations against the buyers have been made. Further reliance has been placed on the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) passed in the matter of *Jagruti Securities Limited Vs. SEBI (Appeal no. 102 of 2006)* to contend that for the charge of

artificially raising of the price of a scrip, it is necessary to show element of collusion between buyer and seller.

- x. Even after selling 12 shares in Patch 1 and 15 shares in Patch 2, the *Noticee no. 1* was left with 145 shares, which were sold in the end of Patch 2, for which no allegation has been made by SEBI. After investigation period, the *Noticee no. 1* has further sold 1368 shares of the *Company*, in the same pattern.
- xi. SCN has been issued after a period of 5 years of the alleged off market transfer and therefore the charges deserve to be dropped. Reference has been made to the order of Hon'ble SAT passed in the matter of *Ashok Shivlal Rupani Vs. SEBI (Appeal no. 417 of 2018)* etc.
- xii. There has to be some direct or circumstantial evidence to prove that the *Noticee no. 1* has manipulated the price of the scrip, as held by of Hon'ble SAT in the matter of *Narendra Ganatara Vs. SEBI (Date of decision: July 29, 2011)* and *KSL & Industries Ltd. vs SEBI (Appeal No. 9 of 2003)* etc.
- xiii. *Noticee no. 1* has also placed reliance on the orders of Hon'ble SAT passed in the matter of *Nishith Shab (HUF) Vs. SEBI (Appeal no. 97 of 2019)*; *HB Stockholding Ltd. Vs. SEBI (date of decision: August 27, 2013)*; orders passed by SEBI in the matter of *Amit Tilala*; order of AO in the matter of *Winsome Yarns Limited*; order of AO in the respect of *Ms. Sangita Pramod Harlaka* in the matter of *Radford Global Ltd.* etc., so as to contend that the seller alone cannot be charged for market manipulation, in absence of any charges against the corresponding buyers.
- xiv. A charge of market manipulation is a serious charge and it should be supported by higher degree of evidence.
- xv. Reliance has been placed on the observations of Hon'ble SAT passed in the matter of *Vikas Ganesh Mal Bengani Vs. WTM, SEBI (Appeal No. 225 of 2009)* and *Ketan Parikh v. Securities and Exchange Board of India (Appeal No. 2 of 2004)* to contend that mere transactions on prices higher than LTP cannot be termed to be manipulative.

7. *Noticee no. 2*, vide its written reply dated June 07, 2019 and letter dated September 14, 2020, has filed its response to the allegations of the SCN, which are summarized as under:

- i. Documents including copy of investigation report have not been provided, which is in violation of principles of natural justice. Various judicial decisions have been relied upon to buttress the above submissions such as:

- a) *H.R. Mehta Vs. Assistant Commissioner of Income-tax, Mumbai - [2016] 72 taxmann.com 110*

b) *Securities and Exchange Board of India v. Price Waterhouse – Supreme Court of India- (Civil Appeal No. 6003- 6004/12)*

c) *Capricon Shopping Complex V. ITQ (1996) 218 ITR 721*

- ii. Sale of 100 shares of the *Company* to the *Noticee no. 1* was executed on October 29, 2012 and the consideration was received in cash. The price of the scrip increased with a volume of 1 to 5 Lakh shares and no allegations of manipulation has been against anyone else except *Noticee nos. 3 and 4*.
- iii. It did not sell a single share in Patch 1 and 2 and its buy trades of shares of the *Company* executed during Patch 1 and 2 did not contribute to positive LTP.
- iv. Off market transactions are *per se* not illegal and the mode of payment of consideration in cash is also a valid mode of payment. The same is done in compliance with the stipulations of Securities Contract (Regulation) Act, 1956, governing spot delivery transactions.
- v. It had indulged in other off market transactions also and payments of most of the off market transactions of shares were done through banking channels only.
- vi. There is no connection with any major trader in the scrip of *Anukaran* during the investigation period nor has any collusion between buyers and sellers been alleged.
- vii. There was no change in the circuit filter of the scrip of the *Company* by the Stock Exchange, despite the upward movement of the price of the scrip. BSE has not issued any kind of warning with respect to the scrip of the *Company*.
- viii. Even if the purchaser of the shares allegedly manipulates the price of the scrip, it cannot be held liable for the same as it merely sold the shares. Reliance has been placed on the following orders to support the said argument:
 - a) *Jatin Manubhai Shah & Ors Vs. Adjudicating Officer, SEBI (Appeal No. 16 of 2010);*
 - b) *Vipul Mohan Joshi Vs. SEBI (Appeal no. of 2019);*
 - c) *Re: Svaraj Trading & Agencies Ltd.- Order of AO, SEBI (Date of decision: August 31, 2018)*
- ix. Price of the scrip increased as the demand of the shares was high and supply was low.
- x. Even though there was large number of shareholders of the *Company*, most of the shareholders did not come out to sell their shares.
- xi. *Noticee no. 2* has also made certain submissions, which being identical to those made by *Noticee no. 1* are not being repeated herein.

8. *Noticee no. 3* vide his letters dated March 16, 2018, April 16, 2018, April 23, 2019 and September 16, 2020; and *Noticee no. 4* vide his letters dated March 18, 2018, April 13, 2018 and September 16, 2020 have made certain submissions, which being identical in their essence are being summarized together in brief here under:

- i. The copy of investigation report, complaints etc. needs to be provided.
- ii. They are not having any connection with the *Company*, its promoters/directors or other connected entities.
- iii. The transactions entered into the shares of the *Company* were independent and having no connection with the transactions of other entities. By issuance of common SCN, unwarranted prejudice is caused.
- iv. The transactions in the shares of the *Company* were made 'on market' screen based system, through SEBI registered broker and all applicable compliances pertaining to such trades were made.
- v. Matching of trades in a screen based system is done on price-time priority by an automated system. Due to such system, no one can have access over details of orders or identities of counter parties.
- vi. All such transactions were *bonafide* without any information of any scheme implemented in the shares. No inquiry with respect to the alleged trades was raised by anyone including Stock Exchange, since the relevant time till issuance of the SCN.
- vii. They have very limited knowledge of the functioning of the stock market and all decisions with respect to trading are done on inputs received from friends etc. Based on such advice, they have traded in the shares of the *Company*.
- viii. They have made small investment as a calculative risk to take first mover advantage to enter into the scrip before it becomes popular.
- ix. *Noticee no. 3* has traded only in 40 shares in 8 trades whereas *Noticee no. 4* has traded in 30 shares in 6 trades and such trades were executed in small quantities of shares within their respective risk bearing capacity.
- x. The said trades, in comparison to total market volume/trades during the investigation period was miniscule to have any effective impact on the price of the scrip.
- xi. *Noticee no. 3* has executed 8 trades on 8 different days. The said trades were spread over different months viz., June 2012 (2 days), July 2012 (2 days), August 2012 (1 day), and September 2012 (3 days).
- xii. Similarly, *Noticee no. 4* had executed 6 trades on 6 different trading days during the investigation period of three years. The said trades were spread over in different months, viz., February 2012 (1 day), March, 2012 (2 days), April 2012 (1 day), May 2012 (1 day) and October 2012 (1 day).
- xiii. The sell orders were placed at prices which were already available on the market. Therefore, being sellers, they cannot be held responsible for contribution towards LTP as buyer had already placed the purchase orders above LTP.

- xiv. After last trade executed by *Noticee no. 3* on September 25, 2012 and by *Noticee no. 4* on October 18, 2012, the price of the scrip of the *Company* rose to INR 306.20 in December, 2012. The average sell price of *Noticee no. 3* was INR 86.88 and *Noticee no. 4* sold at an average price of INR 72.55. Had they been part of manipulation, they would have sold the shares at highest possible rate in December, 2012. A chart showing price movement from January, 2012 to January, 2014 has also been referred to in support of the submission.
- xv. They indulged in short selling of shares of the *Company* because they were hopeful that the price of the scrip will fall and thus, they will make profit by squaring off the position.
- xvi. Immediately after execution of sell trade, they had placed buy orders. As there was no seller (for the corresponding buy order), such buy order did not materialize.
- xvii. Though there is stock lending scheme under which Stock Exchange initiates auction process or squares off the trades at closed out price, however, the same did not materialize for their trades.
- xviii. As non-delivery of shares pursuant to short sell is taking place regularly, no adverse inference should be drawn from the same against him.
- xix. Reference has been made to certain orders like *First Financial, J M S Financial Services* etc., passed by SEBI wherein directions imposed against person who allegedly contributed to LTP, have been revoked.
- xx. They are not connected with other *Noticees* nor the SCN alleges connection based on any transaction.
- xxi. The broker of the *Noticee nos. 3* and *4* is common, however, the timing of opening of trading accounts of the *Noticees* were different. Copies of KYC forms have been submitted in support thereof.
- xxii. There has been delay in the present proceedings due to which the charges should be dropped.
- xxiii. In order to prove violation of serious charges of 'fraud', strict proof is required. Reliance in this connection has been placed on various orders like:
 - a) *R.K. Global Vs. SEBI- Appeal no. 158/2008- Securities Appellate Tribunal;*
 - b) *Narendra Ganatra Vs SEBI- Appeal no. 47/2011- Securities Appellate Tribunal; etc*
- xxiv. No loss has been caused to any of the investors due to their alleged trades nor have they derived any disproportionate gains.

9. Having perused the replies filed on behalf of the *Noticees*, it is noticed that the submissions made on their behalf can be broadly classified on two counts i.e. Preliminary or technical submissions in the form of objections to the proceedings and natural justice followed thereunder, and submissions on merit. Before advertng to the merits of the case, I find it proper to deal with those preliminary objections raised by the *Noticees* viz; non-furnishing of copy of investigation report, delay in initiating

action etc., prejudice caused to them warranting the proceedings to be dropped on those grounds alone.

10. I note from the records that after conducting inspection of documents that have been relied upon in the SCN issued to them, the aforesaid *Notices* have demanded for inspection/copies of various other documents like entire investigation report, copies of complaints received etc., and have contended that not providing the same to them has resulted in violation of principles of natural justice, as they have not been able to defend their case effectively. In this respect, it is however noted that documents which have been relied upon in the SCN to make allegations against the *Notices*, have already been furnished to the *Notices* as annexures to the SCN and again during the inspection of such documents, the copies thereof have also been duly provided to them.

11. Though the *Notices* have contended that non-furnishing of documents has caused prejudice to them, and in the absence of those documents, they were not able to defend themselves effectively, however, the *Notices* have not been successful in exhibiting the exact nature of prejudice claimed to have been caused to them. Similarly, it is also noted that the law on the issue of not giving the copy of entire investigation report is well settled to the effect that providing of documents which have been relied upon in the SCN to frame allegations/charges are treated as sufficient compliance of the principles governing the Natural Justice, unless an entity is successful in showing the prejudice caused, in case the document so demanded by it is not furnished. The issue of causing a prejudice on account of non-furnishing of copy of the entire investigation report came up for consideration before Hon'ble SAT in the matter of *Shruti Vora Vs. SEBI* (Date of decision: February 12, 2020), wherein Hon'ble SAT have *inter alia* observed that in the absence of any law specifically imposing or casting a duty to provide all the documents which are in the possession (of SEBI) though have not been relied upon, it would not be justified on the part of the *Notices* to ask for those documents which are not having a role in attributing the allegation made on *Notices* and therefore, non-furnishing of all such documents would not *ipso facto* result in breach of principle of nature justice. Similarly, the Hon'ble SAT in the case of *Reliance Commodities Ltd vs. National Commodity & Derivatives Exchange Ltd.* (DoD- July 23, 2019) have *inter alia* observed that;

"2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant....."

12. Reverting to the facts of the present case, I note that the charges levelled against the respective *Notices* pertain to indulging in manipulative and fraudulent trades for which the *Notices* have been provided with the findings *qua* them from the investigations, in the SCN. The SCN also contains as annexures, copy of the demat statement and trade log of the scrip of *Anukaran* etc. Except for making a bald allegation of non-furnishing copy of investigation report, the *Notices* have failed to establish any prejudice caused to them on account of such non-furnishing of the investigation report. Thus, in the light of the aforesaid jurisprudence, I am of the view that the principles of natural justice have been adequately complied with in the present matter, as all the documents relied upon in the SCN have been duly furnished to the *Notices*.

13. Thus, the contention of *Notices* that non-furnishing of investigation report caused prejudice to them is devoid of any merit as *Notices* have not brought on record any reasons sufficient to satisfy that the furnishing of same was essential nor have they explained as to what prejudice was caused to them by non-furnishing of the entire investigation report. Therefore, the contention of the *Notices* is rejected as the same is without any merit.

14. The *Notices* have further raised that the instant proceedings are required to be dropped on the ground of delay. It has been stated that the trades alleged to be manipulative were executed in the year 2012, whereas the SCN has been issued in the year 2018. Insofar as the contention of the *Notices* pertaining to delay in issuance of SCN is concerned, it is noted that the allegations in the SCN dated March 19, 2018 have been premised on the trades executed during the investigation period which is spread over January 01, 2012 to January 06, 2015. It has to be understood that in order to ascertain *prima facie* culpability of any delinquent, the trade data and other documents needs to be thoroughly examined during the investigation, which no doubt needs considerable time. After crystallisation of the factual aspects pertaining to the case, the proceedings move further towards issuance of show cause notice. Thus, when I consider the factual aspects of the case on the basis of which the SCN has been issued in March, 2018, I do not find any reason or infirmity to drop the charges on the ground of delay as claimed by the *Notices*. For the purpose of arriving at *prima facie* findings, all data pertaining to the scrip have to be diligently evaluated and only pursuant thereto; a show cause notice can be issued.

15. Without prejudice to the aforesaid, I may also record here that the extant framework of SEBI Act, 1992 and PFUTP Regulations do not prescribe a limitation period for initiation of action against any wrong doer for the violations of the said enactment and rules and regulations made thereunder. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in the matter, which could be held as so inordinate that it results in causing prejudice and continuation of same tantamount to miscarriage of justice, in my view, the date when the violation came to the notice

(of SEBI), would be the relevant point and not the date of actual commission of the said violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. The said legal position has been endorsed by Hon'ble SAT in *Ravi Mohan & Ors. vs. SEBI (Appeal no. 97/2014; Order dated December 16, 2015)*: “.....Based on decision of this Tribunal in case of *HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013)* it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, as it is also settle that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C)* has held that if there is no statutory bar for adjudicating the matter beyond a particular date, it would be proper to drop the proceedings or set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”

16. Before dealing with the other grounds of defense taken by the *Noticeses* to counter the allegations levelled against them in the SCN, as the SCN alleges violation of provisions of PFUTP Regulations, it is relevant that, a reference to the relevant regulations that have been invoked in the SCN are made here as under:

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly –

- (a) buy, sell or otherwise deal in the 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;

.....

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

17. From the aforesaid factual narratives, I observe that *Notices nos. 1, 3 and 4* have followed a uniform trade practice vis-à-vis the scrip of *Anukaran*, i.e., execution of sell trades of shares of *Anukaran* in miniscule quantities, thereby contributing to the positive LTP variance of the scrip, with only difference being the fact that the *Notices nos. 3 and 4* indulged in short selling of the scrip. On the other hand, *Notice no. 2* is facing the charges of transferring shares of the *Company* in off-market, to the *Notice no. 1*, which apparently was not a genuine transfer and was alleged to have been done only for facilitating the manipulation of the price of the scrip on the Stock Exchange platform. For the sake of convenience, the allegations against *Notices nos. 1, 3 and 4* are being taken up first for discussion and consideration in the following paragraphs.

18. In terms of the SCN, it is noted that the *Notice no. 1* has undertaken trades during both the patches of the investigation period, i.e., Patch 1 and Patch 2. The details of such trades alleged in the SCN as manipulative and fraudulent depicting the corresponding percentage of LTP contribution as extracted from the trade log, are tabulated hereunder:

Table No. 02

(Patch 1)

S.NO	Date of trade	No. of shares held before trade	Trade qty.	Trade price	LTP variance (INR)	Sell order details				Corresponding buy order details				LTP Percentage
						number	time	Price	qty.	number	order time	Price	qty.	
1.	30/10/2012	100	2	142.9	6.8	12000137084577	11:59:25	142.9	2	17000158000079	09:00:02	142.9	300	5
2.	31/10/2012	99	1	150	7.1	19000178001084	09:16:57	150	1	15000128003683	09:00:00	150	100	4.97
3.	02/11/2012	98	1	157.5	7.5	11000127002098	09:19:15	157.5	1	14000176000169	09:00:01	157.5	300	5
4.	05/11/2012	97	1	165.35	7.85	15000143023424	09:28:19	Market order	1	16000148004578	09:00:01	165.35	300	4.98
5.	07/11/2012	96	1	173.6	8.25	14000032211114	14:00:47	173.6	1	11000031000042	09:00:00	173.6	300	4.99
6.	08/11/2012	95	1	182.25	8.65	23000126069198	10:57:56	182.25	1	15000128001500	09:00:00	182.25	100	4.98
7.	12/11/2012	94	1	191.35	9.1	17000165153065	14:10:15	191.35	1	11000126003238	09:00:02	191.35	500	4.99
8.	13/11/2012	93	1	200.9	9.55	23000130038232	16:38:57	200.9	1	15000133000686	15:30:01	200.9	500	4.99
9.	16/11/2012	92	1	210.9	10	18000187231519	14:57:10	210.9	1	12000146000053	09:15:02	210.9	500	4.98

S.NO.	Date of trade	No. of shares held before trade	Trade qty.	Trade price	LTP variance (INR)	Sell order details				Corresponding buy order details				LTP Percentage
						number	time	Price	qty.	number	order time	Price	qty.	
10.	19/11/2012	91	1	221.4	10.5	22000153102081	13:02:36	221.4	1	12000142000440	09:00:02	221.4	500	4.98
11.	20/11/2012	90	1	232.45	11.05	12000153062596	14:09:14	232.45	1	13000131385555	14:53:44	232.45	2	4.99
	Total		12	2171.5 -	96.35				12				3,402	

19. It can be seen from the above table that the *Noticee no. 1* sold 12 shares of *Anukaran* on 11 different trading days during the period of October 30, 2012 to November 20, 2012 (Patch 1) and by such trades, the *Noticee no. 1* is alleged to have contributed INR 96.35 to the LTP variance of the scrip. The contribution caused by the trades of the *Noticee no. 1* was 43.58% of the total LTP variance of INR 221.10 as seen during the relevant period of Patch 1. A quick calculation of the said figures would go on to indicate that the *Noticee no. 1* contributed INR 8.02 towards LTP variance for every share sold by him during Patch 1.

20. The SCN further alleges that *Noticee no. 1* has also executed trades in exactly similar fashion during Patch 2 (November 27, 2012 to December 26, 2012) of the investigation period. In terms of the information captured in SCN, the first trade in Patch 2 was executed at INR 149.45 and the last trade was executed at INR 306.20. From the records, it is seen that a total no. of 16 trades were executed in the scrip of *Anukaran* in 16 trading days and there were only two sellers active during this particular period. The details of analysis of impact caused by the *Noticee no.1* on the price of the scrip during Patch 2) is captured in the following table:

Table No. 03

(Patch 2)

S.NO.	Seller Name (Noticee No. 1)	Net LTP			Positive LTP			Negative LTP			Zero LTP		% of + LTP to Total Market + LTP Rs.156.75
		INR	QTY traded	No of trades	INR	QTY traded	No of trades	INR	QTY traded	No of trades	QTY traded	No of trades	
1.	Rajesh Chetanji Tawri	142.20	15	15	142.20	14	14	0	0	0	1	1	90.72
	Market total	156.75	16	16	156.75	15	15	0	0	0	1	1	100.00

21. As can be seen from the above table, the *Noticee no. 1* by his 14 trades sold 14 shares and collectively by all such trades, he has contributed an amount of INR 142.20 to the LTP variance, out of the total

LTP variance of INR 156.75 in the scrip seen during the relevant period. The detailed breakup of the such trades executed by the *Noticee no. 1* during Patch 2 and other details like no. of shares held before trade, trade wise LTP impact, buy order details etc., are captured in the following table

Table No. 04 (Patch-2)

Sr No.	Date of trade	No.of shares before trade	Trade qty.	Trade price	LTP variance (INR)	Sell order details				Corresponding buy order details				LTP Percentage
						Number	Time	Price	qty.	Number	order time	Price	qty.	
1.	27/11/2012	89	1	149.45	-	19000040085386	11:58:46	149.45	1	12000028011254	09:34:38	149.45	5	-41.68
2.	29/11/2012	88	1	156.90	7.45	15000128095066	12:40:49	156.90	1	20000155000270	09:18:41	152.00	50	4.98
3.	04/12/2012	87	1	164.70	7.80	22000132017923	10:08:17	164.70	1	18000154064050	11:30:08	164.70	1	4.97
4.	05/12/2012	86	1	172.90	8.20	12000125097818	10:56:19	172.90	1	12000125148596	13:08:49	172.90	500	4.98
5.	06/12/2012	85	1	180.00	7.10	21000120029234	10:18:05	180.00	1	12000124186227	14:25:30	181.00	200	4.11
6.	07/12/2012	84	1	189.00	9.00	21000031220128	13:23:53	189.00	1	18000040052991	10:01:00	189.00	22	5
7.	10/12/2012	83	1	198.45	9.45	17000147159574	14:52:08	198.45	1	23000106027619	09:35:56	198.45	22	5
8.	11/12/2012	82	1	208.35	9.90	22000125043348	10:01:26	208.35	1	19000159035269	09:43:35	208.35	20	4.99
9.	13/12/2012	152*	1	218.75	10.40	12000124106703	11:56:44	218.75	1	12000125042093	09:58:02	218.75	10	4.99
10.	14/12/2012	151	1	229.65	10.90	20000135024269	10:20:55	229.65	1	15000122038525	09:53:21	229.65	10	4.98
11.	18/12/2012	150	1	240.00	10.35	17000147124298	12:31:34	240.00	1	19000159133742	12:55:11	240.00	10	4.51
12.	19/12/2012	149	1	252.00	12.00	11000105105074	11:12:05	252.00	1	13000117005377	09:23:47	Market Order	2	5
13.	20/12/2012	148	1	264.60	12.60	19000159097406	11:29:29	264.60	1	14000153001974	09:17:22	264.00	3	5
14.	21/12/2012	146	1	277.80	13.20	12000130108709	11:26:05	277.80	1	19000166000828	09:24:28	277.80	10	4.99
15.	24/12/2012	145	1	291.65	13.85	11000090199521	14:33:31	291.65	1	21000115024096	09:40:29	291.65	10	4.99
	Total		15		142.20				15				875	

22. I note that in response to the allegations made in the SCN, the *Noticee no. 1* has submitted that he is an innocent investor and the trades executed by him were without any intention to inflate the price of the scrip. He has sold shares only with an intention to maximize the profit.

23. After carefully analysing the details of the trades executed by the *Noticee no. 1*, I find no credence to rely on the submissions advanced by him. From the details of sell trades as enumerated in the above two tables, it is noted that in both the patches, he had executed trades in miniscule quantities of 1 share only (except 1 trade involving 2 shares), in each of his trades. In the Patch 1, he has sold 12 shares in 11 trades whereas in Patch 2, he has sold 15 shares in 15 trades. Thus, in the two patches together, he has sold 27 shares in 26 trades. It is also observed that in both the patches, he has sold shares above the LTP in as many as 25 trades. In Patch 1, his contribution to LTP was of INR 96.35 to the total positive market LTP of INR 221.10 and in Patch 2, the LTP contribution by him was of INR 142.20 to the total LTP of INR 156.75 contributed to the scrip. In percentage terms, it is noted that the contribution of LTP by the *Noticee no. 1* to the total market LTP during the two patches were 43.58% and 90.72 %, respectively. Consequently, as the analysis of the total LTP contribution to the scrip of *Anukaran* by the *Noticee no. 1* in the two patches suggests, it is observed that in Patch 1, the *Noticee no. 1* has contributed to price rise in the scrip by **INR 8.02** for every share, sold by him and similarly in Patch 2, average contribution by him to the price rise in the scrip of *Anukaran* was of **INR 9.48**, per every share through the sale of share by him.

24. As stated above, the *Noticee no. 1* had executed 11 trades through which he sold only 12 shares in Patch 1 and each of his trade was executed above the LTP. The submissions of the *Noticee no.1* that he had sold the shares to garner maximum profit in the scrip of *Anukaran* are not substantiated by any justifiable explanation or any evidence by the *Noticee no.1* in support thereof. It is evident from the trade details of the *Noticee no.1* that immediately after receiving 100 shares from the *Noticee no. 2* in an off-market transaction on October 29, 2012, he started selling those shares without losing any time, from the very next day i.e., from October 30, 2012. He continued to sell those shares of *Anukaran* (in Patch 1) up to November 20, 2012 and again after a hiatus of 06 days, commenced selling from November 27, 2012 up to December 24, 2012. Thus, effectively in 11 trading days over the period of 20 days, he had sold only 12 shares and further over a period of 15 trading days, he preferred to sell only 1 share at a time aggregating to 15 shares. The submission that sale of shares of *Anukaran* was not intended to inflate its price but to maximize the profit appears to be an empty excuse, particularly after observing the price rise caused in the scrip and the pattern of trading resorted to by the *Noticee no. 1*, which had noticeable contribution to such price rise, which clearly exhibits an apparent motive to artificially raise the price of the scrip. The plea of maximizing profit also does not find any support from the trading pattern of the *Noticee*. It is inexplicable that during a period of two months, the *Noticee*

has never thought of selling more than one share at a time, at prices above LTP, to gain more profit or even to hold his shares to sell them in future at higher prices, if he anticipated a price rise in the scrip. However, as noted above, the *Noticee no. 1* chose to sell only 01 share each in all instances except for one trade, where he sold 02 shares thereby contributing to the LTP of the scrip.

25. I further note that the *Noticee no. 1* started selling shares of *Anukaran* @ INR 142.9 and continued to sell till the price reached up to INR 232.45 in Patch 1, out of which, the contribution made by him to the LTP variance of the scrip was INR 96.35 through his LTP contributing trades. As mentioned earlier, just after a rest of 06 days, the *Noticee* again adopted the same *modus operandi* of selling 01 shares in each of his trades at a price higher than the LTP during the Patch 2 period. The unusual and abnormal conduct displayed by the *Noticee* by no means can be held to be the conduct of a normal prudent investor. The *Noticee* has admittedly sold 01 share per trade (except for one trade in which he sold 02 shares) over a long period at a price higher than the LTP and has never ever thought of selling shares in larger quantities, despite there being buy orders for sufficient quantities available in the market. It is also noted that although the scrip witnessed a substantial rise in price, the *Noticee no. 1* had executed sell orders on a continuous basis with miniscule quantities. Though, the proclaimed objective of the *Noticee no. 1* was to maximize the profit in the scrip, in spite of there being adequate buy demands in the market, the *Noticee no.1* never seems to have indulged in buying the scrip during the said time, from the exchange platform so as to consolidate his position in the scrip which a prudent investor eyeing for maximum profit would have done, as the scrip was witnessing rise and there were huge buy demands of the scrip. On the contrary, he indulged in execution of sell trades with a minimum possible lot on each day, with an apparent motive to set a high closing price of the scrip. The said objective further finds strength from the background fact that the *Noticee no. 1*, who bought shares in off market transaction from the *Noticee no. 2* presumably impressed by the future prospect of the scrip, indulged in execution of sell order in tiny quantities immediately after receipt of shares from *Noticee no. 2*, successively contributing to the LTP and resultantly to the price rise of the scrip. Such a trading behaviour does not reflect any genuine intention to maximize the profit the way a prudent seller would have behaved and sold his shares to maximize his profits. The trading pattern followed and the explanations offered before me are beyond any business rational which cannot justify or legitimize such unfair and manipulative trades indulged in by the *Noticee no. 1* just to maximize profit. The market is governed by written rules and well established market practices have evolved over the period of time and any person resorting to any peculiar pattern of trading which has a cascading effect of distorting the market mechanism by way of creating artificial trading, leading to rise in the price of a scrip through manipulative trades by no means can be held as normal and fair trading in the market.

26. In view of the above, considering the manipulative mode and unusual manner of selling shares by the *Noticee no. 1* in the scrip of *Anukaran* as highlighted above over a substantial period of time, such a trading practice followed by the *Noticee no. 1* was apparently motivated towards sending a false and misleading impression to the market at large, about the trading activities in the scrip of *Anukaran* so as to artificially induce other investors to trade in the scrip. The repetitive sell orders of the *Noticee no. 1* which led to his contribution of INR 96.35 to the LTP in Patch 1 and INR 142.20 in Patch 2 are material enough to establish that the trades executed by him were not genuine but were executed with fraudulent and manipulative intent. The role of the *Noticee no. 1* is significant in contributing substantial amount of LTP to the scrip of *Anukaran*. The extra ordinary exuberance shown by him while selling the shares of *Anukaran* and thereby contributing to LTP with each such trade, can't be held as trades executed in normal course of investment activities to maximize the profit. The *Noticee no. 1* never preferred to sell shares in large quantity to seize the price benefit, which exposes nothing but his manipulative and fraudulent intent to deal with the scrip with a stock of 100 shares acquired through off-market deal, only to disrupt the price discovery process in the scrip. The *Noticee no. 1*, with each of his sell trades has invariably contributed to the market positive LTP of the scrip and therefore, all the pleas taken by the *Noticee no. 1* in his defence have to be rejected for want of any merit.

27. Further, when the trade log of the scrip of *Anukaran* in analysed carefully, the following peculiar facts are noted, insofar the trades of *Noticee no. 1* are concerned:

- i. On the days when the *Noticee no. 1* has executed his sell trades, no other person is seen to be present as a seller of the shares of *Anukaran*. He started selling shares of *Anukaran* on October 30, 2012 and with intermittent breaks, he kept on selling shares of *Anukaran* till November 29, 2012. In fact, in the month of November, 2012, out of 13 trades executed on 13 different trading days, it was he, who was the seller in as much as 11 trades and only on two occasions (November 22nd and 23rd), two other sellers had entered into the market.
- ii. The pending buy orders with which the *Noticee no. 1* matched his sell orders over the days were placed in the system in early part of the day in majority of the instances, whereas the corresponding sell orders that were placed by him by matching the price of such pending buy orders, were placed after huge gaps of as much as 5 hours. I observe that the trades of the *Noticee no. 1* were the results of matching of orders on price time priority, hence it is clear that the pending buy orders which were not getting any counter party sale orders for hours together, could be translated into trades, only by the concrete efforts of the *Noticee no. 1* who chased those long pending buy orders and marched his sell orders of 1 share only, to execute a LTP contributing trade, in each of his trades. The *Noticee* has argued that it is not the case of SEBI that the *Noticee* has entered orders in variance to the best available counter order in the system. However, even though the trades executed by *Noticee no. 1* may

have been on the basis of best available counter party buy orders, the notable abnormal fact that cannot be ignored is that the *Noticee no. 1* chose to sell a very small number of shares (01 each time except one trade when he sold 02 shares) for 26 separate trading days despite the presence of buy orders for large quantities of the said scrip in the system and availability of large number of shares (100), in the possession of *Noticee no. 1*. Further, the *Noticee no. 1* claims to have received those 100 shares against settlement of some pending dues involving a third party, the details of which have not been furnished to cement the argument so advanced. It is also very unusual that against the settlement of dues, the *Noticee no. 1* willingly agreed to accept the shares of a company which did not have sound financials or market standings. The fact that the shares were at that time very much tradable, still he preferred to receive the shares in off market mechanism against his dues and did not demand such third party or the *Noticee no. 2* to effect sell of its shares in market and settle his dues through cash. I also note that the trades executed by *Noticee no. 1* contributed to the market positive LTP of the shares of *Anukaran* by 43.58 % in Patch 1 and 90.72% in Patch 2. It has been claimed by the *Noticee no. 1* that as a rational seller, he sold the shares when the price of the scrip was rising. However, the trading pattern exhibited by him by selling only 01 share in each of the 26 different trading days (except one trade involving 02 shares), despite the presence of large buy orders available in the system on many occasions, defies the rational behaviour of a prudent investor and rather smacks of manipulative and fraudulent intent behind such manner of trading in the scrip of *Anukaran*. Moreover, as the *Noticee no. 1* has been found to be the only seller on many of the trading days, it can be said that, had the *Noticee no. 1* not matched his sell orders with the pending buy orders by offering 01 share on each such trade, there would not have been any trade executed on those days and the consequential increase in the price of the scrip could not have happened via those LTP contributing trades.

- iii. Another factor that demolishes the ground of defense of the *Noticee no.1* is the percentage of the LTP contributions made by each of his trades. As noted from the two tables cited above, except for one instance, in all other trades, the *Noticee no. 1* has contributed to the LTP of the scrip broadly in the range of 4.90 %-5 % in each of his trades. Such a unique trading pattern of trading where a trader is always selling shares in a particular range of LTP percentage, cannot be a mere coincidence. The only suggestive reason for the same could be that the Stock Exchange had put a circuit filter of 5% on the price of the scrip during the relevant time. The inference that can be drawn from such surrounding facts is that the *Noticee no. 1* was on a mission to increase the price of the scrip of *Anukaran*, on each of his trading days to the maximum possible level, by contributing to the LTP variance to maximum possible limit, fixed by the Stock Exchange.

28. In view of the above discussed trading pattern of *Noticee no. 1*, I find that he was not acting as a genuine seller in the market and had no *bonafide* intention to sell as because, in spite of sufficient number of buy orders with abundant quantities being available in the market and with sufficient quantities of shares at his disposal, the *Noticee* has deliberately released very small quantity of share in each of his transactions and has executed not more than one transaction in a day. In this manner, the *Noticee* was instrumental in establishing a price higher than the last traded price thereby contributing to the increasing price of the scrip with each of his trades. In view of the repeated nature of such trades by him, the culpability of the *Noticee* in increasing the price of the scrip through such manipulative and fraudulent trades is established. Hence, I am convinced that he has manipulated the scrip price and created a misleading appearance of trading in the scrip by executing such trades as explained above.

29. It is further noted that the established trading pattern of the *Noticee no. 1* which has led to positive LTP of INR 96.35 during Patch 1 (43.58% of the total market positive LTP) and INR 156.75 during Patch 2 (90.72% of the total market positive LTP) and therefore, in light of the established manipulation from the overall circumstances, the trades of the *Noticee no. 1* executed after the investigation period are irrelevant for the present proceedings. Further, the manipulative trades of the *Noticee no. 1* containing which reflect large contribution to the LTP, themselves make the case of the *Noticee no. 1* factually distinguishable from the cases cited by him in his defence.

30. I would like to add here that the *Noticee no. 1* has made certain arguments which will be dealt in subsequent paragraphs while dealing with the case of *Noticee nos. 3 and 4*, as the said *Noticees* have also made similar submissions.

31. Moving on to the allegations against the *Noticee nos. 3 and 4*, I note that these two *Noticees* have been alleged to be involved in short selling of the shares of *Anukaran*, and by executing such trades in minimal quantities, the *Noticee nos. 3 and 4* have been alleged to have indulged in manipulation of the price of the scrip of *Anukaran*.

32. It is noted that the operation of short selling of shares is governed by the SEBI's Circular no. MRD/DoP/SE/Dep/Cir- 14 /2007 dated December 20, 2007. The following features of short selling of securities shall be assistive in understanding the case in hand:

- i. All classes of investors have been permitted to indulge in short sell in terms of the aforesaid circular and short selling is defined as: selling a stock which the seller does not own at the time of trade. In simple terms, when a person wants to earn money out of the expected fall in price of a share, he can sell such shares without owning it and subsequently square off his sell

position by buying the same quantity of shares during the day, thereby pocketing the difference in case the price falls at the time of squaring off.

- ii. Further, naked short selling is a prohibited activity that means, while short selling any share; the investor has to honour the obligation of delivering the shares at the time of settlement.
- iii. The short selling position is required to be squared off on the same day. However, if an investor does not square off its position by buying the shares before closure of the market, the buyer (who had purchased shares which were short sold) shall be given delivery by the Stock Exchange by purchasing such shares in auction mechanism. For example, 100 shares of company XYZ Ltd. were short sold @ INR 120 and when on the same day, the price fall to INR 100, the trade was to be squared off by buying 100 shares @ INR 100 to ensure settlement of trades in terms of delivery of payment and securities.
- iv. However, in case the second leg of the transaction is not conducted by the seller, the Stock Exchange shall buy the shares in auction and deliver the same to the buyer, who had purchased in the short sell transaction. In such a scenario, appropriate penalty is imposed on the trader (i.e short seller) by the Stock Exchange, depending on the rate at which the settlement system was able to buy in the auction mechanism.

33. From the afore stated regulatory framework governing short selling, one can say that in order to make profit out of decreasing prices of a scrip, the investor has to first short sell and eventually, on the same trading day itself, square off his position; differential amount of two transactions being his profit/loss. Thus, to make profit, the investor needs to have adequate time so as to appropriately square off his position during the same trading day itself. It is also noted that trading hours on the Stock Exchange platform are from 09:00 am to 03:30 pm.

34. In the aforesaid backdrop of the above regulatory framework relating to transaction in securities, I shall now evaluate the alleged trades of the *Noticee nos. 3 and 4* which have been captured in the following table including the percentage of the LTP contribution caused by such trades as alleged in the SCN:

Table No. 05

S. N O.	Date of trade	No.of shares held before trade	Trade qty.	Trad e price	LTP variance (INR)	Sell order details				Corresponding buy order details				LTP Percent age
						number	Time	price	qty.	numbe r	order time	price	qty.	
Aanand Balavantrai Boghani (Noticee no. 3)														
1	12/06/2012	0	5	69	3.25	11000122179019	13:14:38	69	5	16000146000000	09:00:00	69	500	4.94
2	28/06/2012	0	5	72.45	3.45	13000143056169	15:02:52	72.45	5	21000146000013	09:00:00	72.45	2000	5
3	04/07/2012	0	5	76.05	3.60	12000142115339	15:29:24	76.05	5	15000128001578	09:00:17	76.05	500	4.97
4	13/07/2012	0	5	79.85	3.80	22000138049471	15:27:45	79.85	5	19000180000000	09:00:00	79.85	100	5
5	03/08/2012	0	5	92.3	4.35	18000225222076	15:12:18	92.3	5	13000162000783	09:00:00	92.3	100	4.95
6	07/09/2012	0	5	96.9	4.60	12000137398960	14:02:07	96.9	5	12000145000003	09:00:02	96.9	300	4.98
7	12/09/2012	0	5	101.7	4.80	16000149126862	14:56:43	101.7	5	12000141000400	09:00:00	101.7	500	4.95
8	25/09/2012	0	5	106.75	4.05	19000264054880	14:51:01	106.75	5	19000219004507	09:00:00	106.75	300	3.94
	Total		40	-	31.90				40				4,300	
Kaushik Bipinchandra Dhanki (Noticee no. 4)														
1	27.02.2012	0	5	54.2	2.55	12000048081078	13:18:16	54.2	5	22000052001574	09:00:01	54.2	2000	4.94
2	06.03.2012	0	5	56.9	2.70	23000059183996	15:12:17	56.9	5	17000060000367	09:00:01	56.9	2000	4.98
3	27.03.2012	0	5	59.7	2.80	15000234081541	13:49:38	59.7	5	12000253000161	09:00:02	59.7	100	4.92
4	30.04.2012	0	5	62.65	2.95	14000249056401	15:15:58	62.65	5	20000211000029	09:00:00	62.65	1000	4.94
5	04.05.2012	0	5	65.75	3.10	15000196071287	13:26:31	65.75	5	14000229000023	09:00:00	65.75	1000	4.95
6	18.10.2012	0	5	136.1	6.45	17000157294567	14:05:40	136.1	5	11000121003311	09:00:03	136.1	99	4.97
		Total	30		20.55				30				6199	

35. The two *Notices* have argued that their trades were normal trades and were executed in the regular course of trading in securities without being influenced by any intent to manipulate the price of the scrip. The authorized representative of the *Noticee nos. 3 and 4* during the personal hearing has referred to the 'order log' of the scrip of *Anukaran* to seek support to his point that immediately after placing a short sell, the *Notices* have placed a buy order, in order to square off and settle their respective trades, within the same day. In order to appreciate the submissions of the *Notices*, it requires perusal and consideration of the trade log which is reproduced herein below:

Table No. 06

Aanand Balavantrai Boghani (Noticee no. 3)					
Sr. no.	ORDER_DATE	ORDER_TIME	BUY/SELL	RATE	QTY
1.	12-06-2012	13:14:38	S	69	5
2.	12-06-2012	13:14:49	B	69	50
3.	28-06-2012	15:02:52	S	72.45	5
4.	28-06-2012	15:02:58	B	72.45	50
5.	04-07-2012	15:29:24	S	76.05	5
6.	13-07-2012	15:27:44	S	79.85	5
7.	13-07-2012	15:27:49	B	79.85	5
8.	03-08-2012	15:12:17	S	92.3	5
9.	03-08-2012	15:12:24	B	92.3	50
10.	07-09-2012	14:02:06	S	96.9	5
11.	07-09-2012	14:02:22	B	96.9	50
12.	12-09-2012	14:56:42	S	101.7	5
13.	12-09-2012	14:56:46	B	101.7	50
14.	25-09-2012	14:51:00	S	106.75	5
15.	25-09-2012	14:51:04	B	106.75	50
Kaushik Bipinchandra Dhanki (Noticee no. 4)					
Sr. no.	ORDER_DATE	ORDER_TIME	BUY/SELL	RATE	QTY
1.	27-02-2012	13:18:16	S	54.2	5
2.	27-02-2012	13:18:27	B	54.2	500
3.	06-03-2012	15:12:17	S	56.9	5
4.	06-03-2012	15:12:21	B	56.9	100
5.	27-03-2012	13:49:37	S	59.7	5
6.	27-03-2012	13:49:49	B	59.7	100
7.	30-04-2012	15:15:58	S	62.65	5
8.	30-04-2012	15:16:03	B	62.65	50
9.	04-05-2012	13:26:30	S	65.75	5
10.	04-05-2012	13:26:52	B	65.75	5
11.	18-10-2012	14:05:40	S	136.1	5
12.	18-10-2012	14:05:54	B	136.1	100

36. I have carefully gone through the aforesaid details of the trades executed by the *Noticee nos. 3 and 4* and have also considered the identical submissions made by both of *the Notices*.

37. At the outset, I observe that the submissions of the *Noticee nos. 3 and 4* are patently contradictory to the factual aspects of their trades. It is noted from the replies of the *Noticee nos. 3 and 4* that they

have claimed to have taken risk so as to gain ‘first mover advantage before the scrip becomes popular’. It is common understanding that if a reasonable man claims to reap benefits out of a scrip of a company before others get into said scrip, such a person shall naturally buy the shares and wait for the price to rise, which will happen if the scrip becomes popular and such person can then sell those shares so as to make some profit. Under no circumstances, a person who is anticipating the share to become popular, shall enter into short sell of such shares, which in the present case has been done by the *Noticee nos. 3 and 4*. In the present case, the SCN alleges only short sell by the *Noticee nos. 3 and 4* and even in their replies, the said *Noticees* have not provided any details with respect to the buy trades executed by them if any, in the scrip of *Anukaran*. The act of short selling expresses the inherent intention that the *Noticee nos. 3 and 4* were expecting a price fall in the scrip of *Anukaran*. However, during the proceedings before me, a claim to reap benefit before others enter into such scrip has been made. I observe that such type of double stands is mutually contradictory and appears to be a mere after thought exercise without any substance to avoid the likely enforcement or other regulatory or preventive/curative actions. Thus, the claim of attempting to take “first mover advantage” is *ex-facie* contradictory and deserves no further consideration.

38. Further, upon a careful scrutiny of the trade log of the scrip, copy of which is furnished to the *Noticees* along with the SCN, I note certain facts, a summary of which is presented herein below:

Table No. 07

Sr. No.	Month	Dates on which trades were executed	Remarks
1.	February, 2012	06, 13, 14, 21 and 27	Noticee no. 4 had traded on 27/02/2012
2.	March, 2012	06, 27	Only Noticee no. 4 was the seller on both the days
3.	April, 2012	30	Only Noticee no. 4 was the seller on the said day.
4.	May, 2012	04	Only Noticee no. 4 was the seller on the said day.
5.	June, 2012	12 and 28	Only Noticee no. 3 was the seller on both the days
6.	July, 2012	04 and 13	Only Noticee no. 3 was the seller on both the days
7.	August, 2012	01, 02 and 03	Only Noticee no. 3 was the seller on 03/08/2012
8.	September, 2012	7, 12, 14 and 25	Except on 14/09/2012, only Noticee no. 3 was the seller on rest of the days.
9.	October, 2012	09, 10,12,15,18,30 and 31	Only Noticee no. 4 was the seller on 18/10/2012

39. Based on a conjunctive reading of the details of the order log (Table 05), trade log (Table 06) and the aforesaid details culled out from the trade log, I observe that:

- i. Both of the *Notices* (nos. 3 and 4) were not holding a single share of *Anukaran* and both of them have entered into short selling of 5 shares each in exactly similar fashion, albeit on different days.
- ii. It is noted from the order log that except for one instance, the *Noticee* nos. 3 and 4 had placed their buy orders (for at least the same number of shares short sold) immediately after placing their sell orders, so as to square off their position, that was taken by short selling. However, admittedly, such an attempt of squaring off the position never seems to have fructified. The only possible reason for the same is that there was no one selling the shares, from whom the aforesaid *Notices* could have purchased the shares and squared off their short sell positions.
- iii. It is further noted that all the trades have been executed for quantity of 5 shares each, irrespective of the demand pending in the system which was largely in the range of 100-2000 shares. It is also interesting to note that all the buy orders, corresponding to which the sell (short sell) orders of the *Noticee* nos. 3 and 4 matched, were placed in the system at the opening of the market. However, such buy orders remained unexecuted in the system for long and every time, it was the sell (short sell) order placed by the *Noticee* nos. 3 and 4, which fructified such buy orders into trade, albeit for small quantities of 5 shares each.
- iv. I note that out of the 8 trades executed by the *Noticee* no. 3, as many as 4 trades have been executed after 15:00 pm and out of said 4 trades, 2 trades have been executed at the verge of closure timings of the market. It is noted that the trades that were executed on July 04, 2012 and July 13, 2012, were executed at 15:29:24 and 15:27:45, respectively (almost at the closing of market hours). Similarly, 2 trades have been executed at 14:56:43 and 14:51:01. The *Noticee* no. 4, though claimed to be totally unconnected with the *Noticee* no. 3, has also followed a pattern akin to the *Noticee* no. 3, wherein out of 6 short sell trades, is been seen to have executed 1 trade each at 15:12:17 and 15:15:58; 1 trade at 14:05:40 and 3 other trades during the period of 13:18:16 to 13:49:38.
- v. Admittedly, merely based on the timings of the trades, no imputation of manipulation can be made on any person. However, one cannot ignore the fact that the nature of trades under reference are short sell trades, which needs to be squared off before closure of the market, failing which the trader shall remain exposed to imposition of penalty by the Stock Exchange under the auction mechanism. Therefore, in an ideal situation, a short seller will be apprehensive of non-availability of suitable orders during closure of the market hours so as to set off his short sell order and the consequential penalty has a potential to distort his thin profits that he would be expecting from his short sell position. Thus, when the facts of the present case are seen holistically, it seems very difficult to comprehend as to what prompted *Noticee* nos. 3 and 4 to execute such trades around market closing time, having glaringly remote chances of squaring off their short sell trades, which admittedly had to be settled on trade to trade basis.

- vi. It is noted that the claim of the *Notices* to have placed their buy orders in all cases, immediately after execution of the short sell is factually correct. I observe from the tables that the buy orders that were necessary to square off the short sell positions were, placed within a gap of 3 to 4 seconds. However, the aspect that merits consideration is the pricing of such buy orders. It is seen that all the buy orders have been placed by the *Notice nos. 3 and 4* at exactly the same rates at which the corresponding short sell orders were executed. I also observe that the said *Notices* have exhibited a strange trading strategy where shares are short sold and instead of even attempting to square off such positions by placing buy orders at an amount lesser than the rate of the sell trade, the buy orders have been placed at exactly the same price at which shares were short sold a while ago. Under the circumstances, it cannot be disputed that the two *Notices* were not short selling with a profit motive but apparently the only motive that the *Notice nos. 3 and 4* had in their mind, was execution of those trades at prices higher than the LTP. I note that no explanation has been put forth by the *Notice nos. 3 and 4* in order to dispel their strange trading pattern, except for relying on the fact that they have ‘tried to square off’ their short sell trades. In my view, such a glaring fact has tilted the preponderance of probabilities totally in support of the allegations, since, irrespective of the fact that the two *Notices* were naïve or inexperienced traders as claimed by them, there ought to be at least an attempt to make some profit by placing buy trades at lesser prices, which unfortunately is missing from their conduct. In these circumstances, it is evident that the alleged trades were executed to set the closing price in the scrip upwards and not with intent to garner benefit, from falling prices of the scrip.
- vii. It is also noticed that the quantity of buy trades was not always equal to the sell trades, which gives an indication that the *Notices* might be interested in buying the shares also. For illustration, *Notice no. 3* has always short sold 5 shares but the corresponding buy orders, which were purportedly placed to square off the sell positions, contained 50 shares in 6 instances. However, as noted above, the *Notice no. 3* was never able to even square off his position of 5 shares, let alone buying the remaining shares. The said factual aspect brings another suspicion to the veracity of the claim of having executed genuine trades by the *Notice*, for which trade log needs to be referred to. As noted above, *Notice no. 3* had placed buy orders of 50 shares each on 6 instances, none of which could be fructified. Given the fact that *Notice no. 3* had short sold 5 shares each, the placing of buy orders for 50 shares would go on to show that he had an intention of buying extra 45 shares in those instances. However, even after placing buy orders for such extra 45 shares which could not get executed, *Notice no. 3* never placed a fresh buy order on the next day or any day thereafter, without having an open short sold position. In other words, if the *Notice no. 3* had any genuine desire to buy shares during his attempts to square off his short sold positions, such an expression to buy shares was never implemented. I find that exactly similar trading pattern has been followed by *Notice no. 4* also, who is seen to have short sold 5

shares on February 27, 2012 and after 11 seconds, he has attempted to purchase 500 shares, which he could not purchase. Similarly, buy orders of 100 shares each were placed by *Noticee no. 4* on March 06, 2012, March 27, 2012 and October 18, 2012; respectively with corresponding short sold shares being 5 shares only on each of those days. However, despite exhibiting such a demand, the *Noticee no. 4* never attempted to buy the shares of *Anukaran* afresh. Under the circumstances, after witnessing such peculiar trading behavior on the part of the aforesaid *Notices*, the claim that the SCN is based on conjectures and surmises and that they have acted in a *bonafide* manner, does not have any merit for any further consideration.

- viii. Another fact that comes to light based on a careful analysis of the trade log is the lone presence of *Noticee nos. 3* and *4* as a seller on the relevant trading days. It is seen that *Noticee no. 3* has traded in the scrip in the months of June, July, August and September, 2012. I also note that in the said 4 months, the scrip of *Anukaran* witnessed trading only on 11 trading days, viz.: 12th and 28th June; 04th and 13th July; 01st, 02nd and 03rd August; 07th, 12th, 14th and 25th September. Out of aforesaid 11 trading days, the *Noticee no. 3* has traded on 08 days and, on all such 08 days, it was only the *Noticee no. 3*, who had sold (short sold) shares of *Anukaran*. There is no other person/seller who is seen to have executed even a single sell trade on such days when the *Noticee no. 3* has executed his sale trades. In the months of June and July, 2012, the scrip of *Anukaran* witnessed trading on only 2 days each and in the month of August, 2012 the trading days increased to 3 days and in September, it increased to 4 trading days. For rest of the trading days, no trade was executed in the scrip of *Anukaran*. Thus, in the months of June and July, 2012, it was the *Noticee no. 3* alone, who was behind 100% of the trading in the scrip of *Anukaran*.
- ix. Similar attribution can be given to the *Noticee no. 4* also, since on all those days when *Noticee no. 4* had executed his sell trades (short sell), there was no other seller of shares of *Anukaran* and it was the *Noticee no. 4* alone, who was selling shares of *Anukaran*, that too without holding such shares. To elaborate further, for the months of March, 2012 (trading took place only on 06th and 27th); April, 2012 (trading took place only on 30th); and May, 2012 (trading took place only on 04th), it was the *Noticee no. 4* alone, who was selling (short selling) the shares of *Anukaran*. Collectively seen, since February 27, 2012 till July, 2012, the *Noticee nos. 3* and *4* were holding the field of trading in the scrip of *Anukaran*.
- x. It is further noted that all the aforesaid trades executed by the two *Noticee nos. 3* and *4* contributed to the LTP variance in the scrip of *Anukaran*. The *Noticee no. 3*, by his 8 trades bearing 40 shares contributed INR 31.90, whereas the *Noticee no. 4*, by his 6 trades involving 30 shares contributed INR 20.55, to the LTP variance of the scrip of *Anukaran*. Thus, when there was no trade in the scrip of *Anukaran* for the whole trading day, it was the covert act(s) of short selling in the shares of *Anukaran* by the two *Notices*, which not only resulted in creation of a false appearance of trading in the scrip, but also triggered a signal of upward movement of the price of the scrip to

the investors at large. I observe that in absence of any cogent reason to justify such repeated acts of indulging in unsuccessful short selling in the shares of the *Company* that too always at prices higher than the LTP, there cannot be any motive except for an intention to carry out an agenda to manipulate the price, implemented meticulously, in the scrip of *Anukaran*, by these *Notices* through their dubious concerted actions.

- xi. I also observe that exactly similar to the trades of the *Noticee no. 1*, the *Noticee nos. 3* and *4* had also executed trades which were always having potential of contributing LTP near to the 5%, apparently to the extent permitted by the circuit filter at appropriate time. Thus, the said two *Notices* have also taken all efforts to take the scrip's price to higher levels by gradually increasing the scrip price within the permissible limits, through their LTP contributory sell trades, as narrated above in detail.

40. The *Noticee nos. 3* and *4* have sought shelter under the claim that the trades executed by them were in small quantities and were too miniscule to have an impact on the price of the scrip. However, the said submission is factually incorrect and legally untenable. It is very much possible that trade in any scrip can be executed even for a quantity as less as one share, which can cause a substantial variance with the LTP of the scrip. Since the price of the scrip can get altered based on a trade involving even a single share only, such a trade when carried out repetitively with manipulative intent, can have potentiality to manipulate the price of the scrip in the same manner as can be done by a trade involving large number of shares. Evidently, the trades executed by the *Noticee no. 3* had contributed INR 31.90 (14.43% of the total market variance of INR 221.10) and the trades executed by the *Noticee no. 4* had contributed INR 20.55 (9.29% of the total market variance of INR 221.10), to the market positive LTP of scrip of *Anukaran*. Thus, the aforesaid LTP contributing trades of the *Notices* themselves go on to show as to how their trades involving small number of shares have proved to be equally potent to distort the price discovery mechanism of the market.

41. At this stage, I also note that Hon'ble SAT, in numerous orders have laid down that an entity in isolation can be booked for its unilateral act of manipulation of price of the scrip if analysis of trade log and order log reflects *malafide* intention even without any collusion with the other entities. The various cases that have spelt out the factors that deserve to be taken into account to assess the manipulation in a trade, are briefly discussed hereunder:

- i. Hon'ble SAT, in the matter of *Mrs Kalpana Dharmesh Chheda vs. SEBI (Appeal no. 454 of 2019 decided on February 25, 2020)*, while dealing with a similar issue, have *inter alia* held that "*looking at the pattern of trading done by the appellants and the fact that the appellants have derived considerable financial benefit through that particular scheme or nature of trading we are of the view that the trading pattern adopted by the appellants is of a manipulative and unfair nature and would squarely fall within the ambit of the PFUTP*"

Regulations. The pattern of trade clearly establishes this as it is on 49 occasions that the appellants sold 1 to 5 shares, mostly one share, when in fact the buy orders available in the system was much higher. This behavior cannot be justified in terms of normal rational expectations of a seller.”

- ii. In the matter of *Sbri Lakhi Prasad Kheradi vs. SEBI (Appeal no. 232 of 2017 decided on June 21, 2018)*, the Hon’ble Tribunal have held that “*Facts recorded in paras 15 to 17 of the impugned order clearly establish that the trades executed by the appellant had the effect of net positive LTP of Rs. 85.35. Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades.*”
- iii. While dealing with the issue of manipulation caused by a buyer of the shares, Hon’ble SAT in the matter of *Saumil Bhavnagari v. SEBI (Appeal No. 28 of 2014 decided on March 21, 2014)*, *inter alia* held that: “*From the nature of the trading, it is clear that the appellant has sought to create a misleading impression that a large number of persons were trading in the scrip.*”

42. Thus, in light of the afore-stated judicial observations, one can firmly state that the trading pattern of the *Noticee nos. 3 and 4* involved a series of unusual elements such as, absence of any other sellers on those trading days; execution of (short sale) trades at the fag end of the day leaving no time to off-set the contract; no intention of making profits; all trades being executed at prices higher than the LTP, no genuine effort to consolidate their shares stock when the scrip was witnessing price rise on a continuous basis etc. When these unusual and peculiar trading activities are considered holistically, one can easily appreciate that the preponderance of all probabilities, clearly points fingers at the manipulative trades executed by the *Noticees* thereby vindicating the allegations made against them in the SCN. Similarly, the examination of the trades executed by the *Noticee no. 1* also exposes similar *modus operandi* like absence of other sellers when the shares were sold by the *Noticee no. 1*, always selling 01 share in each of his trades (except 1 trade when he sold 02 shares) and repeatedly contributing market positive LTP to the maximum level permissible (just near the upper circuit level of 5%) in both the patches, by using 100 shares acquired through off-market deal from *Noticee no.2*.

43. I observe that the aforesaid inferences based on the trading pattern of the *Noticee nos. 1, 3 and 4* are sufficient in themselves to prove the charges of manipulation and the mere absence of any other direct evidence cannot be a ground of exoneration, as held by Hon’ble Supreme Court in the matter of *SEBI Vs. Kishore R. Ajmera [(2016) 6 SCC 368]*. Hence, merely for the reason that the counters parties to trades have not been proceeded against or no connection is brought by the investigation between the parties to a trade, would not be a ground to seek exoneration in isolation.

44. The *Notices* have contended before me that as their trades were executed on screen based system of the Stock Exchange, where no one can have the details of the orders placed by their counter parties, manipulation cannot be imputed on such trades without an arrangement with the counter parties. The said argument is however erroneous as the charges in the SCN against them are not of collusion with the counter party buyers but of manipulating the scrip by their own independent acts of indulging in repeated selling (by *Noticee no. 1*)/short selling (by *Noticee nos. 3 and 4*) of the scrip. Therefore, the argument of no collusive trades with counter party buyers is redundant and will not be of any help to the *Notices*. The conspectus of factors governing the trades executed by the *Noticee nos. 1, 3 and 4* as highlighted earlier, speak volumes about the trading conduct of the *Notices*, which by no stretch of reasonableness can be termed as an outcome of system driven trades, executed on price time priority. Under the circumstances, the submission of the *Notices* that the trades were genuine in nature does not find support from the strange and abnormal pattern of the trades executed by them. Executing similar trades on a repetitive basis is self-evident of the fact that the trades were borne out of a pre mediated scheme to manipulate the price of the scrip.

45. The *Noticee nos. 1, 3 and 4* have strongly harped upon the fact that the sell orders placed by them were matched with already pending buy orders on the market platform and as no action has been initiated against the buyers, they too deserve exoneration. Insofar as the said argument is concerned, I note that the mandate under the present proceedings is to adjudge the allegations levelled against the *Notices* and if the investigation has not made any allegation of *prima facie* complicity of the *Notices* with the buyers, I do not find it a reason to exonerate the *Notices*, more so, considering my observations noted above in support of the allegations against the said *Notices*. Even assuming that the investigation has either not been successful in establishing a connection between the *Notices* and the counter parties who were large in numbers or for lack of adequate evidence, it does not *suo moto* lead to a conclusion that no proceedings should continue even against entities, whose trades have been independently noticed to be abnormal and laced with elements of manipulation and fraud. In case the evidences mustered by the investigation are *prima facie* sufficient to sustain the charges made against the *Notices*, it would be reasonable to proceed against such *Notices* on the basis of the allegations framed thereon and these allegations deserve to be examined on the basis of those factual evidences including trading pattern adopted by the *Notices* and the explanations offered by them to rebut those allegations. I have already noted with respect to the present case that the buyers had placed orders in the early hours of the respective trading days and it was the sell/short sell orders placed by the *Noticee nos. 1, 3 and 4* only, which acted as a catalyst to convert such long pending buy orders into trades. Thus, in all the trades executed by the *Noticee nos. 1, 3 and 4*, they are responsible for converting those long pending buy orders into trades at prices above LTP. At this stage, it may be relevant to quote the observations of Hon'ble SAT recorded in the matter of *Systematix Shares & Stocks India Limited Vs. SEBI (2012)*.

The Hon'ble Tribunal while rejecting a similar contention have observed *inter alia* as: “We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful.” Under the circumstances, the *Notices* were required to put forward justifiable explanation on merits of their case, which they have failed to do, for the reasons recorded in the foregoing paragraphs.

46. The *Notices nos. 3 and 4*, while referring to the price movement graph of the scrip of *Anukaran*, have claimed that the price moved to a level of INR 306.20 while their average selling price was considerably lesser than the said price (INR 86.88 for *Noticee no. 3* and INR 72.55 for *Noticee no. 4*). By referring to the said figures, the *Notices* have argued their case as not involved in any act of manipulation, as they could have otherwise sold the shares at peak price of INR 306.20. I find that the argument of possible selling of shares at its peak price is not applicable in their case, as they have played their role of short selling the shares of 1 share in each trade without any real intention to sell and in the process they have successfully inflated the price of the scrip on certain days, as already discussed in the preceding part of this order. Further, the *Noticee nos. 3 and 4* have not made any purchase of the shares, so the natural prudence to sell the shares at its peak price was absent in their trading behaviour which was primarily aimed at increasing the price of the scrip with the help of their short sell trades. Moreover, the arguments of the *Notices* may hold good, in case they are successful in showing that at the time of their trades, they were very much aware of the likely upward increase in the price of the scrip and despite knowing the same, they had sold their shares as they had no malice to be part of any unfair and manipulative scheme.

47. It is noted from the SCN that the *Company* had not made any corporate announcement, still the price of the scrip rose from INR 35.15 to INR 256.25 during January 01, 2012 to December 26, 2012, nevertheless, only these the *Notices 3 and 4* were collectively trading during the major part of this period, i.e., February, 2012 to July, 2012.

48. The *Notices* have claimed that no loss has been caused to any investor due to their alleged trades. In this connection, I observe that establishment of direct quantified damage/loss to an investor *in personam* is not an essential ingredient to prove the charges of the price manipulation. The very acts of marking up the price of a scrip higher by manipulative trading practices even by a selected few persons can induce the investors *in rem*. There is no evidence on record to show that the drastic upward price movement of scrip of *Anukaran* from INR 35.15 to INR 256.25 was attributable to any genuine corporate action or business development but the same was found to be due to the manipulative and fraudulent trades executed by some people in the scrip. It is relevant to state here that how so ever judicious an investor may try to be; he may not always be able to understand as to whether the price rise noticed in a scrip is due to any genuine business development or due to manipulative actions in

the market. By observing such a price trend showing remarkable increase in the share price of a company, an innocent investor has all reasons to fall prey to the temptation to invest in such security. I find it pertinent to demonstrate here the collective increase in the price of the scrip that have been caused by the *Noticee nos. 1, 3 and 4* by way of their manipulative trades, which is tabulated herein below:

Table No. 08

Sr. No.	Noticee no.	Contribution in INR to LTP in Patch 1 (% of the total LTP)	Contribution in INR to LTP in Patch 2 (% of the total LTP)
1.	Noticee no. 1	96.35 (43.58%)	142.20 (90.72%)
2.	Noticee no. 3	31.90 (14.43%)	-
3.	Noticee no. 4	20.55 (9.29%)	-
Total		291	

49. Considering the afore quoted numbers which reflect the quantum of impact that has been caused by the manipulative trades of the *Noticee nos. 1, 3 and 4*, on the price of the scrip one cannot ignore that such a huge impetus given by the 3 *Noticees* together to the price of the scrip of *Anukaran*, had all the elements to attract gullible investors to invest in the scrip. It has already been recorded that there was no corporate announcement by the *Company* that could be stated as a reason behind such price rise and when the trades of the aforesaid 3 *Noticees* are evaluated carefully, it can be observed that the said trades must have created an illusion in the minds of the investors about the bright future prospect of the scrip after witnessing the price of the scrip riding on an ascending graph. It is therefore clear that the inducement created by the manipulative trading of the 3 *Noticees* is sufficient enough to establish their violations as alleged in the SCN without dealing into the quantification of losses caused to the investors which is not at all necessary to decide the merits of the charges against the *Noticees*.

50. At this stage, I find it apt to refer to the observations of the Hon'ble SAT in the matter of *Giriraj Kumar Gupta HUF Vs. SEBI (Date of decisions: February 25, 2020)*, in which the Hon'ble Tribunal, inter alia, observed that "*Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument that each entity's trade is miniscule and only on a few days alone etc. is not sufficient to rebut the findings in the impugned order.*"

51. After dealing with the complicity of the *Noticee nos. 1, 3 and 4* in manipulation of the price of the scrip of *Anukaran*, I shall now proceed to evaluate the charges made in the SCN against the *Noticee no. 2*. The charge against the *Noticee no. 2* is that the transfer of 100 shares of *Anukaran* to the *Noticee no. 1* by it was not genuine and was done only for the purpose enabling manipulation in the price of the

scrip of *Anukaran*, as it turned out from the trading activities of *Noticee no. 1* soon after he acquired those shares from *Noticee no. 2*.

52. As regards the transfer of shares of *Anukaran* is concerned, it has been submitted by the *Noticee no. 1* that he was not related and known to the *Noticee no. 2*. It has been further submitted by *Noticee no. 1* that he was to receive money from a third person, and such outstanding dues were settled in the form of transfer of shares of *Anukaran* from the *Noticee no. 2* to the *Noticee no. 1*. However, *Noticee no. 1* has neither elaborated on the identity of such third person nor about the exact nature/amount of the said third party outstanding obligation, which remains grossly unexplained and unsubstantiated. Similarly, the justification provided by the *Noticee no. 2* with respect to its off market transfer of shares to the *Noticee no. 1* is found to be contradictory as well erroneous, as discussed below:

i. *Noticee no. 2*, in its written reply dated June 07, 2019 had claimed that it had sold 100 shares of *Anukaran* to the *Noticee no. 1* on October 29, 2012 and the consideration was received by it in cash, which is a legal way of settling payments, whereas, the *Noticee no. 1*, the counter party to the said transaction, has claimed to have ‘purchased/received’ the shares from the *Noticee no. 2*, in lieu of settlement of some old dues that a third party, namely Mr. Shah owed to him. It is pertinent to mention here that during the personal hearing held on June 11, 2019, the authorized representative for *Noticee no. 1* had sought some more time to file details with respect to the specific of the transaction with the said third party (Mr. Shah) to substantiate his submission, however, the same has not been provided nor any details with respect to the said loan amount which was purportedly settled by way of off-market transfer of shares have been furnished. Neither of the two *Notices* has submitted any verifiable documents in support of the claim so made.

ii. Moreover, from the submissions of the *Noticee no. 1* and 2 regarding transfer of shares, I find the *same* are full of contradictions and having no substance and mere afterthought to avoid the possible enforcement consequences. The claim of the *Noticee no. 1* of having received the shares from the *Noticee no. 2* in lieu of a third-party settlement amount remains unsubstantiated in the absence of any supporting details. The claim and the submission further do not inspire any credibility for the reason that the *Noticee no. 2* has stated to have sold the shares to the *Noticee no. 1* and the consideration was claimed to have been settled in cash which is not in conformity with the explanation offered by *Noticee no. 1*. Further, it remains unexplained as to why the *Noticee no. 2* has sold shares to the *Noticee no. 1* for a price relatively lower than the prevailing market price. The submission of the *Noticee no. 2* is again fraught with contradiction, as on the one hand the *Noticee no. 2* feigns ignorance about the identity of *Noticee no. 1*, whereas on the other side, he willingly transferred shares to the *Noticee no. 1* (who was a stranger to him) in an off market mode. Under the circumstances, the very act of off-market transfers between these two *Notices*

clearly suggests a connection/nexus that the two entities were enjoying between themselves, contrary to their claims as aforesaid.

- iii. It is noted from the SCN that during the investigation, the *Noticee no. 2* vide its letter dated October 29, 2012 had, claimed to have sold 100 shares of *Anukaran* to the *Noticee no. 1* @ INR 82.87 for a total amount of INR 8287/- and the consideration amount was received in cash. At the stage of investigation, there was no whisper from any of the parties about the said transfer of shares being executed in order to settle some third party dues which has been now claimed by the *Noticee no. 1* apparently as an after-thought exercise.
- iv. It also appears that the *Noticee nos. 1* and *2* are evading their liability to substantiate the said transaction as is apparent from the diverse stands taken by them giving two different versions to the said off-market dealing in 100 shares of the *Company*.
- v. Further, the market price of the scrip at the relevant time is also of great significance so as to test the strength of their respective claims. It is seen from the trade log that from October 18, 2012 to October 31, 2012, the price of the scrip of *Anukaran* jumped from INR 136.10 to INR 150. The *Noticee no. 2* has claimed before me that the shares were sold @ INR 82.87 on October 29, 2012 and the same being a spot delivery sale in terms of provisions of the Securities Contracts (Regulation) Act, 1956, no illegality can be imputed. As noted above, the market price of the scrip during the relevant time was far higher than the price at which the *Noticee no. 2* claims to have sold the shares to the *Noticee no. 1*. I note that the *Noticee no. 2* remained active in the market as a buyer in the scrip of *Anukaran* during February, 2012, however, no cogent reason is forthcoming from it as to why the *Noticee no. 2* did not sell its shares on the market platform which would have fetched him at least INR 40-50 per share extra in comparison to the off-market settlement made with the *Noticee no.1* and thereby it willingly incurred a loss of INR 4000 (approx.) on those 100 shares.
- vi. The *Noticee no. 2* in its reply has stated that it has sold shares of *Anukaran* to other persons also in off market and consideration for those transaction of shares was settled through banking mode. However, the *Noticee no. 2*, which is a corporate body, has not been able to demonstrate the reasons for accepting the consideration in cash against the purported sale of shares to the *Noticee no. 1*. The *Noticee no. 2* has merely stated to have accepted sale considerations in cash, however, no supporting documents like vouchers, cash receipts, authority letter in favour of the executant of the transfer on behalf of *Noticee no. 2* (as it is an incorporated entity), etc., have been produced before me to corroborate and add strength to the said claim. Thus, the claims have not been supported by any verifiable independent document to make out a case of genuine sale transfer to rebut the allegations made in the SCN with respect to the said transfer of shares.
- vii. Moreover, the manner in which the *Noticee no. 1* started dealing with those shares immediately after receiving them from *Noticee no. 2*, has already been elaborated in the earlier part of the

order, where it has been observed as to how without even waiting for some time, the *Noticee no. 1* started selling those shares in a fraudulent manner to inflate the price of the scrip. It all goes on to show that the trades as well as the transfer of shares which preceded such trades were all part of a pre-mediated arrangement with the sole purpose of stirring up the price of the scrip and to create artificial appearance of trading in the said scrip so as to induce the investors to trade in the scrip.

53. It is also relevant to mention here that the *Noticee no. 2*, has not only tried to defend itself, but also has attempted to vehemently defend the trades executed by the *Noticee no. 1* as were (using those shares transferred by it), which in my view reinforces the suspicion of his collusive nexus with the *Noticee no. 1*. The conduct of the said two *Noticees* clearly brings home the charges made in the SCN that the transfer of shares in off-market mode by the *Noticee no. 2* to the *Noticee no. 1* was done only to facilitate the *Noticee no. 1* to manipulate the scrip price, which indeed happened due to the meticulous trading pattern practiced by the *Noticee no. 1*, which requires no further discussion.

54. I note that the *Noticee no. 2* has placed reliance on the orders of Hon'ble SAT passed in the matter of *Vipul Mohan Joshi* (supra) etc., so as to contend that being a mere transferor, it cannot be held liable for the alleged manipulations committed by the transferee. I have perused the said orders and I observe that the present case is factually distinguishable in light of the contradictory stands that have been taken by *Noticee nos. 1* and *2* while justifying the off-market transfers, which clearly undermines the authenticity of the claim of the both the *Noticees*. Thus, the reliance placed on the said orders is of no help for the *Noticee no. 2*. Additionally, in that matter, at the time of transfer of shares through off market mode, the scrip was not trading on the exchange platform, whereas, in the instant matter, I have observed above that no explanation has been put forth by the *Noticee no. 2* for consciously incurring a loss of INR 4,000/- happily on those 100 shares by avoiding market based sale and by preferring to make off market transfers to the *Noticee no 1*.

55. Further, reliance has been placed on the decisions of *Vikas Ganesh Mal Bengani Vs. WTM, SEBI* (supra) and *Ketan Parikh* (supra), wherein the Hon'ble SAT held that mere placing of buy orders at prices above the LTP would not lead to a conclusion of manipulation being done. I have perused the said orders and observe that the said orders are of no help to the *Noticees*, as in the present case, the charges are not made on the fact of merely selling at prices higher than the LTP but clearly on the distinguishable abnormal pattern of trading, as has already been elaborated earlier, and various other factors like selling of shares in miniscule quantity; no other seller present in the market on those trading days, indulging in short selling repeatedly towards the closure of the trading and not being able to offset those trades, etc., that have collectively proved that the trades were not *bonafide* and were in the nature of manipulative trades.

56. Before summing up, I note that the *Noticee no. 1* vide his email dated December 29, 2020, has filed an additional submission in his defense and has requested for another hearing to be given in the matter. In the said communication the *Noticee no. 1* has raised some objections and has pleaded for dropping of SCN on the ground of delay. I find that the submissions of the *Noticee no. 1* are similar and akin to the objections already raised by the *Noticee nos. 3* and *4* in the matter taking a ground of delay which has already been dealt with by me in the initial part of this order. Strangely, the *Noticee* on the one hand has demanded that the SCN should be dropped on the grounds of delay and on the other hand, has pleaded for another hearing without any *bonafide* reason. I also note from the records that the *Noticee no. 1* was given two opportunities to present his case and in the hearing held on June 11, 2019, the Authorised Representative of the *Noticee no. 1* was asked to provide the details of the third –party involved in the share transfer. However, I find that even the additional submissions made now vide email dated December 29, 2020 is silent on the said details sought from him. In view of the above, I find that the *Noticee no. 1* has been given sufficient opportunities to defend the allegations made against him and in the absence of any plausible ground warranting another hearing, the request of the *Noticee no. 1* is found to be an attempt to delay the proceedings hence deserves to be rejected.

57. To sum it up, it would be relevant to reiterate here that the transfer of 100 shares in an off market transaction by the *Noticee no. 2* to the *Noticee no. 1*; the inconsistencies in the versions advanced by the two *Noticees* pertaining to the payment of consideration paid against the said off-market transaction of 100 shares; the unique and unusual pattern of selling 01 share at a time on a continuous basis over a long period, trading in miniscule quantities by the *Noticee no. 1* immediately after receipt of those 100 shares that consistently resulted in contributing to the LTP etc., leave no room for doubt that the transactions were not carried out in normal course of dealing in securities but with some ulterior motive to disturb market mechanism of the securities market by artificially raising of the price of shares of *Anukaran*. Considering the trading pattern, the responses filed, justifications advanced and absence of any documents to support those justifications advanced, I am constrained to find that the acts of the two *Noticees* were not genuine and such trades (of *Noticee no. 1*) were sufficient to mislead and induce the genuine investors to deal in the securities market. Thus, even in the absence of any proven nexus with the counter party buyers or any allegation of collusion/nexus with any other person, the acts of the above *Noticees* are independently themselves found to be *malafide* and manipulative in nature for the reason records above. After getting the shares in his account, the *Noticee no. 1* placed repetitive sell orders which led to the contribution of INR 96.35 in Patch 1 and INR 142.90 in Patch 2 in 26 trades through which he sold only 27 shares, which was possible only due to those manipulative trades executed by him.

58. Insofar as the degree of proof is required, I observe that the Hon'ble Supreme Court, in their judgment passed in the matter of Kishore R. Ajmera (supra), has laid down the principle that in case direct evidence is not available, the immediate facts surrounding the events may be considered to draw inferences. In precise terms, the Hon'ble Supreme Court held that: *"In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that are as on able/prudent man would adopt to arrive at a conclusion."*

59. Further, the Hon'ble SAT in the case of *Ketan Parekh Vs SEBI* (Appeal no. 2 of 2004), while dealing with the issue of manipulative trade observed *inter alia* that: *".....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."*

60. I note that Hon'ble Supreme Court, in *SEBI Vs. Rakhi Trading Pvt. Ltd.* (2018) 13 SCC 753 has appreciated the need of protection for interest of investors by observing 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."*

61. Based on the foregoing factual analysis and observations, I note that the *Noticee nos. 1, 3 and 4* by way of their trades which are clearly established to be manipulative and unfair, have distorted the price discovery mechanism of the Securities Market. By executing those manipulative trades repeatedly at higher prices, the *Noticee nos. 1, 3 and 4* were able to trigger rapid rise in the price of the scrip, which was not real but only an outcome of such manipulative trades. Further, the *Noticee no. 1* would not have been successful in carrying out the price manipulation in the scrip of *Anukaran*, but for the active connivance of the *Noticee no. 2* who, by providing the shares of the *Company* to the *Noticee no. 1* in off market transaction *albeit* at a loss, has made its intention clear that the transfer was done for the

purpose of manipulating the price of the scrip of *Anukaran*, which indeed happened. I, therefore, hold that the *Notices* by their respective acts, as discussed in detail above, have violated Regulation 3 (a), (b), (c), (d) and 4 (1), 4(2), (a) and (e) of PFUTP Regulations.

Directions:

62. In view of the above, having found that the charges levelled against the *Notices* in the SCN stand established, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby observe that considering the frequency of trades, volume of shares underlying such trades, impact of market positive LTP and consequently artificial price rise of the scrip on the investors, it would in the interest of investors that the Securities Market is insulated from such offending *Notices*, and accordingly, I restrain all the *Notices* from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for a period of six (06) months from the date of this order.

63. It is further clarified that during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Notices* shall remain frozen.

64. Obligation of the aforesaid *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid *Notices* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

66. A copy of this order shall be forwarded to the *Notices*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

Date: JANUARY 08th, 2021

Place: Mumbai

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA