

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

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Names of the Entities	PAN
1.	Disposed by way of Settlement Order dated March 28, 2018	
2.	Mr. Sanjay Jalan	AAWPJ2893G
3.	Ms. Anila Jalan	AAIPA6667P
4.	Ms. Rinku Jalan	AGBPJ8319E

(The entities mentioned above are individually known by their respective name or Noticee number)

In the matter of Le Waterina Resorts and Hotels Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the scrip of Le Waterina Resorts and Hotels Limited (for convenience "*Le Waterina/ Company*"), for the period of October 01, 2010 to March 05, 2012 (hereinafter referred to as "Investigation Period") for possible violation, if any, of the provisions of the Securities and Exchange Board of India Act, 1992 (for short "*the SEBI Act, 1992*") and rules and regulations made thereunder.

2. During the course of investigation conducted by SEBI, while analyzing the price and trade movement in the scrip of *Le Waterina*, following facts, *inter alia*, came to light:

- a) During the Investigation Period, the face value of the stock was split from ₹10 into ₹1 with effect from July 04, 2011. In order to have a better analysis of

conduct of various entities, the Investigation Period was divided into pre-stock split period (October 01, 2010 to 03 July, 2011) and post-stock split period (04 July, 2011 to March 05, 2012).

- b) Mr. Sanjay Jalan (*Noticee no. 2*) was the promoter of the *Company* during the Investigation Period. Further, *Noticee no. 3* (Ms. Anila Jalan) (mother of *Noticee no. 2*) and *Noticee no. 4* (Ms. Rinku Jalan) (wife of *Noticee no. 2*) had transferred shares of the *Company* to various entities (for convenience "*suspected entities*") through off-market transfers during both pre-stock split period and post stock split period.
- c) The *suspected entities* that received shares of *Le Waterina* in off-market transactions from the *Noticees no. 3* and *4*, had traded those shares in the market by executing trades among themselves and thereby created artificial volume in the scrip of the *Company*.
- d) Investigation further observed financial dealings between bank accounts of the *Noticees no. 2* and *4*. Further, it was observed that the bank account of the *Noticee no. 4* was used by the *Noticee no. 2* for his business dealings and therefore, the major financial dealings of the *Noticee no. 4* were controlled by the *Noticee no. 2*.
- e) Investigation also observed that the *Noticee no. 2* was connected to one of the *suspected entities* through fund transfers.

3. Keeping in view the aforesaid findings of facts as unearthed during the investigation, it has been alleged that the *Noticees no. 2 to 4*, in connivance with each other had transferred huge quantities of shares of *Le Waterina* under a scheme or artifice to various *suspected entities* for creation of artificial volumes in the scrip and thereby causing a misleading appearance of trading in the scrip. Such acts of manipulations in the scrip of *Le Waterina* by the *Noticees no. 2 to 4* were alleged to be in breach of provisions of Section 12A (a), (b) and (c) of the *SEBI Act, 1992* read with regulation 3(a), (b), (c), (d) and regulation 4 (1), 4 (2) (a), (d) (g) of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “the PFUTP Regulations, 2003”).

Show Cause Notice and Reply

4. Pursuant to the aforesaid findings during the investigation, a common Show Cause Notice dated January 09, 2017 (hereinafter referred to as “SCN”) was issued to the *Notices no. 2 to 4*, asking them to show cause as to why suitable directions under Section 11, 11(4) & 11 (B) the *SEBI Act, 1992* shall not be issued against them for their alleged acts of violations of provisions of the *PFUTP Regulations, 2003*.

5. I note from the available records that the afore-said SCN was duly served on all the *Notices no. 2 to 4*, in response to which the *Notices no. 2 to 4* have submitted their written replies. Subsequently, in compliance with the principle of natural justice, an opportunity of personal hearing was accorded to the *Notices no. 2 to 4* for which the date of hearing was fixed on December 04, 2018 in Mumbai. The hearing notices were duly served upon all the *Notices (Notices no. 2 to 4)* in response to which the *Notices* had made a request to hold the personal hearing at Chennai instead of Mumbai, citing financial issues. Considering such a request of the *Notices* the *Notices* were heard conducted through video conference. During the aforesaid hearing the AR for the *Notices* requested for adjournment of the proceedings taking the plea that his clients are willing to settle the matter by filing consent application before SEBI under the extant provisions of Settlement Regulations. The case was scheduled for next hearing on December 20, 2018 but had to be adjourned on the request of the *Notices* who sought some more time to compile certain information called from them during the previous hearing. The next date for personal hearing in the matter was scheduled on September 13, 2019, which was attended by *Noticee no. 2* in person and AR of the *Notices no. 3 and 4*. All the *Notices* again sought adjournment on the ground of pursuing their respective settlement applications filed with SEBI under the extant consent mechanism. Subsequently, another opportunity of personal hearing was granted to the *Notices no. 2 to 4* on January 14, 2021 which was attended by *Noticee no. 2* in person and AR

of the *Notices no. 3 and 4*. It was informed that the application filed by the *Notices no. 2 to 4* for settlement of disputed under the existing settlement mechanism did not materialize and the said applications of the *Notices* for settlement were rejected. The case was accordingly discussed and the *Notices* were heard on the said date. Considering the above, and the fact that more than sufficient opportunities of personal hearing have been granted to the *Notices no. 2 to 4*, I deem it appropriate to proceed in the matter on the basis of materials available on record, including the verbal as well as written replies to the SCN and also the post hearing submissions filed by the *Notices no. 2 to 4*, details of which are tabulated below:

Table no. 1: Details of replies filed by the *Notices no. 2 to 4*

<i>Noticee No.</i>	Date of Reply
<i>Noticee no. 2</i>	Letters dated March 01, 2017, March 14, 2017, November 19, 2018, December 18, 2018 and February 03, 2019
<i>Noticee no. 3</i>	Letters dated March 01, 2017, March 14, 2017, November 19, 2018, December 18, 2018 and February 14, 2019
<i>Noticee no. 4</i>	Letters dated March 01, 2017, March 14, 2017, November 19, 2018, December 18, 2018 and February 01, 2019

Submissions of the *Notices no. 2 to 4*

6. On the basis of the submissions so far received from the *Notices* in their replies to the SCN, during personal hearing and other documents filed by them subsequently, the main contentions of the *Notices* are summarized as below:

Noticee no. 2

- a) The *Noticee* is living separately from her wife (*Noticee no. 4*) since 2002 and the financial decisions taken by *Noticee no. 4* were her independent decisions and the *Noticee no. 2* had no control on the same. Similarly, the *Noticee no. 3* (mother of *Noticee no. 2*) took independent decisions in her financial dealings.

- b) He had received shares of the *Company* by way of gift from his father and he has never bought or sold any equity shares of *Le Waterina*.
- c) Regarding the regular fund transfers from the *Noticee no. 2* to *Noticee no. 4*, it has been submitted that same were pertaining to continuing responsibilities of family including maintenance and up keeping of children born out of wedlock.
- d) Regarding the allegation of receipt of funds of ₹50 lacs by *Noticee* from M/s. J.S. Enclaves Pvt. Ltd (for short “**JS Enclaves**”) (an entity related to one of the *suspected entity*), *Noticee* has submitted that he has taken a loan of ₹50 lacs from JS Enclaves for business purposes and proper documentation was done regarding the said loan.
- e) It has further been submitted that he has repaid an amount of ₹5 lacs to JS Enclaves towards the aforesaid loan during 14.09.2011 to 10.03.2012. To further substantiate his claims, *Noticee* has attached a certificate of a chartered accountant, *inter alia*, certifying that the said funds were used for business purposes.

Noticee no. 3

- f) The shares of the *Company* were sold in order to secure retired life. However, no consideration was received from the buyers of those shares as the cheques received towards the said payment got dishonored.
- g) Regarding allegation of transfer of shares of *Le Waterina* to *suspected entities* by the *Noticee no. 3* in off-market, it has been submitted that she was unaware about the procedures of the stock exchange, so she preferred to transfer the shares of the *Company* in off-market mode to such entities. She came to know about such entities through network of her parents in Kolkata.
- h) With respect to the receipt of sales consideration against the off-market transfer of 64.18 lacs (64,18,550) shares of the *Company*, the *Noticee* has submitted that out of 64.18 lacs shares, she transferred around 16.08 lacs

shares (1608550 shares) of the *Company* to the *Noticee no. 4*. She has further submitted that the aforesaid shares were gifted to her daughter-in-law (*Noticee no. 4*) out of love and affection to eventually benefit her grandchildren. She has further submitted that the payment consideration of ₹69 lacs for the remaining 48.10 lacs shares (64.18 lacs - 16.08 lacs) was not realized as the cheques for the aforesaid payment were dishonored. Additionally, she has submitted that one entity, namely Bharat Thakkar was not able to pay for 2 lac shares which she had transferred to him, therefore *Noticee no. 3* asked Bharat Thakkar to transfer those shares to her daughter-in-law (*Noticee no. 4*). Further, *Noticee no. 3* has also submitted that she has not been able to retrieve records pertaining to payment consideration amount of 10000 shares transferred to an entity namely Ramdos.

- i) On the query as to what further follow up action or legal recourse has been taken by her in order to recover the defaulted payment from the off-market buyers, she has submitted that as she was trying to dispose of the shares without the knowledge of her husband and her son (*Noticee no. 2*), hence she did not want them to know that she had been cheated.

Noticee no. 4

- j) The *Noticee* is separated from her husband (*Noticee no. 2*) for many years and living on her own with her two children.
- k) Regarding allegation of transfer of shares of *Le Waterina* to *suspected entities* by *Noticee no. 4* in off-market, it was submitted that as she was novice with regard to the procedures of the stock exchange and preferred to transfer the shares of the *Company* in off-market to such entities. She came to know about such entities through network of her parents in Kolkata.
- l) With respect to the query about receipt of sales consideration from the *suspected entities* to whom shares of the *Company* were transferred in off-market, it has been submitted that out of the total consideration of ₹5.71

crores (₹5,71,01,380) receivable against off-market transfer of 56.80 lacs shares (56,80,455 shares), she had received payment of ₹90.92 lacs (₹90,92,380) only and remaining consideration of ₹4.8 crores (₹4,80,09,000) was not realized by her, as the cheques received for the aforesaid payment were dishonored. In this regard, the *Noticee* has also submitted the copies of notices of dishonor of cheques sent to the other entities which defaulted in payment. Regarding further follow up action on legal recourse in order to recover the defaulted payment, she has submitted that as she was trying to dispose of the shares without the knowledge of her father in law and her husband (*Noticee no. 2*), she did not want them to know that she had been duped and deceived by the buyers.

- m) As regards the receipt of around 16 lacs shares (1608550) of the *Company* from *Noticee no. 3*, she has submitted that the aforesaid shares were gifted by her mother-in-law (*Noticee no. 3*) out of love and affection to enable her and her two children to have financial stability.
- n) On the issue of receipt of ₹75 lacs from *Noticee no. 2* on August 19, 2011 and further transfer of such funds to one of the *suspected entities*, she has submitted that the fund was received from her husband (*Noticee no. 2*) towards purchase of a flat in her name in Kolkata. She has further submitted that the said funds of ₹75 lacs were transferred to Metal Impex Traders towards the advance against the allotment of flat. However, due to recession in real estate domain, the matter is still pending.

Consideration of Issues and Findings

7. Considering the findings of the Investigation, the allegations levelled against the *Noticees* in the SCN based on such findings, and the explanations offered by the *Noticees* to the allegations made in the SCN through their written and oral presentations before me, I find that in this case, the issues that require consideration are as follows:

- Whether the Noticees are successful in rebutting the allegations of transferring shares in off-market mode as a part of fraudulent scheme or are successful in establishing that the transfer of shares was genuine and bonafide and not in violation of the provisions of Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with regulation 3 (a), (b), (c), (d) and regulation 4 (1) and 4 (2) (a) (d) and (g) of the SEBI (PFUTP) Regulations, 2003?

8. From the perusal of the facts and charges framed in the SCN, I find the investigation has revealed that the price and the volume in the scrip of the *Company* was manipulated through fraudulent trading in its shares by certain *suspected entities*. Those *suspected entities* are seen to have received lacs of shares from the *Noticees no. 3 and 4* in off-market transactions and have in turn used those shares (received from *Noticees no. 3 and 4*) for manipulating the volume and price of the scrip of the *Company* by indulging in trading amongst themselves on the stock exchange and thereby have created the artificial volume and raised the price of the scrip through such unfair, fraudulent and manipulative trades. Before proceeding further, I note that most of the *suspected entities* who were found involved in execution of manipulative and fraudulent trades for raising the price and generating artificial volumes in the scrip of the *Company* are not noticees before me in the present proceedings. The charges made in the SCN have also not categorically imputed the *Noticees* herein for executing any fraudulent and manipulative trades in the scrip of the *Company*. Therefore, it would not be within the remit of this SCN to consider and make observation qua those *suspected entities*, who are not part of the present proceeding. Further, one of such entities who had applied for settlement of the proceedings initiated against him under the settlement mechanism of SEBI, has successfully got his pending proceedings settled upon acceptance of his settlement application and payment of settlement amount made by him in terms of settlement order dated March 28, 2018. Hence, it would also not be fair and proper to make any adverse observation qua him while considering and appreciating the materials available before me in the instant proceedings. In view of the above, my endeavor in the present case pending before me will be to confine the

scope and ambit of the instant proceedings limited to the alleged acts of *Notices no. 2, 3 and 4*. (hereinafter collectively referred to as *Notices*) in the scrip of the *Company* including the charge against them for conniving with each other as a part of a fraudulent scheme to manipulate the price and volume of trading in the shares of the *Company* in violations of various provisions of the *PFUTP Regulations, 2003*. At this juncture, before moving forward on this issue, it would be proper to refer to the relevant regulatory provisions alleged as to have been violated in the SCN which are produced hereunder for ready reference:

SEBI Act, 1992

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Regulation 3 of the SEBI (PFUTP) Regulations, 2003: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly –

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*

(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 thereunder.

Regulation 4 of the SEBI (PFUTP) Regulations, 2003: - 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;

(d) inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;

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

9. As stated above the allegations against the Noticees no. 3 and 4 in the matter primarily pertains to transfer of huge quantity of shares of *Le Waterina* to various *suspected entities* thereby facilitating creation of artificial volumes and artificially inflated price of the scrip of the *Company*, through unfair fraudulent trades indulged in by those *suspected entities*. Therefore, to start with, it is pertinent to look at the details of the trades executed by the *suspected entities* after receipt of shares of the

Company from the Noticees no. 3 and 4 during pre-stock split period and post-stock split period, and those are tabulated below:

Table no. 2: Trades of suspected entities

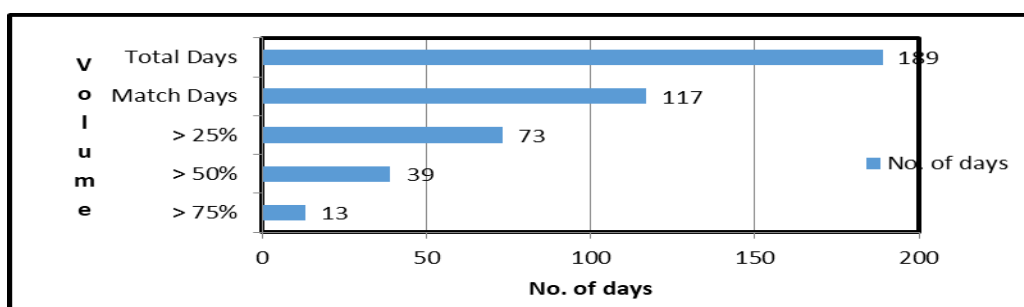
Period	Gross Buy (number of shares)	% of total buy to total traded volume	% of matched buy qty with <i>suspected entities</i>	Gross Sell (number of shares)	% of total sale to total traded volume	% of matched sell qty with <i>suspected entities</i>
Pre- stock split	12,92,946	41.89 %	54.37%	17,89,937	57.99 %	39.31%
Post- stock split	2,28,30,923	62.98%	68.90%	31	2,24,61,631	61.96%

10. I note from the aforesaid table no. 2 that that the *suspected entities* had contributed to 41.89% and 57.99% of the gross buy and gross sell volumes respectively in the scrip of the Company during the pre-stock split period. I further note that the trading amongst the *suspected entities* during the pre-stock split period was significant which is evident from the table no. 2 above indicating that 54.37% of gross buy and 39.31% of gross sell of *suspected entities* who received shares from the Noticees no 3 and 4 were executed and matched with other *suspected entities*. Similar trading pattern was noticed during the post-stock split period as well, during which the *suspected entities* had contributed to 62.98% and 61.96% of gross buy and gross sell volumes respectively, in the scrip of Le Waterina. During the said post-stock split period, the *suspected entities* had been seen executing trades amongst themselves in the scrip of the Company and in the process, the *suspected entities* were found to have executed and matched 68.90% and 70.04% of their buy and sell trades respectively amongst each other. The aforesaid trade data shows that by way of trading amongst themselves, the *suspected entities* have contributed significantly to the volumes of trades in the shares of the Company during the Investigation Period. I also note that during the Investigation Period, the price of the scrip increased from of ₹35.4(pre-split) to ₹10.7 (post-split hence, unadjusted ₹107) by more than 200%, though during the same period, BSE Sensex moved down registering a decrease of 2731.23

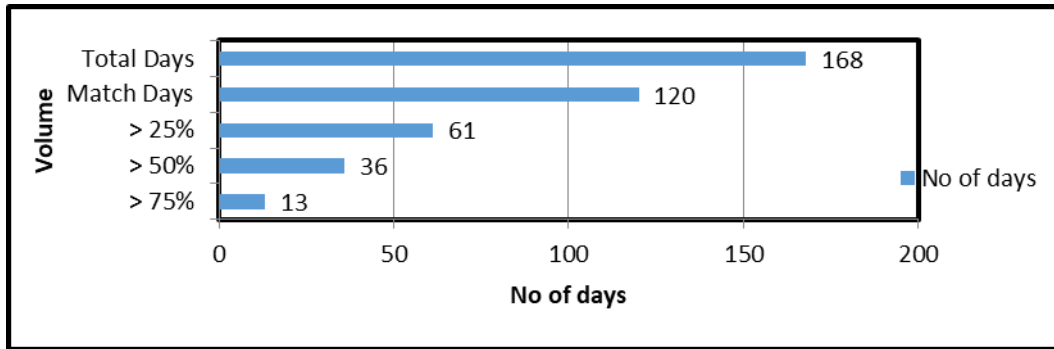
points (13.59%). I also note that no major corporate announcements were made by the *Company* during the Investigation Period which can substantiate and explain the rationale behind the above noted price rise in the scrip of the *Company*. It appears that such unusual and abnormal price rise was also contributed by the artificial volumes created by the *suspected entities*, who received shares from the *Notices* no. 3 and 4 and started trading amongst themselves with those shares. The aforesaid facts further strengthen the allegations against the *Notices* for having transferred such huge quantities of shares to the *suspected entities* through off-market mode as well as raises strong suspicion on the intent of the *suspected entities* and the trading pattern adopted by them while trading in the scrip of the *Company*.

11. I also note from the records available before me that during the pre-stock split period, out of 189 trading days, *suspected entities* executed trades among themselves on 117 days and thereby created artificial volumes (41.89% of gross buy and 57.99% of gross sell) in the scrip of *Le Waterina*. In this regard, out of the said 117 trading days, on 73 days, the traded volume of those *suspected entities* had constituted more than 25% of respective day's total trade volumes. Similarly, during the post-stock split period also, out of 168 trading days, the *suspected entities* through their *inter se* trades on 120 trading days have created large artificial volumes in the scrip of *Le Waterina*. In this regard, it was also seen that out of those 120 trading days during which the *suspected entities* traded amongst themselves, on 61 days the traded volume of the *suspected entities* had constituted more than 25% of respective day's total trade volumes. A graphical representation of the aforesaid analysis is placed below:

Graph 1: Trading pattern of *suspected entities* during pre-stock split period



Graph 2: Trading pattern of *suspected entities* during post-stock split period



12. From the foregoing analysis of trading pattern displayed by the *suspected entities* in the scrip of the *Company* during the Investigation Period as highlighted above, the *suspected entities* are seen to have indulged in following a very unusual patterns of trades to deliberately manipulate the trading volumes of the scrip of *Le Waterina* with a malicious intention to create artificial volumes in the scrip of the *Company*.

13. As already pointed out above, the *Notices no. 3* and *4* through their transfer of huge quantities of shares of *Le Waterina* to various *suspected entities* in off-market mode are alleged to be a part of a fraudulent scheme by facilitating the *suspected entities* to trade in the scrip for creation of artificial volumes and for inflating the price of the scrip of the *Company*. Details of transfer of shares of *Le Waterina* by the *Notices no. 3* and *4*, the counterparties to such transfers, sales consideration received by the *Noticee no. 3* and *4* as per their submissions etc. are tabulated below for reference:

Table no. 3: Details of off-market transfer of shares by *Noticee no. 3*

Period	Date	Counterparty (also part of <i>suspected entities</i>)	Number of shares	Price / Share (in ₹)	Sale Consideration (in ₹)	Whether Payment received
Pre-Split Period	19.10.2010	Ramdos [^]	10000	-	-	-
	19.10.2010	Rinku Jalan (<i>Noticee no. 4</i>)*	4,50,000	Gift	Gift	NA

	19.10.2010	Bharat Thakkar [^]	2,00,000	-	-	-
	19.10.2010	Sub Total (Pre-Spilt Period) (A)	6,60,000			
Post-Spilt Period	21.07.2011	Kamlesh Jain	30,00,000	1.5	45,00,000	No
	28.07.2011	Ferrah Devang Vyas	4,00,000	1.5	6,00,000	No
	06.08.2011	Miatru Agro	12,00,000	1.5	18,00,000	No
	24.08.2011	Rinku Jalan (Noticee no. 4)	11,58,550	Gift	Gift	No
		Sub Total (Post-Spilt Period) (B)	57,58,550		69,00,000	
		Total (A+B)	64,18,550		69,00,000	

[^] Price details not provided by the Noticee no.3

* Not one of the suspected entities

Table no. 4: Details of off-market transfer of shares by Noticee no. 4

Period	Date	Counterparty (also part of <i>suspected entities</i>)	Number of shares	Price / Share (in ₹)	Sale Consideration (in ₹)	Whether Payment received
Pre-Spilt Period	04.10.2010	On Market	205	36	7,380	Yes
	07.10.2010	Shakuntala Devi	28,000	42	11,76,000	Yes
	07.10.2010	Gandhe Shiva Kumar	22,000	42	9,24,000	Yes
	08.10.2010	Miatru Agro	2,00,000	40	80,00,000	No
	13.10.2010	Kalpana M Golecha	5,000	52	2,60,000	Yes
	13.10.2010	Bharat Thakkar	90,000	52	46,80,000	Yes
	08.11.2010	Miatru Agro	1,50,000	40	60,00,000	No
	08.12.2010	Miatru Agro	63,000	40	25,20,000	No
	16.12.2010	Miatru Agro	2,00,000	40	80,00,000	No

	18.02.2011	J Shankar*	6,250	110	6,87,500	Yes
	23.03.2011	Bhuvaneshwari*	15,000	90	13,50,000	Yes
		Sub Total (Pre-Spilt Period) (A)	7,79,455		3,36,04,880	
Post-Spilt Period	21.07.2011	Kamlesh Jain	20,00,000	1.5	30,00,000	No
	23.09.2011	Jegannath	1,000	7.5	7,500	Yes
	21.09.2011	Miatru Agro	27,00,000	6.63	1,79,01,000	No
	11.01.2012	Sangam Agro	2,00,000	12.94	25,88,000	No
		Sub Total (Post-Spilt Period) (B)	49,01,000		2,34,96,500	
		Total (A+B)	56,80,455		5,71,01,380	

* Not part of the suspected entities

14. I note from the aforesaid table that during the Investigation period, the *Noticee no. 3* had transferred 64.18 lacs shares in the off-market, out of which 16.08 lacs were transferred to her daughter-in-law (*Noticee no. 4*), while the remaining 48.10 lacs shares were claimed to have been sold to various *suspected entities* for which *Noticee no. 3* had failed to provide any evidence of receipt of sales consideration. Similarly, the *Noticee no. 4* had sold 56.80 lacs shares of the *Company* to different *suspected entities* and out of total receivable sales consideration of ₹5.71 crores (₹5,71,01,380), she has been able to provide details of receipt of only ₹90.92 lacs (₹90,92,380) and reportedly has not been able to recover the remaining sales consideration of ₹4.8 crores (₹4,80,09,000) from *suspected entities*. It is not disputed that the above noted shares of the *Company* were transferred by the two *Noticees* (*Noticees no. 3 and 4*) in off-market mode. The two *Noticees* have accepted the fact that they have transferred the aforesaid quantities of shares to various *suspected entities* and have also submitted that they have not yet received even till date, the full sales consideration amount from those counter party off-marker buyers.

15. I note that in response to the allegation of helping the *suspected entities* to create artificial volume in the scrip through unfair and fraudulent trades by way of off-market transfers of huge quantities of shares to those entities, the *Noticee no. 3* has submitted in her defense by stating that the shares of the *Company* were sold by her in order to financially secure her retired life. Similarly, the *Noticee no. 4* has submitted that as she was already separated from her husband (*Noticee no. 2*) she sold those shares to secure future of her children. Regarding the rational for selling such large quantities of shares outside the stock exchange platform, both of them (*Noticees no. 3 and 4*) have taken a plea that as they were not aware about the procedures of the stock exchange, they preferred to sell such shares in the off-market. During the personal hearing, *Noticees no. 3 and 4* were asked to submit their demat account statement to further verify the authenticity of their claims, however no demat account statements have been provided by the two *Noticees* so far. Incidentally, *Noticee no. 4*, vide her reply dated February 01, 2019 while providing the details of her off-market trades in the scrip of the *Company*, has, *inter alia* submitted that as on October 04, 2010, she had sold 205 shares of the *Company* on stock exchange platform at a price of ₹36 per share. Keeping the aforesaid fact into consideration and the fact that *Noticees no. 3 and 4* have not furnished the demat accounts nor have they denied that they do not have any demat accounts to substantiate their claim of ignorance about stock exchange mechanism, it is not possible to accept that these two *Noticees* being part of the promoter group of a listed company were completely oblivious about the advantages of trading through stock exchange platform. Trading on a stock exchange provides a mechanism of settlement guarantee for the respective trade by the stock exchange /clearing corporation, wherein the stock exchange / clearing corporation acts as a counterparty to such trades and takes the responsibility for settlement of such trades. It is impossible to believe that while on the one hand the *Noticees no. 3 and 4* were selling large quantities of shares purportedly to financially secure their future on the other hand, they chose off-market mechanism to sell their shares wherein

there was no guarantee of settlement of their transactions, by ignoring the established stock exchange platform to and deciding to offload huge quantities of their shares in the scrip of the *Company* to various entities in a bilateral manner without being able to enforce payment by the buyers. Therefore, the submission of the *Notices no. 3 and 4* who had already previous experience of trading on exchange platform stating that they preferred off-market transfers as they were not aware about the stock exchange mechanism turns out to be far removed from facts, based on falsehood and an imaginary claim that can hardly be relied upon.

16. I also note that both the *Notices* on most of the occasions have transferred their shares in off-market at a price lower than the prevailing market price. For instance, 30 lac shares and 20 lac shares of the *Company* were transferred to Kamlesh Jain in off-market by *Notice no. 3 and 4* respectively on August 21, 2011 at a price of ₹1.5 per share. However, the closing market price of the scrip of the *Company* on August 19, 2011 was ₹12.26 and the closing price on the next trading day i.e. on August 22, 2011 was ₹11.75. I also note that the scrip witnessed volumes of 49158 shares and 82461 shares on the aforementioned trading days, which indicates that there was enough liquidity in the scrip on the aforesaid trading days. Therefore, the aforesaid acts of both the *Notices* by transferring their shares in the off-market at a price almost 90% less than the market price available on the stock exchanges not only demolishes their defense that they had decided to sell their shares to financially secure their future but also indicates malafide intention of the part of these two *Notices no. 3 and 4*.

17. The submission made by the *Notices no. 3 and 4* that they had to transfer shares in such huge quantities to secure their life and the life of children, is thus found to be bereft of any genuine rationale or compelling circumstances which can be said to have constrained both the *Notices* to transfer their shares by following identical off-market mode almost during the same period of time which also led to similar fate for these two *Notices* i.e. non receipt of the sales consideration from the *suspected entities* to whom they had transferred those shares. The submissions made

by these two *Notices* are also silent about exactly what were those compelling personal factors that forced them to take a similar decision to transfer such huge quantities of shares in the *Company* during the same period unmindful of the market price of the shares prevailing during that period and how exactly they came in contact with those counter parties and on what basis they readily agreed to transfer their shares to them without any documentation or agreement or even without any invoice/receipt in support of exchange of sales consideration. There is no convincing explanation offered to me to justify as to why they skipped the recognized stock exchange platform to sell their shares where receipt of sales proceeds was guaranteed and the settlement of their trades was assured beyond doubt, which would have definitely fulfilled their objective of achieving financial security for them and their children. In the absence of any plausible explanations coming from the two *Notices* justifying the circumstances warranting them to take recourse to such off-market transfers of shares to the *suspected entities* whose antecedents and credibility are unknown, I find no reason to lay credence on the pleas taken by the two *Notices* to justify their off-market transfers and instead, looking at the way those shares were misused subsequently by those suspected entities who bought those shares without even paying the purchase considerations to the Noticee No.3 & 4 to create artificial volumes in the scrip of the *Company*, I am inclined to believe that these two *Notices* have not come out before me with clean hands.

18. I note that the *Notices no. 3 and 4* have further submitted that they have no connection with the *suspected entities*. In this regard, keeping in view the observations made by me in the above paragraph, it is not believable that the two *Notices*, without making even the basic enquiry about the bonafide of their counter party buyers, their paying capacity and other relevant factors useful to them, have simply gone ahead and transferred such large quantities of shares to various entities with whom they claim to have had no connection or had any past transaction history. The undisputed fact the *Notices no. 3 and 4* have transferred their share

without receipt of sales consideration also clearly reinforces the fact that such off-market transfers were executed for no genuine purpose but for other unexplained extraneous reasons which ultimately aided & abetted the misuse of those shares for unfair and manipulative trades in the hands of those suspected transferee entities as alleged in the SCN. Therefore, I am constrained to consider the aforesaid off-market transfers of shares of the *Company* by *Noticees no. 3 and 4* to the *suspected entities* as sufficient self-evident fact to substantiate the allegation that the said transfer of shares was effected under a scheme already known to the *Noticees*.

19. As mentioned earlier, the *Noticees* (*Noticees no. 3 and 4*) have submitted that they have not received payment of sale proceeds from the buyers of those shares and the cheques so received by them from the buyers towards such payment also got dishonored. At this juncture, it is important to look at the details of payment consideration received by *Noticees no. 3 and 4* as per their claim, which is placed in the table below:

Table no. 5: Details of payment consideration received by *Noticees no. 3 and 4*

<i>Noticee no.</i>	Number of shares	Sale / Gift	Sale Consideration (in ₹)	Sale Consideration pending (in ₹)
<i>Noticee no. 3</i>	16,08,550	Gift to <i>Noticee no. 4</i>	-	-
	2,10,000	Sale	NA*	NA*
	46,00,000	Sale	69,00,000	69,00,000
Total	64,18,550			69,00,000
<i>Noticee no. 4</i>	56,80,455	Sale	5,71,01,380	4,80,09,000
Total	56,80,455		5,71,01,380	4,80,09,000

* Details not provided by the *Noticee*

20. The aforementioned table reveals that the shares of the Company worth ₹4.8 crores were transferred to *suspected entities* by the *Noticee no. 4* without any consideration. Similarly, as submitted by the *Noticee no. 3*, shares of the *Company* worth ₹69 lacs were transferred to *suspected entities* without receipt of any payment consideration. As I have observed earlier, no supporting documents such as agreements/ contracts or sales invoices, money receipts etc. have been produced by the *Noticees no. 3 and 4* with respect to the sale of shares of the *Company* made by them through off-market mechanism. There cannot be two opinions that any genuine off-market transaction involving exchange of securities worth of crores of Rupees would involve proper legally enforceable documentation along with terms of agreement being fair, clear and transparent to both the parties to the said transaction. No person with normal prudence can part with his/her valuable securities worth of crores of rupees without ensuring that his/her pecuniary interest in those securities is firmly secured by way of proper legally binding documentation .However, considering that no such supporting documents have been produced by the *Noticees no. 3 and 4*, and no explanation has been offered as to what legal measure has been taken by them against their buyers to recover the unpaid sales consideration from those defaulter buyers, I can very well assume that the off-market transfer of shares of the *Company* resorted to by the *Noticees no. 3 and 4* were done in a casual & informal manner without entering into any contract or agreement with the buyers, which indicates that the *Noticees* were to begin with, not expecting payment of any sales consideration from those suspected entities against the shares transferred by them . I further note that both the *Noticees* (*Noticees no. 3 and 4*) have given identical reasons of not taking any legal recourse against the defaulter counterparties stating that they were trying to dispose of the shares without the knowledge of their family members (*Noticee no. 2* and his father Shri R K Jalan), hence they did not want their family members to know that they had been duped and deceived by the buying entities. I further note that *Noticee no. 4* has claimed in her defense that she had sent demand notices on March 22, 2012 for

dishonor of cheques to the *suspected entities* who had defaulted in making payment of sales consideration however, perusing the said documents/notices. I note that they were merely reminders to the counterparties to make payment, failing which legal action will be initiated. However, the *Noticee no. 4* has not produced any document before me to demonstrate that she had indeed filed petitions before a court of law for effecting recovery of sales considerations from the delinquent buyers. Had she felt genuinely aggrieved by the non-payment of sales consideration, she was legally entitled to claim the recovery of the same before the court of law, which she chose not to pursue for reasons best known to her despite losing such huge amounts of money due to the default by those *suspected entities* who later on played with those shares in the market to create artificial volumes and to artificially raise the price of the scrip of the *Company*. In the aforesaid observations, I find the submissions made by the above noted two *Noticees* glaringly suffer from factual deficiencies, lack of common sense logic and prudence and lack of clarity of purpose & intent as to why they had to enter into those infructuous off-market transactions without any documentations, hence will not at all help in substantiating the genuineness of the said transactions. Rather, I consider such explanations as offered by the *Noticees* to support their actions, as an afterthought as well as superficial attempt to give a color of genuineness to such transactions without being able to satisfy any of the queries that have been agitated and discussed above.

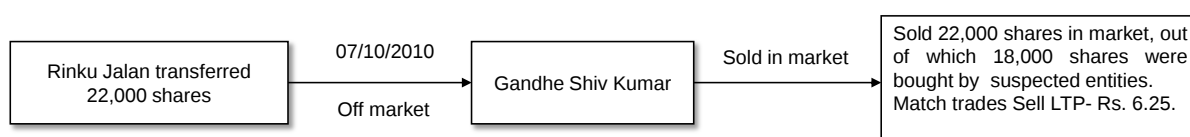
21. Further, from a combined reading of table no. 3, 4 and 5, I can observe even though that *Noticees no. 3* and *4* had not been able to recover the payment consideration from various *suspected entities* for the shares of the *Company* transferred during the pre-stock split period, they still chose to transfer more shares of the *Company* during the post-stock split period as well to *suspected entities* (in some cases, even to the same *suspected entities* who had defaulted in payment). For instance, the *Noticee no. 3* had not received payment for 10,000 shares transferred to one Ramdos and for 2 lac shares transferred to one Bharat Thakkar on 19.10.2010

(during pre-stock split period). However, during post-stock split period she made further transfer of 30 lac shares equivalent to ₹45 lacs to one Kamlesh Jain on 21.07.2011, 4 lac shares (equivalent to ₹6 lacs) to Ferrah Devang Vyas on 28.07.2011 and 12 lac shares (equivalent to ₹18 lacs) to Miatru Agro on 06.08.2011. Similarly, despite the fact that *Noticee no. 4* had failed to recover payment of ₹80 lacs (for 2 lac shares) from Miatru Agro for the shares transferred on 08.10.2010 (during pre-stock split period), she continued to transfer huge number of shares to Miatru Agro and other connected *suspected entities* during the pre and post-stock split period. The aforesaid act of deliberate and continuous transfer of shares of the *Company* through the off-market mechanism and that too, without receiving any payment consideration for the prior transfer of shares clearly suggest an undue haste on the part of the *Noticees no. 3 and 4* who wanted to transfer shares to different entities with undue alacrity and without even waiting for the sales considerations to be received from the entities on time further casts a strong bonafide suspicion compelling me to hold that the aforesaid off-market transfers of shares made by *Noticees no. 3 and 4* are not genuine transfers done in the ordinary course of buying and selling of securities but were done for some oblique objective best known to the parties to the transactions. In my considered view, from the irregular, illicit and ill-conceived manner in which the *Noticees* have conducted themselves while transacting with the *suspected entities* as discussed above at length, merely because the sales consideration is claimed to have not been received, would not be a sufficient defense in itself to grant exoneration to the two *Noticees* from the charges made in the SCN. On the same ground, merely for the reason that there is no direct evidence available on record to substantiate the allegation of connivance under which the transfer of shares of the *Company* were made in obnoxious manner to the *suspected entities*, it would not be a fit case for discharge in favor of the two *Noticees*, particularly when all the attending and circumstantial evidences strongly suggest that shares were transferred in a frivolous & casual manner without carrying any semblance of a genuine sales transaction to achieve a particular ulterior objective.

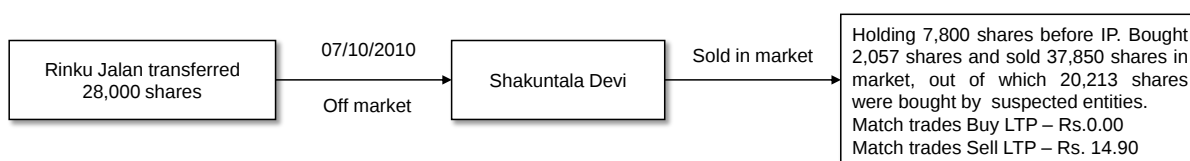
The *Notices* have claimed that since consideration for the transfer of shares were not received by them, it would not be justified to see the transfer through the prism of suspicion as they are themselves a victim of the fraud. However, as I have observed earlier, such a pleading by the *Notices* is found to be not backed by any credible and cogent justification and rather is found to be fraught with serious contradictions. The *Notices no. 3 and 4*, on the one hand have claimed that the transfer of such huge quantities of shares was made by them to secure a good future for them, however, despite having not received the sales consideration which they needed to secure their future, the *Notices* have preferred not to initiate any legal action against any of the suspected entities who cheated them on payment of sales considerations. There is no evidence on record to even suggest that the *Notices* have made a serious follow up with the defaulting buyers to secure the payment against the transfer of shares. In such circumstances, meeting of minds of the parties elsewhere and settlement of dues to the *Notices* in other mode can't be ruled out, more particularly considering the fact that despite having been served with SCN and knowing the likely adverse consequences that may flow from the SCN, neither of the two *Notices* has furnished a single shred of evidence which can cement the argument advanced by them. Under the circumstances and keeping the foregoing discussions and my observations on various submissions made by the *Notices*, I am constrained to record that the two *Notices* (*Notices no. 3 and 4*) were aware of the scheme that the shares they were going to transfer to the *suspected entities* were intended to be utilized for unfair trades with a manipulative purpose and the transfer of shares effected by them to *suspected entities* through off-market was a part of that scheme and the same was not meant to raise any finance to secure the future of these two *Notices* as is writ large from the conduct of the *Notices* in all these off-market transactions.

22. The records available before me suggest that as soon as the shares of the *Company* were transferred by the *Notices no. 3 and 4* in off-market to the *suspected entities*, such *suspected entities* started trading in the scrip of the *Company* using those

shares and even contributed to the Last Traded Price (LTP) in the scrip. For instance, the *Noticee no. 4* had transferred 22,000 shares of the *Company* in off-market to Gandhe Shiv Kumar who in turn sold the entire stock of 22,000 shares (18,000 shares (i.e. 81.82%) to *suspected entities* contributing to LTP of ₹6.25) in the market during pre-stock split period. I also note that majority of the shares sold by Gandhe Shiv Kumar were made to the *suspected entities*. The graphical representation of this transaction is presented below:



23. Similarly, in one more instance *Noticee no. 4* had transferred 28,000 shares of the *Company* in off-market to Shakuntala Devi. Shakuntala Devi was holding 7800 shares of the *Company* prior to Investigation Period and had also separately bought 2,057 shares (out of which 180 shares bought from *suspected entities*). Out of her total share-holding in the *Company*, she sold 37,850 shares (20,213 shares (i.e. 54.31%) sold to *suspected entities*, contributing to LTP of ₹14.90) in market during pre-stock split period. I also note that majority of shares sold by Shakuntala Devi were sold to *suspected entities*. Graphical representation of this transaction is placed below:



24. It is noteworthy that as soon as the shares of *Le Waterina* were transferred to the *suspected entities* through off-market transactions, the *suspected entities* started continuously trading in the scrip of the *Company* on the stock exchange platform. In such a scenario, wherein the scrip was quite liquid and easily tradable on stock exchange, it is strange to observe that the *Noticees no. 3 and 4*, instead of selling the shares on stock exchange platform preferred to sell those shares in off-market to

certain entities at different prices disregarding the prevailing market price of the scrip, and those entities immediately after receipt of those shares indulged in unfair and manipulative trades in the scrip the details of which have been highlighted in the foregoing paragraphs. Although the *Notices no. 3 and 4* have themselves not executed any trade in the scrip of *Le Waterina* on the stock exchange platform during the Investigation Period, the role played by both of them in facilitating execution of those unfair and manipulative trades as highlighted in preceding paragraphs, needs to be viewed in conjunction with those unfair trades executed by the *suspected entities*. It is glaring now that the *Noticee no. 3 and 4* by their very acts of off-market distribution of shares of *Le Waterina* to the *suspected entities*, have in an obvious manner, instigated the process of manipulative trades executed by these *suspected entities* in a coordinated and concerted manner with a view to create false appearance of trading in the market.

25. The SCN has further alleged that as the *Noticee no. 2* was closely connected to the *Notices no. 3 and 4* and he being the promoter of the *Company*, he was also involved in whole scheme of off-market transfer of shares of the *Company* for creating artificial volumes in the scrip of the *Company* on the stock exchange platform. I note from the records available before me that there were regular funds transfers from the bank account of *Noticee no. 2* to bank account of *Noticee no. 4*. In this regard, he *Noticee no. 2* has submitted that he is living separately from his wife (*Noticee no. 4*) since 2002 and the financial decisions taken by the *Noticee no. 4* were her independent decisions and the *Noticee no. 2* had no control on the same. In this regard, during the personal hearing of the *Noticee no. 2*, documents pertaining to judicial separation between *Noticee no. 2 and Noticee no. 4* were called for examination. However, *Noticee no. 2* has not furnished any document either to substantiate the claim of living separately and or to support his claim of paying monthly maintenance to *Noticee no. 4* in terms of any judicial order. It has been only submitted that they are living separately under mutual settlement and as an

obligation and in discharge of legal duty, he transfers funds to the account of his wife i.e. *Noticee no. 4*.

26. As regards the funds transfers from his bank account to the bank account of the *Noticee no. 4*, the *Noticee no. 2* has submitted that such funds transfers were made towards continuing his responsibilities of family including maintenance and upkeep of children. In this regard, on perusing the relevant bank statements produced by the *Noticee no. 2*, I note that there are a number of funds transfers from the bank account of *Noticee no. 2* to bank account of *Noticee no. 4*, of varying amounts ranging from ₹4500 onwards except for a solitary incident of a high value transfer of ₹75 lacs. The *Noticee no. 2* has not submitted any justification for the transfer of such a large amount to the account of the *Noticee no. 4* made on August 19, 2011. If the said transaction is seen in conjunction with the transfer of fund received by the *Noticee no. 2* from an unknown entity on August 18, 2011, the bonafide of the said transfer, in the absence of any justification or tangible explanation from the *Noticee no. 2* would remain further shrouded under suspicion and mystery.

27. The SCN has further alleged that the bank account of the *Noticee no. 4* was used by the *Noticee no. 2* for his business dealings. In this regard, as pointed out above on August 19, 2011, a payment of ₹75 lacs was transferred by *Noticee no. 2* to *Noticee no. 4* and on the same day, the said payment was transferred by *Noticee no. 4* to one entity namely, Metal Impex Traders. For better appreciation of the said transactions, detail of such money transfers are represented in the chart below:



28. From the above graphical representation, I note that the fund of ₹75 lacs was received by *Noticee no. 2* from an unknown entity. In this regard, *Noticee no. 2* has not submitted any details with respect to the counterparty transferor of such an

amount and the purpose for receipt of such a huge amount. The said amount was transferred by *Noticee no. 2* to his wife (*Noticee no. 4*) on August 19, 2011. In this regard, the *Noticee no. 2* has submitted that the payment was made to his wife (*Noticee no. 4*) as an advance payment towards purchase of a flat in her name in Kolkata. The *Noticee no. 4* has also submitted that the said amount was received from her husband (*Noticee no. 2*) as payment towards purchase of a flat in her name in Kolkata. She has further submitted that the said amount of ₹75 lacs was transferred to Metal Impex Traders towards advance against the allotment of a flat, however, due to recession in real estate domain, the matter is still pending.

29. Having considered the aforesaid submission made by the two *Noticees* (*Notices no. 2* and *4*), I find that the two *Notices* have merely made some statements to explain the aforesaid fund transfer involving ₹75 lacs without any documentary support or any other tangible evidence to support such a statement. Firstly, no rationale has been provided by the *Noticee no. 2* behind the decision to purchase a flat in the name of his wife in 2011 despite the fact that they were living separately since 2002. Secondly, the said claim has not been supported by any documentation viz; allotment letter, purchase / booking of a property such as receipt from the developer / vendor/builder, copy of agreement / contract towards purchase of flat, etc. Thirdly, no explanation has been furnished as to why the fund was first transferred to the account of the *Noticee no. 4* and not paid directly to the account of the concerned developer / vendor at Kolkata. Fourthly, till date no documents have been furnished by the *Notices* to apprise about the current status of the said flat so claimed to have been purchased or booked in 2011 by paying such a hefty sum towards advance to Metal Impex. It is not even known whether the said payee, i.e. Metal Impex is a builder or Developer or a Real Estate Agent or just a fictitious name which cannot be ascertained in the absence of any documentary evidence in support of the said purchase or allotment or booking of the flat at Kolkata. Strangely enough, even in this instance also, neither the *Noticee no. 2* nor *Noticee no. 4* has taken any action against the developer or builder for failure to handover the

flat even after a lapse of 9 years from the date of booking or paying advance and apparently no action has been taken taking the ground of recession in real estate market. In view of the aforesaid observations, I am not at all persuaded by the explanation of the *Notices no. 2 and 4* that the said amount of ₹75 lacs was utilized for purchase of a Flat at Kolkata and in my view the source as well as destination of the said amount of ₹75 lacs remains unexplained and unsubstantiated by the *Notices* till date. Further, considering the fact that no documentary evidence has been provided by the *Noticee no. 2* with regard to his legal separation from his wife (*Noticee no. 4*) and looking at the regular transfers of money from the account of *Noticee no. 2* to the account of *Noticee no. 4* ranging from few thousands to as high an amount as ₹75 lacs, it is difficult to accept the contention of *Noticee no. 2* that he had no control over the financial dealings and financial decisions of his wife i.e. *Noticee no. 4*. In fact, the chronology of events including the details of funds transfers by *Noticee no. 2* and the aforesaid observations made in the context of transactions and relationship between *Noticee no. 2* and *Noticee no. 4* and the preponderance of probabilities emanating out of the close relationships being shared by all the *Notices*, persuade me to hold that the *Noticee no. 2* was very much associated with *Noticee no. 4* (his wife) in all her financial dealings including her off-market transfer of shares to the *suspected entities* and he has also served as a part of the scheme in ensuring that huge quantities of shares of the *Company* are transferred in off-market through *Noticee no. 3 (his mother)* and *4 (his wife)* to various entities with an ultimate aim of creating false and artificial volumes in the scrip of the *Company*.

30. SCN has further alleged that the *Noticee no. 2* had received an amount of ₹50 lacs from JS Enclaves on August 13, 2011 (an entity related to one of the *suspected entities*) and the said amount was lying in the bank account of *Noticee no. 2* for a reasonable period of time. In this regard, the *Noticee* has submitted that he had taken a loan of ₹50 lacs from JS Enclaves for business purposes and proper documentation was done regarding the said loan. However, contrary to his claim the *Noticee* has not submitted any loan agreement in this regard. He has further

submitted that he has repaid an amount of ₹5 lacs to JS Enclaves against the aforesaid loan during 14.09.2011 to 10.03.2012. To further substantiate his claims, *Noticee* has attached a certificate of a chartered accountant, *inter alia*, certifying that the said funds were used for business purposes. After carefully considering the contentions of the *Noticee no. 2*, I find that such arguments as have been advanced by him are far from being satisfactory to justify the said transaction more so when *Noticee no. 2* has not been able to produce any documentary evidence to establish that the said fund of ₹50 lacs was actually a loan received from JS Enclaves, his bank account statement does not indicate any interest payment having been made to JS Enclaves against the said loan, and even assuming that a sum of ₹5 lacs has been refunded to JS Enclaves, the *Noticee no. 2* has not been able to provide any evidence showing repayment of the balance amount of loan of ₹45 lacs till date. It also surprising to note that no action has been initiated by JS Enclaves against the *Noticee no. 2* for non-payment of outstanding loan of ₹45 lacs. Under the aforesaid facts and circumstances, I hold that the aforesaid transactions between the *Noticee no. 2* and JS Enclaves involving ₹50 lacs remains an unexplained fund transfer from one of the *suspected entities* to the account of the promoter (*Noticee no. 2*) of the *Company* which further raises fingers at the *malafide* intention of and the role played by *Noticee no. 2* in the whole scheme of manipulation in the scrip of *Le Waterina*.

31. To sum up, the aforesaid chain of events which started with transfer of huge number shares of the *Company* by the promoter related entities (*Noticees no. 3 and 4*) on a continuous basis during the Investigation Period to the *suspected entities* apparently unconcerned about the non-receipt of sales consideration from the buying entities coupled with their inaction to take any legal recourse against any of the defaulting entities even after receipt of the SCN leaves no room to rely on any of the submissions so made by the *Noticees* in their defense which are found to be mere empty statements without being supported by any tangible corroborative evidence so as to lend any credence to their claims. The aforesaid acts on the part of the *Noticees* and having considered the materials on record, leave no doubt in my mind

that the transfers of shares through off-market transactions to various *suspected entities* over a period of time on a continuous basis were not genuine transactions in securities but were effected with a sole motive to facilitate creation of artificial volumes in the scrip of the *Company* by the *suspected entities*. As the facts of the matter, the relationships shared by the *Noticees* and the circumstances under which all the impugned transactions have been executed would clearly indicate, it was the *Noticee no. 2* (promoter of the *Company*) alongwith the *suspected entities* had designed an artifice or a scheme for creating false / artificial volumes in the scrip of the *Le Waterina*, in which the *Noticee no. 3* and *4* have also played their role of transferring the shares of the *Company* in off-market to those *suspected entities* as part of the said pre-conceived design as alleged in the SCN.

32. Keeping in view the afore-stated malicious trading pattern exhibited by the *Noticees* and my observations thereon in the foregoing paragraphs, it may be relevant here to note that the Hon'ble Securities Appellate Tribunal (for short "SAT"), in the matter of *Ketan Parekh v. SEBI* (Appeal No. 2 of 2004 decided on 14.07.2006) had an occasion to deal with the propriety of non-genuine trades and have held the following:

".....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."

33. Further, the Hon'ble Supreme Court of India in the case of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753 has appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market is not a platform for any fraudulent or unfair trade practice. The Hon'ble apex Court has further held 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."*

34. I would also like to rely on the judgement of Hon'ble Supreme Court in the matter of Kishore R. Ajmera case wherein it was 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."*

35. In the light of the aforesaid rulings of the Hon'ble SAT and Hon'ble Supreme Court of India, and after considering the trading pattern and role played by the Noticees, it constrains me to hold that the Noticees no. 3 and 4 were not acting as genuine market participants and had no bona fide intention to sell the shares of *Le Waterina*. Further, I have no hesitation to conclude that the Noticees have acted as per their respective role as a part of a scheme for creating artificial volumes in the scrip of *Le Waterina* which had all the elements of inducing innocent investors to deal in the shares of the *Company*. In the process, the Noticees no. 2, 3 and 4 were acting as part of a common plan and accordingly have indulged in those unfair,

manipulative and fraudulent acts as alleged in the SCN. The unique but unusual trading pattern that has been exhibited by the *Noticees* in this case demonstrate their active involvement in the entire plan about which they cannot feign ignorance as sought to be done by them. I therefore hold that the acts of *Noticees* vis-à-vis the scrip of *Le Waterina* have been glaringly ill motivated, fraudulent and was intended towards manipulating the volumes of the shares of *Le Waterina* in glaring violation of Section 12A (a), (b) and (c) of the *SEBI Act, 1992* read with regulation 3(a), (b), (c), (d) and regulation 4 (1), 4 (2) (a), (d) (g) of the *PFUTP Regulations, 2003*.

Directions:

36. In view of the above, having found that the charges levelled against all the *Noticees* in the SCN stand established, also considering the specific role played by each of the *Noticee* while executing those manipulative transactions in the scrip of *Le Waterina*, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the *SEBI Act, 1992*, in order to protect the interest of investors and the integrity of the securities market and to meet the ends of justice; restrain the *Noticees* 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 as provided in the table below:

Names of the <i>Noticee</i>	Period
<i>Noticee no. 2</i>	06 months
<i>Noticee no. 3</i>	06 months
<i>Noticee no. 4</i>	06 months

37. During the period of restraint, the existing holding of securities including the holding of units of mutual funds of the *Noticees* shall remain frozen.

38. It is clarified that obligation of the *Noticees*, 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, in respect of pending 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.

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

40. 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: MAY 24, 2021

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA