National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55812	**Date: February 28, 2023**
Circular Ref. No: 57/2023	

To All NSE Members,

Sub: SEBI Order in the matter of Nutraplus India Limited

SEBI vide its order no. WTM/SM/IVD/ID3/24253/2022-23 dated February 28, 2023, has hereby debarred the below mentioned entities from accessing the securities market and further prohibited from buying, selling, or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 1 year from the date of this order.

Sr. no.	Name of the entity	PAN
1	Shreenath Finstock Private Limited	AABCS6025R
2	Bhavin Sureshbhai Thakkar	AFCPT8628L
3	Gedalia Multitrading Private Limited	AAFCG0456N
4	Bishal Narain Mittal HUF	AAHHM2656R
5	Anchal Kishor Ostwal	ABBPO9965C
6	Yogita Manoj Mittal	AIZPM4024F

Further, all open positions, if any, of the entities debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

National Stock Exchange of India

https://www.nseindia.com/regulations/member-sebi-debarred-entities

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Ritik Bhriegu (Extension: 23020), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

ANNEXURE: SEBI Order in the matter of Nutraplus India Limited

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF NUTRAPLUS INDIA LIMITED

In respect of:

Sr. No./ Noticee no.	Name of the Noticee	PAN
1.	**Shreenath Finstock Private Limited**	**AABCS6025R**
2.	**Bhavin Sureshbhai Thakkar**	**AFCPT8628L**
3.	**Gedalia Multitrading Private Limited**	**AAFCG0456N**
4.	**Bishal Narain Mittal HUF**	**AAHHM2656R**
5.	**Anchal Kishor Ostwal**	**ABBPO9965C**
6.	**Yogita Manoj Mittal**	**AIZPM4024F**

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

1. Securities and Exchange Board of India ("**SEBI**") conducted an investigation in the trading activities of certain entities in the scrip of Nutraplus India Limited (hereinafter referred to as "***Nutraplus***" or the "***Company***"), for the period of January 01, 2015 to July 27, 2017 (hereinafter referred to as the "**the investigation period**"), so as to ascertain as to whether the acts of the above *Noticees* were in contravention any provision of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the ("**PFUTP Regulations**").

2. Based on the aforesaid investigation, a common show cause notice dated December 12, 2019 (hereinafter referred to as the "**SCN**") came to be issued to the *Noticees* herein. The facts necessary for the present proceedings, as culled out from the SCN are briefly narrated herein below:

i. The *Company* was initially incorporated as a private limited company and it got converted into a public limited company w.e.f June 13, 1992. The equity shares of the *Company* are listed on BSE Limited (hereinafter referred to as "**BSE**").

ii. The *Company* announced a bonus on its shares in the ratio of 1:10 w.e.f January 19, 2017 and further the scrip of the *Company* underwent a stock split on February 27, 2017 from 1 equity share of Face Value of INR 10 to 2 equity shares of Face Value of INR 5 each.

iii. The investigation period was divided into four broad patches of time:

   a. Patch 1 - January 01, 2015 to February 03, 2016 (Price rise patch) (Pre-split)

   b. Patch 2 - February 04, 2016 to February 23, 2017 (Price fall patch) (Pre-split)

   c. Patch 3 - February 27, 2017* to March 29, 2017 (Price fall patch) (Post split) (*February 24, 2017 to February 26, 2017 were trading holidays)

   d. Patch 4 – March 30, 2017 to July 27, 2017 (Price rise patch) (Post split)

iv. During the investigation period, BSE Sensex moved from 27,485.77 to 32.383.30 registering an increase of 4897.53 points (17.82%), however, the price of the scrip of the *Company* decreased from INR 64.45 to INR 36.75, registering a decrease of INR 27.70 (42.98%), before closing at INR 18.90 on December 21, 2018.

v. The details of the price volume movement of the scrip, prior to, during and after the investigation period has been captured in the following table:

Table no. 1

Period	Dates		Opening Price (volume) on first day of the period(INR)	Closing price (volume) on last day of the period (INR)	Low price(volume) during the period (INR)	High Price(volume) during the period (INR)	Avg. no. of (shares) traded daily during the period
Before Investigation period	**01/10/2014-31/12/2014**	**Price**	28.00	61.40	22.15 (25.11.2014)	61.40 (31.12.2014)	**31285**
		Vol	1388	186257	452 (23.10.2014)	284741 (17.12.2014)	
During Investigation Period	**01/01/2015-27/07/2017**	**Price**	64.45	36.75	19.60 (29.03.2017)	494.40 (03.02.2016)	**64613**
		Vol	10562	129531	1 (Multiple dates)	1358095 (12.08.2016)	
Patch 1		**Price**	64.45	472.10	64.45	494.40	**57231**

Period	Dates		Opening Price (volume) on first day of the period(INR)	Closing price (volume) on last day of the period (INR)	Low price(volume) during the period (INR)	High Price(volume) during the period (INR)	Avg. no. of (shares) traded daily during the period
	01/01/2015-03/02/2016				(01.01.2015)	(03.02.2016)	
		Vol	10562	72585	618 (15.01.2015)	645468 (28.12.2015)	
Patch 2	**04/02/2016-23/02/2017**	**Price**	488.00	61.65	47.30 (22.11.2016)	488.00 (04.02.2016)	**36960**
		Vol	14857	37494	1 (Multiple dates)	1358095 (12.08.2016)	
Patch 3	**27/02/2017-29/03/2017**	**Price**	35.00	24.10	19.60 (29.03.2017)	35.00 (27.02.2017)	**101240**
		Vol	140508	359210	23488 (02.03.2017)	359210 (29.03.2017)	
Patch 4	**30/03/2017-27/07/2017**	**Price**	25.05	36.65	21.00 (31.05.2017)	40.95 (18.07.2017)	**167540**
		Vol	283380	129531	13449 (30.05.2017)	741056 (12.07.2017)	
After Investigation period	**28/07/2017-27/10/2017**	**Price**	36.50	28.40	22.80 (28.09.2017)	36.95 (09.08.2017)	**53004**
		Vol	143451	19352	5062 (19.10.2017)	198235 (13.10.2017)	

vi. The *Company* had made two preferential allotments, first on February 26, 2015 for 32,18,500 equity shares to non-promoter entities and second, on March 12, 2015 for 13,49,848 equity shares to non-promoter entities and, both the allotments were made at a price of INR 54 per equity share. *Noticee nos. 4,* and *6* were the preferential allottees in the preferential allotment dated February 26, 2015 and the *Noticee no. 5* was allotted shares under the preferential allotment dated March 12, 2015.

vii. All the 6 *Noticees* were observed to be connected to each other due to various factors, details of which would be discussed in the later part of the present order.

viii. During the Patch-1 (Price rise Patch) of the investigation period, the price of the scrip opened at INR 64.45, touched a high of INR 494.40 and it closed at INR 472.10. The analysis of trades executed on buy side reflected the following details:

Table no. 2

Name of the buyer	**PAN**	**All trades**			**LTP Diff. >0**			**LTP Diff. < 0**			**LTP Diff. =0**		**% of positive LTP to mkt positive LTP (Rs. 24086.60)**
		Net LTP	**QTY traded**	**No of trades**	**LTP impact**	**QTY traded**	**No of trades**	**LTP impact**	**QTY traded**	**No of trades**	**QTY traded**	**No of trades**	
Shreenath Finstock Private	AABCS6025R	6356.9	2479160	24782	9215.9	599408	9586	-2859	776751	5513	1103001	9683	38.26

Limited (*Noticee no.1*)													
Bhavin Sureshbhai Thakkar (*Noticee no. 2*)	AFCPT8628L	2901.35	520005	9594	3855	119174	3841	-953.65	156207	2096	244624	3657	16.01
Total - market		**410.7**	**15509634**	**113269**	**24086.6**	**2898627**	**29350**	**-23675.9**	**4803930**	**33298**	**7807077**	**50621**	**100.00**

ix. During the Patch-1 of the investigation period, *Noticee no. 1* through its 9586 trades, had contributed INR 9215.90 to the Last Traded Price (**LTP**), which was 38.26% to the total market positive LTP, out of which INR 202.25 to positive LTP (0.84% of total market positive LTP) was contributed from the trades executed between *Noticee no. 1* and other suspected/connected entities.

x. Further analysis of trades of *Noticee no. 1* indicated that the *Noticee no. 1* through its trades involving 1 share each in 4497 instances, had contributed INR 5,694.85 to the positive LTP (23.64% of the total market positive LTP during Patch-1) with following details:

Table no. 3

No of shares traded	No of trades	No of shares bought	Buy order qty range	Available Sell order qty range	+ve LTP Contribution	% to Market +ve LTP
1	4497	4497	1	1-12000	5694.85	23.64
1	306	306	2-10000	1-1000	161.40	0.67
2-10	1330	7775	2-11000	2-6500	1226.05	5.09
11 & above	3453	586830	11-12000	11-15000	2133.60	8.86
Total	**9586**	**599408**	**-**	**-**	**9215.9**	**38.26**

xi. Similarly, *Noticee no. 2* through his 3841 trades, had contributed INR 3,855 to the market positive LTP, which was 16.01% to the total market positive LTP, out of which

INR 121.25 positive LTP (0.50% of total market positive LTP) was contributed from the trades executed between *Noticee no. 2* and other suspected/connected entities.

xii. Further analysis of trades of *Noticee no. 2* indicated the following:

Table no. 4

No of shares traded	No of trades	No of shares bought	Buy order qty range	Available Sell order qty range	+ve LTP Contribution	% to Market +ve LTP
1	2446	2446	1	1-12000	2737.10	11.36
1	57	57	2-4001	1-5000	42.45	0.18
2-10	657	4316	2-5000	2-10000	669.90	2.78
11 & above	681	112355	11-10001	11-10000	405.55	1.68
Total	**3841**	**119174**	**-**	**-**	**3855**	**16**

xiii. *Noticee no. 2,* through his series of buy trades involving 1 share each on 2446 instances, contributed INR 2,737.10 to the positive LTP, which was 11.36% of the total market positive LTP during Patch-1.

xiv. Further, during Patch-4 (Price rise patch), the price of the scrip of the *Company* opened at INR 25.05 (previous close INR 24.10), touched a high of INR 40.95 and closed at INR 36.65. The details of the LTP contribution made by some of the *Noticees* are indicated in the table below:

Table no. 5

Name of the buyer	PAN	All trades			LTP Diff. >0			LTP Diff. < 0			LTP Diff. =0		% of positive LTP to mkt positive LTP (INR)
		Net LTP	QTY traded	No of trades	LTP impact	QTY traded	No of trades	LTP impact	QTY traded	No of trades	QTY traded	No of trades	
Shreenath Finstock Private Limited (Noticee no. 1)	AABCS6025R	315.35	2232962	6244	521.85	345213	2599	-206.5	777960	1402	1109789	2243	36.25
Bhavin Sureshbhai Thakkar (Noticee no. 2)	AFCPT8628L	46.8	80933	678	62.1	3197	330	-15.3	29636	158	48100	190	4.31
Gedalia Multitrading Private Limited (Noticee no. 3)	AAFCG0456N	264.15	1822033	5259	491.7	286187	2129	-227.55	520952	1290	1014894	1840	34.15
Total –		626.3	4135928	12181	1076	634597	5058	-449.4	1328548	2850	2172783	4273	74.71
Total - market		**12.55**	**13738347**	**30560**	**1439.7**	**1547978**	**7413**	**-1427.15**	**4165238**	**8169**	**8025131**	**14978**	**100.00**

xv. The analysis of the trades indicated that during the Patch-4 the *Noticee no. 1,* through its 2599 trades, had contributed INR 521.85 to the positive LTP of the scrip, out of which, INR 15.75 was contributed to the market positive LTP (1.09% of the total market positive LTP) of the scrip while trading with connected entities.

xvi. The analysis of the trades executed by the *Noticee no. 1* during Patch-4 is reflected in the following table:

Table no. 6

No of shares traded	No of trades	No of shares bought	Buy order qty range	Available Sell order qty range	+ve LTP Contribution	% to Market +ve LTP
1	1765	1765	1	1-62000	392.00	27.23
1	6	6	100-1000	1	0.75	0.05
2-10	63	392	2-2000	2-5000	11.2	0.78
11 & above	765	343050	12-31080	15-48000	117.90	8.19

xvii. As can be noted from the above table no. 6 that the *Noticee no. 1* in as many as 1765 instances, has traded each time by placing buy order for 1 share only and through such trades involving miniscule quantities, a LTP contribution of INR 392.00 in the scrip of the *Company* was made, which was 27.73% of the total market positive LTP during Patch-4.

xviii. Further, during Patch-4, *Noticee no.4* through his 2129 trades, had contributed INR 491.70 LTP, which was 34.15% to the total market positive LTP. Further analysis of the trades executed by the *Noticee no. 4* indicated the following:

Table no. 7

No of shares traded	No of trades	No of shares bought	Buy order qty. range	Available Sell order qty. range	+ve LTP Contribution	% to Market +ve LTP
1	872	872	1	1-60713	228.10	15.84
1	9	9	3-22429	1-201	1.10	0.08

2-10	375	3350	2-30000	2-65000	93.45	6.49
11 & above	873	281956	12-50000	15-62000	169.05	11.74
Total	**2129**	**286187**	**-**	**-**	**491.7**	**34.15**

xix. *Noticee no. 3,* through its buy trades involving 1 share each on 872 instances, contributed INR 228.10 to the positive LTP, which was 15.84% of the total market positive LTP during Patch-4.

xx. Apart from the contribution to LTP (and price rise) made during the Patch-1 and Patch-4 of the investigation period, it was also noticed that New High Price (**NHP**), has been created by certain entities during Patch-1. It was noticed that during the Patch-1 period, the price of the scrip moved from INR 64.45 to a high of INR 494.40, registering an increase of INR 429.95 (667.11%) and in this respect the following *Noticees* had contributed to NHP of the scrip during Patch-1:

Table no. 8

Entity Name	**PAN**	**BSE**						
		NHP Diff (INR)	**% of NHP Diff to total Mkt NHP Diff**	**Traded Qty**	**No. of Trades**	**Entity's Net LTP Contribution**	**Entity's +ve LTP Contribution**	**% of positive LTP contributed by entity to Total Market positive LTP**
Shreenath Finstock Private Limited (*Noticee no. 1*)	AABCS6025R	114.3	26.58	12662	149	6356.9	9215.9	38.26
Bhavin Sureshbhai Thakkar (*Noticee no. 2*)	AFCPT8628L	76.2	17.72	1924	96	2901.35	3855	16.01
Total-		**190.5**	**44.3**	**14586**	**245**	**9258.25**	**13070.9**	**54.27**

Entity Name	PAN	BSE						
		NHP Diff (INR)	% of NHP Diff to total Mkt NHP Diff	Traded Qty	No. of Trades	Entity's Net LTP Contribution	Entity's +ve LTP Contribution	% of positive LTP contributed by entity to Total Market positive LTP
Total – Market		429.95	100.00	65339	657	410.7	24086.6	100.00

xxi. An analysis of the trades reflected that the *Noticee no. 1* and *Noticee no. 2* have contributed INR 49.20 (11.44% of total market NHP during the patch) and INR 22.80 (5.30% of total market NHP during the patch) to NHP by placing buy order of 1 share each on 26 instances and 37 instances, respectively.

xxii. Further, during Patch-4 of the investigation period, the price of the scrip moved from INR 25.05 to INR 40.95, showing an increase of INR 15.90 (63.74%). The details of contribution made to NHP by the *Noticee nos. 1, 2* and *3* through their trades are tabulated herein below:

Table no. 9

Entity Name	PAN	BSE						
		NHP Diff (INR)	% of NHP Diff to total Mkt NHP Diff	Traded Qty	No. of Trades	Entity's Net LTP Contribution	Entity's +ve LTP Contribution	% of positive LTP contributed by entity to Total Market positive LTP
Shreenath Finstock Private Limited (*Noticee no. 1*)	AABCS6025R	3.55	22.33	3463	27	315.35	521.85	36.25

Entity Name	PAN	BSE						
		NHP Diff (INR)	% of NHP Diff to total Mkt NHP Diff	Traded Qty	No. of Trades	Entity's Net LTP Contribution	Entity's +ve LTP Contribution	% of positive LTP contributed by entity to Total Market positive LTP
Gedalia Multitrading Private Limited (*Noticee no. 3*)	AAFCG0456N	3.25	20.44	7407	29	264.15	491.7	34.15
Bhavin Sureshbhai Thakkar (*Noticee no. 2*)	AFCPT8628L	2.00	12.58	17	17	46.8	62.1	4.31
Total		**8.8**	**55.35**	**10887**	**73**	**626.3**	**1075.65**	**74.71**
Total – Market		**15.9**	**100.00**	**36980**	**132**	**12.55**	**1439.7**	**100.00**

xxiii. The aforesaid table indicate that the 3 *Noticees* have contributed INR 8.80 to the NHP, which was 55.35% of the total NHP during the Patch-4.

xxiv. As stated earlier, *Noticee no. 1* and *Noticee no. 3* have made significant contribution to positive LTP of the scrip by repeatedly placing buy orders for 1 share only on multiple occasions. A further analysis of the trades indicates that the *Noticee no. 1* has contributed NHP of INR 2.20 (13.84% of total market NHP during Patch-4) by placing order of 1 share each on 13 instances.

xxv. *Noticee no. 4, 5* and *6,* who were allotted shares under the preferential allotment, have also sold majority of their shares post lock-in after the price was inflated by the *Noticee nos. 1* to *3* through their unfair and fraudulent trades as narrated above (by placing buy orders for 1 share on multiple instances) in the scrip of the *Company*.

xxvi. The details of the shares sold by the *Noticee nos. 4, 5* and *6* and profits generated by them by offloading of their shares at artificially inflated prices (taking advantage of the price rise predominantly caused by the trades of the *Noticee nos. 1* to *3)* are captured in the following table:

Table no. 10

S. No	Name of the Preferential Allottee	No. of shares allotted	Issue Price (in INR)	Total Amount Paid during allotment A	Post-Split Holding(Shares Allotted)	Post-Bonus Holding (Shares Allotted) B	Adjusted Acquisition price (in INR)* C =A/B	No. of shares sold to suspected entities D	Actual Sale Value of shares sold to suspected entities (in INR) E	Buy Value of the sold shares (received via pref allotment) (in INR) F=C*D	Profit made (in INR) G=E-F
1.	Bishan Narain Mittal HUF(Noticee no. 4)	170000	54	9180000	340000	374000	24.55	43100	1573150.00	1057909.09	**5,15,240.91**
2.	Anchal Kishor Ostwal(Noticee no. 5)	100000	54	5400000	200000	220000	24.55	129392	3590694.05	3175985.45	**4,14,708.60**
3.	Yogita Mittal (Noticee no. 6)	108000	54	5832000	216000	237600	24.55	112825	3210516.75	2769340.91	**4,41,175.84**

* *Adjustment in acquisition price made for split and bonus issue by the company during the lock-in period of shares allotted on preferential basis.*

3. Based on the aforesaid factual details, the SCN makes the following allegations:

i. The trading pattern of *Noticee nos. 1, 2* and *3* of placing orders for 1 share only on several occasions and further contributing LTP to the scrip that had no fundamentals indicate that their intention was not to buy shares of the *Company* but to manipulate and increase the price of its shares;

ii. The *Notice no. 1, 2* and *3* through their NHP contributing trades have further manipulated the price of the scrip of the *Company*;

iii. The *Noticee nos. 4, 5* and *6* have made unlawful gains by selling part of their shares of the Company at prices artificially inflated by their connected *Noticees* i.e. *Noticee nos. 1, 2* and *3*; and

iv. All the aforesaid acts were done as part of a manipulative scheme, device and artifice implemented by the *Noticees,* which is in violation of Section 12 A (a), (b), (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (b) of PFUTP Regulations.

4. The SCN calls upon the *Noticee nos. 1, 2* and *3* to show cause as to why appropriate directions be not issued to them and further, the *Noticee nos. 4, 5* and *6* have been called upon to show cause as to why appropriate directions including disgorgement of wrongful gains be not issued against them. The show cause notice was served upon the *Noticees* through registered post.

5. It is noted from the records that the *Noticee no. 1* has vide his letters dated January 07, 2020, August 24, 2022 and September 14, 2022 filed its reply to the SCN, and the key points raised in those letters are summarised herein below:

I. The main business of the *Noticee no. 1* is trading in shares and while acting as a day-trader/jobber, it squares-off its position on the same day.

II. Being a trader in the securities market, the *Noticee* always buys the shares in the quantities which are available on the market platform and no ill intention can be attributed for trading in such a manner. The *Noticee* has also traded in 21 other stocks apart from Nutraplus during the investigation period and continued to trade in scrips (including Nutraplus) even after the investigation period.

III. The SCN suffers from an inordinate delay as the investigation period is of January 2015 to July, 2017, and the SCN has been issued on February 14, 2020. Owing to such delay, the *Noticee* is not able to recall the specific particulars of the transactions involved so as to effectively defend himself and thus a prejudice has been caused. Reliance has been placed on the judgment of the Hon'ble Supreme Court passed in the matter of *Government of India v. Citedal Fine Pharmaceuticals, Madras and Ors [AIR 1989 SC 1771]* and the order of the Hon'ble SAT passed in the matter of *Ashlesh Gunvantbhai Shah v. SEBI [Appeal No. 169 of 2019].*

IV. The allegation of having purchased shares from the 3 preferential allottees and manipulation of the scrip is totally baseless. The trades were executed for the purpose of deriving benefits from the volatility in the price of the scrip. While trading on the market platform, the identities of the counter parties are not known.

V. The broker of the *Noticee* was SATCO Capital Markets Limited and it did not inform the *Noticee* about any restrictions in the number of trades or manner in which the trades need to be executed. SEBI has rightly taken action against the said broker.

VI. There is no connection with the entities mentioned in the SCN except for Mr. Kishor Ostwal and Ms. Sangita Ostwal, who are Directors of the *Noticee no. 1 Company.* The SCN imputes connection of the *Noticee* with few suspected entities, however, no allegation has been made based on the trades of all such suspected entities.

VII. The SCN alleges artificially increasing the price of the scrip against *Noticee nos. 2* and *3*, however, no connection of the *Noticee* has been alleged with the said two entities.

VIII. Any connection between other suspected entities against whom no allegation has been made is not relevant. The SCN records in para no. 2.1 (for Patch-1) and para no. 2.19 (for Patch-2) that positive LTP contribution by other suspected entities allegedly connected to the *Noticee,* is negligible and no allegation has been made against such suspected entities.

IX. As the SCN does not record any connection of the *Noticee no. 1* with the *Noticee nos. 2* to *6*, it belies logic as to how the *Noticee* can be alleged to be part of the scheme of manipulation. No cogent evidence has been brought on record to establish any connection or meeting of minds to come to even *prima facie* findings that the trades were carried out with an intent to manipulate the market.

X. The contents of the SCN show that the *Noticee* has made negative LTP contribution also, however, the same has not been considered appropriately by SEBI. In fact, the number of shares involved in such trades (negative LTP contributing trades) were 18,79,752 shares in Patch 1 and 1887749 in Patch 4, and the said number of shares was higher than the trades contributing positive LTP. The said details indicate that the allegation of manipulating the price does not have any merit.

XI. Arising out of same facts, vide an order dated March 31, 2020, the Adjudicating Officer has exonerated ARG Management Solutions Private Limited (**ARG**). The said entity ARG also had a substantial number of trades with positive LTP contribution while trading with preferential allottees. The AO had considered the negative contribution to the LTP and held that the trades entered into were neither synchronised, reversed or manipulative. The same principle should be applied in the present case as well to grant exoneration from the present proceedings. Further, another company namely Trans Constructions & Consultancy Private Limited, having Directors Mr. Sorabh Gupta and Ms. Nisha Gupta, was identified to have traded significantly in the shares of Nutraplus. The said company had a common Director with ARG Management

Limited, and the aforesaid two Directors had also traded in the shares of Nutraplus. However, SEBI has not charged Trans Constructions & Consultancy Private or its Directors in suspected group.

XII. Reliance has been placed on the order of the Hon'ble SAT passed in the matter of *M/s Krishna Enterprises v. SEBI [Appeal No. 131 of 2015], inter alia* holding as: "*Therefore, by defending the conflicting orders, SEBI is neither promoting the development of the securities market nor acting in the interests of the securities market. On the contrary, by defending the conflicting orders, SEBI is encouraging passing of conflicting orders which are detrimental to the interests of the securities market….. Therefore, the conduct of SEBI in supporting the orders which are mutually contradictory in nature, clearly shows that SEBI is blindly supporting the orders passed by it in spite of the fact that the said orders are detrimental to the interests of the securities market. Such a conduct on part of SEBI is disgraceful to say the least.*"

XIII. The trades of the *Noticee* need to be seen in isolation. Further, even the trades containing single share needs to be seen in context of order placement. An order of 5 shares placed at market price may match with 5 different sell orders placed at different rates, and the same will show 5 different trades.

XIV. The SCN records that the suspected entities had traded with 1563 counterparties and the *Noticee no. 1* has traded with 1272 counter parties. The same shows that the trading in the scrip was not predominantly between the connected entities so as to create an illusion of trading

XV. Further, during Patch-1, out of total 155, 09,634 shares traded during the relevant period, the *Noticee* has only traded in 24,79,160 shares. The *Noticee* has bought 5,86,830 shares by placing buy orders in the range of 11-12000, by matching the selling quantities available on the market platform (11-15000 shares). Further, the 4497 shares were brought by making buy orders of 1 share each when the sell orders were also in the range of 1-12000.

XVI. The SCN indicates that during Patch-4, the *Noticee* has dealt with 528 counter parties which shows that the *Noticee* has not contributed to the LTP under any scheme of manipulation. The allegation made in the SCN that the *Noticee* did not have any intention to buy shares is not correct as the SCN itself records the *Noticee* has purchased 343050 shares by placing the buy orders in the range of 11 to 31080 shares.

XVII. The allegation of creating NHP in 26 instances during Patch-1 by trading single share is also baseless as the *Noticee* has traded in 1 share each on 4503 instances. Further, contribution to NHP is insignificant. Similarly, during Patch-4, the *Noticee* has traded on 1771 occasions in single share and NHP has been created only in 13 instances.

XVIII. It is normal to place orders at a price higher than the previous prices, which may lead to creation of NHP and such a scenario does not involve any manipulation.

XIX. Only 38.60% trades of Patch-1 and 62% trades of Patch-4 have been termed as manipulative, meaning thereby that the rest of the trades of the *Noticee* are genuine, which indicate that there was no manipulative intent involved in the trades of the *Noticee.*

XX. The SCN does not show any connection of the *Noticee* with the preferential allottees, rendering the allegations against it as baseless.

XXI. Merely stating contribution to LTP, NHP and placement of multiple single share orders would not *ipso facto* establish fraud or market manipulation, unless some connection is established with the *Company* or its promoters. Further, no motive for the alleged manipulation has been ascribed nor any allegation of making unlawful gains has been made against the *Noticee.* Reliance has been placed on the orders passed by the Hon'ble SAT in the matters of *DLF Limited (Appeal no. 331 of 2014)* and *KSL Industries Limited Vs. Chairman, SEBI (Appeal no. 9 of 2003)* etc.

XXII. The SCN fails to discharge the preponderance of probabilities standard for establishing charge of fraud and reliance in this connection has been placed on the order of the Hon'ble SAT in the matter of *Shruti Vora v. SEBI [Appeal No. 308 of 2020]* and the judgment of the Hon'ble Supreme Court passed in the matter of *SEBI v. Shri Kanaiyalal Baldevbhai Patel [(2017) 15 SCC 7].*

XXIII. There is no law prohibiting trades in single share and it is a common practice amongst the jobbers. Jobbers regularly place orders of single share to test the depth of the market since the trading software/screen shows only the lowest sell offer and the highest buy offer, along with the quantities offered by that seller/buyer. Such orders are placed to check whether the seller will sell those shares at the price being offered and if such trade happens, the buyer may reduce its price.

XXIV. It is not possible to manipulate share price with single share trade.

XXV. Reliance has been placed on the orders of the Hon'ble SAT passed in the matter of *M/s Nishith M. Shah HUF v. SEBI [Appeal No. 97 of 2019], Rajesh Jivan Patel v. SEBI [Appeal No. 222 of 2020]* wherein it was held that selling miniscule amount of shares by itself is not illegal nor manipulative nor violative of Regulation 3 and 4 of the PFUTP Regulations unless collusion with others is found.

XXVI. The SCN alleges the *Noticee* to have assisted in providing an exit opportunity to certain preferential allottees, however, the SCN overlooks the fact that the average daily volume in the scrip was 64,613 shares, which shows that there was no requirement to provide exit to the preferential allottees.

XXVII. It belies any commercial rationale that a scheme of manipulation ended up in providing profit of merely INR 4.14 Lakh to the *Noticee no. 5.*

XXVIII. As per SEBI's own analysis, out of 156 preferential allottees, 115 allottees managed to sell their shares after the lock-in period got over. The same shows that the 3 preferential allottee (*Noticee nos. 4* to *6*) were also in position to sell their shares in the open market.

XXIX. It also needs to be appreciated that the trading in the alleged connected group was negligible during Patch-1 and trading with the external (non-connected) persons was scattered for which no adverse inference has been drawn.

XXX. The investigation report has indicated that SEBI has not initiated proceedings under Section 11B against ARG Management.

XXXI. It is a well settled positon of law that directions under Section 11B of the SEBI Act, 1992 ought to be remedial in nature and should not be used for penal consequences. Reliance has been placed on the orders passed by the Hon'ble SAT in the matters of *Sterlite Industries (India) Ltd v. SEBI (2001) 34 SCL 485 (SAT)* and *Anand Rathi v. SEBI (2002) 36 SCL 182 (SAT)*

6. The records before me indicate that the *Noticee no. 2* has vide his letters dated January 06, 2020, August 23, 2022 and September 14, 2022 filed written replies to the SCN. It is noted that many of the submissions made by the *Noticee no. 2* are identical to those summarised for the *Noticee no. 1* above. The summary of submissions of the *Noticee no. 2* which are not repetition of what *Noticee no. 1* has already submitted and which are factually unique to his case, are being stated hereunder:

I. *Noticee no. 2* is a trader and jobber, earning money through trading in securities and has dealt in many scrips including Nutraplus during the investigation period. Year wise dealing in scrips by the *Noticee* vis-à-vis the scrip of Nutraplus are tabulated hereunder:

Table no. 11

Broker	FY	No. of Scrip	Qty Traded	Qty of Nutraplus	% of Nutraplus to total volume
SATCO	2015-16	78	19096564	606156	3.17
SATCO	2016-17	60	15876025	814344	5.13
SATCO	2017-2018	103	21812645	106961	0.49

II. The above shows that trades in Nutraplus were only miniscule portion of the total trades of the *Noticee,* considering similar nature of trades executed by ARG Management Private Limited has been exonerated by the Adjudicating Authority.

III. Many orders of the *Noticee* have matched with separate sell orders containing single share each, leading to execution of trades of 1 share each and illustrations of such trades have been filed. The *Noticee no. 2* has also provided an illustration where only a single sell order placed by him on April 21, 2015 at 15:27:10:756824 pm for sale of 3351 shares got executed partially and resulted in 15 different trades with different entities.

IV. Allegation based on common contact number/email address from KYC data is incorrect and not tenable.

V. The allegation against the *Noticee* to have purchased shares from the three preferential allottees is baseless and the alleged connection with the three sellers is also denied being baseless. The connection with other entities is also denied except for the fact that the *Noticee* is a Director in Gedalia Multimedia Private Limited (*Noticee no. 3*). Reliance was placed on the decision of the Hon'ble SAT in the matter of *HB Stockholding Vs. SEBI (Appeal no. 114 of 2012)* holding that the mere factor of one or two entities sharing common address or one person being promoter of a company at some point are not sufficient factors to establish the charge of fraud.

VI. The total shares traded in the market during the relevant time was 155,09,634 and the *Noticee* has traded only in 5,20,005 shares (3.35%) which being miniscule couldn't have manipulated the stock of the *Company*.

VII. The allegation of buying single share to manipulate the price is also baseless, as the *Noticee* had purchased 2446 shares but on other 681 occasions, the *Noticee* had purchased 112355 shares by trading in more than 11 shares each.

VIII. Further, the allegation of having created NHP in Patch-1 is also baseless as only in 96 trades out of 9594 trades have created such NHP (1% of the total trades during Patch-1). The NHP contribution of ARG Management Private Limited was INR 28.20 (6.656% of the total market NHP during Patch-1), which was higher than the NHP contribution of the *Noticee.*

IX. While issuing the SCN, no consideration was given to his negative LTP contributing trades in the scrip of the Company. Infact, the *Noticee* has traded in 400831 shares and such trades did not contribute any positive LTP and such trades constitute 77% of the total number of shares (5,20,005) traded by the *Noticee.*

X. The SCN has failed to show any connection of the *Noticee* with the preferential allottees. There have been numerous trades executed between the *Noticee* and Shreenath Finstock Pvt. Ltd. (*Noticee no. 1*), however, no connection has been alleged between the two entities. Without any cogent evidence to show meeting of minds, it would be unfair to conclude that trades were executed with *malafide* intent. The SCN itself records that the *Noticee* had traded with 758 counterparties.

7. It is noted that the *Noticee no. 3 (Gedalia Multitrading Private Limited)* has also made similar submissions vide letters dated January 06, 2020, August 24, 2022 and September 14, 2022 and the submissions unique to its case are being summarised hereunder:

I. *Noticee* is not connected to any of the preferential allottees from whom it had purchased shares of Nutraplus. There is no connection of the *Noticee* with other entities except for the fact that Mr. Bhavin Thakkar (*Noticee no. 2*) is one of its Directors.

II. The SCN itself records that the *Noticee* has dealt with 528 counterparties who were all scattered.

III. The allegation to contribute to positive LTP by executing trades of 1 share each are baseless as around 281956 shares were purchased on 873 occasions, by executing trades containing more than 11 shares each.

IV. The SCN has not considered the contribution of the *Noticee* to negative LTP in final analysis as the *Noticee* has executed trades involving zero or negative LTP and such trades involved trading of 1535846 shares.

V. The *Noticee* has contributed only 15.84% to the LTP in Patch-4, whereas ARG Management that had contributed 17.56% to the LTP was exonerated by the Adjudicating Authority having held that contribution was miniscule.

VI. The allegations of SCN cannot be established because only 2129 trades out of 5259 total trades (40%) have been alleged to be manipulative.

8. It is noted that the submissions made by the *Noticee no. 5* vide letter dated January 07, 2020, August 24, 2022, and September 14, 2022 are also similar to those made by the *Noticee nos. 1, 2,* etc., however the following submissions have been found to be unique to the *Noticee no. 5:*

I. The *Noticee* was allotted 100,000 shares in the preferential allotment out of the total 89,00,000 shares allotted by the *Company (*merely 1.1% of the total shares).

II. The SCN only states that she has sold 129392 shares and does not make any allegation of LTP or NHP creation nor it makes any connection with other entities.

III. The present SCN does not provide any material that supports the charges against the *Noticee* being part of a larger fraud/artifice and also lacks in providing the nature of direction likely to be issued against her. While seeking exoneration, reliance has been placed on the judgment of the Hon'ble Supreme Court of India passed in the matter of *Gorkha Security Securities v. Government (NCT of Delhi), [(2014) 9 SCC 105].*

IV. In screen-based trading, sale of shares is bound to match with entities who have frequently placed buy orders.

V. The trade details show that apart from the *Noticee nos. 1* to *3,* there were multiple counter parties to the trades of the *Noticee.*

VI. The trades executed between various parties were not synchronized nor any allegation of execution of manipulative trades have been made against the *Noticee.*

VII. SEBI has not charged the other preferential allottees, who had also sold their shares during the investigation period. The same shows that the *Noticee* did not require the help of *Noticee nos. 1* to *3* to exit the shares. If the counter parties were connected to the *Noticee,* they would not have purchased the shares at an increased price.

VIII. The *Noticee* has also purchased shares of Nutraplus after she had made the alleged transactions.

IX. The other 115 preferential allottees who had also sold the shares of Nutraplus during the investigation period, have not been charged.

9. *Noticee nos. 4* and *6,* vide their separate, yet identical letters dated February 01, 2021 and February 03, 2021, have broadly made the following submissions:

I. The facts stated in the SCN are not related to the *Noticee nos. 4* and *6*, except for the fact that Mr. Manoj Mittal is the son of B.N. Mittal (Karta of *Noticee no. 4)* and husband of Mrs. Yogita Mittal (*Noticee no. 6*), who were the allottee of the shares of the *Company* and are continuing to hold the said shares. Mr. Manoj Mittal was appointed as Additional Director on the Board of CMI Limited, New Delhi on July 29, 2016 till September 28, 2016 and on September 28, 2016, he was appointed as an Independent Director. He had attended his first Board meeting on September 27, 2016.

II. The shares of the *Company* were allotted to the *Noticee nos. 4* and *6* around 15 months before July 29 2016, i.e., the date when Mr. Manoj Mittal joined CMI Limited. Based on the said gap of time, the investment in the shares of the *Company* cannot be linked to the investment of the *Noticees* in the shares of the *Company.* Mr. Manoj is still an Independent Director of CMI Limited, whereas Mr. Kishor Ostwal has resigned from the Directorship.

III. The preferential allotment of shares was under lock-in for one year in terms of applicable regulations. The consent of the *Noticees* to undergo the lock-in for his investment reflects his long term approach.

IV. The share price fell after the lock-in got over and the price was in lower circuit continuously. The decision to invest was an independent one, so was the decision to sell the partial holdings after the lock-in got over.

V. As per the SCN, 115 preferential allottees have also sold shares, apart from the other shareholders of the *Company*. Therefore, the sale of shares by the answering *Noticees* cannot be questioned. The scrip of the *Company* was not inactive nor was any surveillance condition imposed on it by BSE.

VI. The sell order was placed by the stock broker over a period of time, and the shares could have been purchased by anyone on the market platform without the knowledge of the *Noticee.*

VII. The connection alleged in the SCN is based on false presumptions and is not justified. Merely because Mr. Kishore Ostwal was an independent Director on the Board of another *Company* where Mr. Manoj Mittal was a Director, would not stop the *Noticees* to sell his shares.

VIII. Mr. Manoj Mittal also holds shares in the *Company* and no allegations have been made against him. Further, the *Noticees* have also not sold his total shareholding and only a small portion was sold, which defies the alleged *malafide* on the part of the answering Noticees.

IX. As there was no illegality in selling of the shares, no amount of alleged unlawful gains should be disgorged.

X. The volume of trading in the shares was very huge and the *Noticees* have sold only a fraction of such large volume. Further, the price of the scrip increased from July, 2017 (when the *Noticees* sold the shares) to December, 2017 to a price of INR 50.

10. It is noted that the personal hearing in the present matter was fixed for December 08, 2020 which got rescheduled to February 09, 2021 and again to May 25, 2021. The said hearing again got adjourned to August 10, 2021 and on the said date, a common Authorised Representative appeared for the *Noticee nos. 4* and *6* and made oral submissions, while a request for adjournment was received from the Authorised Representatives of the *Noticee nos. 1, 2, 3* and *5*. Acceding to the said request, their personal hearing was rescheduled to September 09, 2021 and an intimation to this effect was issued on August 10, 2021 itself. However, on August 30, 2021 another request was received to keep the proceedings in abeyance on the ground that an appeal in another matter arising out of same investigation involving more or less similar allegations is pending before the Hon'ble Supreme Court of India. The said request was responded by SEBI vide an email of even date and it was informed to the *Noticees inter alia* that as the present proceedings are distinct from the one pending before the Hon'ble Supreme Court, hence, the request of adjournment could not be accepted. However, again on September 04, 2021, a further adjournment request was received citing non-availability of the *Noticees* due to some religious festival. In view of the said request, the personal hearing again got adjourned and was scheduled for hearing on June 07, 2022. In the meanwhile, on June 01, 2022, an inspection of documents was conducted on behalf of the

aforesaid *Noticees*. Further, vide email dated June 04, 2022, another request was made by the aforesaid *Noticees* stating *inter alia* that the documents/information withheld/redacted during the investigation needs to be furnished in compliance of natural justice. It was further stated that the copy of the investigation report which is voluminous in size, needs to be perused in detail before presenting their case. In view of the requests so made, the hearing was rescheduled to July 27, 2022. However, again, vide an email dated July 26, 2022, a request for adjournment was made. Having accepted the request for adjournments so many times due to which the matter is getting delayed, this time the said request of the aforesaid *Noticees* was rejected, and the matter was taken up for hearing on July 27, 2022 as per the schedule. During the said hearing, the Authorised Representative for *Noticee nos. 1, 2, 3,* and *5* though appeared through Video Conferencing, but again, a request for adjournment was made by him *inter alia,* by repeating the earlier ground that appeal in connected matter is pending before the Hon'ble Supreme Court. However, it was pointed out that numerous adjournment requests in the present matter have already been entertained and till date, no written reply to the show cause notice has been filed on behalf of the aforesaid *Noticees*. While the request for adjournment of personal hearing was not acceded to, the said *Noticees* were however given liberty to file their written replies to the SCN. Subsequently, the written replies on behalf of the aforesaid *Noticees* were filed and while filing such replies, the Counsels for the *Noticees* again pleaded for another opportunity of hearing. The said request was acceded to and in the interest of justice, the matter was scheduled for personal hearing on September 07, 2022. On the said day, the Authorised Representative for the *Noticee nos. 1, 2, 3* and *5,* appeared through Video Conferencing and made oral submissions on the lines of submissions made in their written reply filed.

11. Further, vide separate letters September 07, 2021, the *Noticee nos. 4* and *6* have forwarded submissions in response to certain queries raised during the personal hearing.

12. Before I proceed to appropriately deal with the replies/submissions of the *Noticees* as have been summarised above, I find it worthwhile to recollect here the violations of provisions alleged against the *Noticees*. It has been alleged in the SCN that the *Noticees* have violated the provisions of Section 12 A (a), (b), (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) and 4(2)(b) of the PFUTP Regulations. The said provisions are reproduced hereunder for facility of reference:

> ***SEBI Act, 1992***
>
> ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control***
>
> ***Section 12A.No person shall directly or indirectly—***

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

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

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

PFUTP Regulations

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:-

(b)dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss"

13. I have carefully perused the contents of the SCN, the materials available on record including the written replies filed by *Noticees*. It is noted that a contention has been made by the *Noticee no.5* that the SCN does not provide any material to support the charges against the *Noticee no. 5* of being part of a larger fraud. In this connection, having perused the SCN and available records, it is observed that the SCN in specific terms alleges that *Noticees* were enjoying connection amongst each other and further, in support of the above allegations, materials have been annexed

along with the SCN to show the links that connect the *Noticees* through a common thread, details of which are being examined in later part of the order. Further, the SCN proceeds with enumerating the allegations, the role played by each of the *Noticees* which formed the basis to make insinuations and has also furnished all the incriminating evidence, which have been relied upon to make such allegations. Therefore, in view of the specifics of the factual details containing the trades executed by the *Noticees* and other material available on record, I find that there is not even an *iota* of vagueness in the SCN, as has been contended by the *Noticees*. I, therefore, do not find any merit in the contention of such *Noticees* that charges made in the SCN are omnibus or vague.

14. It is also noted that delay in the present proceedings have been raised by the *Noticees* as one of the reasons for which they are not able to defend their respective case appropriately. Insofar as the factual aspect governing the said submission is concerned, I note that the investigation period in the present matter pertain to January 01, 2015 to July 27, 2017 and the investigating authority was required to collect the information from various sources including the trading data, bank account statements, Demat account statements etc., and only after collection of such data, a final analysis was undertaken that finally culminated in the form of an investigation report dated March 26, 2019. Based on the investigation report, a common Show Cause Notice came to be issued on December 12, 2019. As stated above, the alleged violations pertain to the period commencing from January 2015 till July 2017 i.e. to say in other words, the period under investigation consist of approx. 30 months, which included the two rounds of preferential allotments made to a large number of non-promoter entities. In order to arrive at concrete findings in the investigation report, it was incumbent upon SEBI to examine all the relevant data as gathered from the relevant sources. Considering the above factual matrix viz., the period of investigation, number of entities involved and volumes of data sought and analysed before the SCN was issued on December 12, 2019, I am of the view that *Noticees* have not been successful in demonstrating that delay in completion of the investigation and commencement of the proceedings have in any way, substantially prejudiced them in defending the allegations made in the SCN so as to grant exoneration on this ground alone.

15. Undoubtedly there is no provision under the SEBI Act, 1992 or the PFUTP Regulations, 2003 which prescribes any time limit for taking cognizance of the alleged breach of provisions of the Act, and rules and regulations made thereunder. The Legislature, in its wisdom, did not deem it fit to provide for the same. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in a matter, it is important not to lose sight of the fact that it is the date when the alleged violation came to the notice of SEBI which would be the relevant point and certainly not the date of commission of the said violation. Again, whether a delay in a particular case is justified or not depends on the attending facts and circumstances of that specific case. In this regard, it is relevant to refer here to the findings of the Hon'ble Supreme Court in the matter

of *Mahendra Lal Das vs. State of Bihar and Ors. (2002) I SCC 149* wherein the Hon'ble Apex Court held that "*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case.*"

16. The above said legal position has also come up for consideration before the Hon'ble SAT in *Ravi Mohan & Ors. v. SEBI (SAT Appeal No. 97 of 2014 decided on December 16, 2015)* and was endorsed by the Hon'ble SAT again in the matter of *Kunal Pradip Savla & Ors v. SEBI (Appeal no. 231 of 2017) decided on April 13, 2018, where in while dealing with the contention of delay in initiating action the Hon'ble Tribunal has held as below*:

> *"...................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, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, 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 no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot 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.................."*

17. Further, I observe that the *Noticee no. 1* has on the one hand stated that due to the delay, it is not in a position to recall the specifics of the transactions, and on the other hand, various detailed explanations to justify the alleged trades have been furnished. Thus, in view of the fact that a detailed reply has been filed to defend the alleged transactions, it indicates that the passage of time has not hampered the capacity of the *Noticee no. 1* to contend its case before SEBI and no prejudice whatsoever has been caused due to such a passage of time.

18. In view of the above, considering the fact that the alleged violations pertain to the period 2015 to 2017 and the SCN in the instant matter has been issued in December, 2019, it would be difficult to accept the above contention of the *Noticees* that the instant proceedings deserve to be dropped on the ground of delay when the *Noticees* have failed to show if any prejudice has been caused to them, except for making a bald assertion that they were rendered incapacitated in defending the allegations. Considering the complexities involved in ascertaining the facts of the matter and analysis thereof which pertained to numerous suspected entities, the above contention of the *Noticees* is not tenable in the facts of the present matter. In this regard, in order to substantiate my above findings, reliance is placed on the findings of the Hon'ble Tribunal in the matter of *Rajendra Aggarwal vs. SEBI (Appeal No 552/ 2019;* date of decision: September 17, 2021*),* wherein

also, while rejecting the contention of delay, the Hon'ble Tribunal has held that "*On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice* ….."

19. At this stage, I can't resist in observing that the first, the *Noticees* have raised a contention of delay in initiating action in the matter, even though the SCN was issued within a reasonable period of time, in December 2019, secondly, after the issuance of the SCN have resorted to all possible ways to take adjournments on one pretext or the other, and have caused delay in concluding the proceedings. I have highlighted above how the *Noticees* have exhibited their conduct and casual approach while participating in the proceedings. I have already highlighted as to how a few of the *Noticees* had repeatedly sought adjournment from the personal hearings taking various pleas, and thus, the *Noticees* themselves have prolonged the proceedings resorting to delaying tactics, hence, cannot now claim that the proceedings suffer from delay and laches. Additionally, I observe that the SCN and the annexures thereto contain all the details based on which the allegations have been made against the *Noticees,* and it is also noted that the *Noticees* have finally not only been able to make a fort of defence for themselves but have also got opportunity to analyse trade details of another entity (ARG Management Private Limited), so as to claim exoneration from the charges on the grounds of parity. Therefore, there does not appear to be any kind of prejudice which can be said to have inconvenienced the *Noticees* to defend their case merely because of the passage of time. In the light of the above observations purely based on factual position of the matter as well as the extant legal jurisprudence governing the issue, I am of the considered view that no delay has been committed by SEBI in initiating action in the present matter, hence, the contention of the *Noticees* in this regard deserves rejection.

20. I further note that a vehement contention of disparity in treatment has been raised by the *Noticees* by stating that another entity viz., ARG Management Private Limited, which had also traded in the scrip of Nutraplus Limited was fastened with only Adjudication proceedings and eventually, the said entity was exonerated from the charges by the Adjudicating Authority. Insofar as the selection of different enforcement action against a similarly placed entity is concerned, I observe that the said contention is completely baseless as the *Noticees* have not been able to demonstrate as to how they are placed at equal footing with the aforesaid entity, in terms of connection as well as allegation of acting in concert with other entities in the present proceedings. Further, it is a well settled proposition of law that the decision of SEBI to decide the course of enforcement actions against different entities in a given set of facts can't be subject matter of a *lis* and in support of the above, reference and reliance is placed on the findings of the Hon'ble Supreme Court of India as recorded in the matter of *SEBI Vs. Kishore R. Ajmera [(2016) 6 SCC 368]*: "*The imposition of monetary penalty in the case of M/s. Ess Ess Intermediaries Pvt. Ltd., M/s. Rajesh*

N. Jhaveri and M/s. Rajendra Jayantilal Shah [second category] for violation of the FUTP Regulations cannot be a basis for alteration of the punishment of suspension imposed on M/s. Monarch Networth Capital Limited to one of monetary penalty. In this regard, provisions of Section 15J of the SEBI Act has to be kept in mind and if the primary authority had thought it proper to impose different penalties in different cases involving different set of facts, we do not see how and why interference should be made in present appeals."

21. In addition to the aforesaid, it is further noted that reliance placed by the *Noticees* on the order dated March 31, 2020 passed by the Adjudicating Officer exonerating ARG Management Private Limited is also not tenable as the said order of the Adjudicating Officer is no longer in force. Further, I find that the aforesaid order dated March 31, 2020 was considered by SEBI to be erroneous to the extent that it is not in the interest of the securities market, hence, SEBI in exercise of its powers vested under Section 15I (3) of the SEBI Act, 1992 has set aside the same vide its order dated September 27, 2022. Further, vide the said order dated September 27, 2022, ARG Management Private Limited has been held guilty of violation of provisions of the SEBI Act, 1992 read with the provisions of PFUTP Regulations and a penalty of INR 10 Lakh has been imposed on it. Thus, in totality, the AO order, on the basis of which the contention of parity has been made before me, is not in force anymore. Therefore, all the arguments of *Noticees* which hover around the Adjudicating Officer's order *qua* ARG Management Private Limited do not hold any strength now and are thus rejected *in limine.*

22. Moving on to the merits of the case, I note that as per the facts stated in the SCN, the *Noticee nos. 4 (Bishal Narain Mittal HUF), 5 (Anchal Kishor Ostwal)* and *6 (Yogita Manoj Mittal)* are the entities who had received shares of Nutraplus Limited in the preferential allotment. Further, the *Noticee nos. 1, 2* and *3* allegedly manipulated the price of the scrip by contributing to the positive LTP and further facilitated the above preferential allottee *Noticees* viz., *Noticee nos. 4*, *5* and *6* to off-load their shares of the *Company* at artificially inflated price and thereby deliberately, as part of a scheme, helped these three *Noticee nos. 4, 5* and *6* to generate unlawful gains.

23. Before evaluating the principal allegation of manipulating the price of the stock of the *Company* and then successfully off-loading the shares at artificially inflated price, it would be essential to first go through the premise that these *Noticees* have acted as a part of a large fraudulent scheme, as alleged in the SCN. Accordingly, I deem it fit to first comment on the *inter-se* connections between these *Noticees,* which the SCN and its annexures have brought out based on factors, like common email id, mobile number etc. Further, in their replies also, few of the *Noticees* have made their inter-se connection evident. All such factors are proposed to be examined in the following paragraphs so as to come to a finding as to whether the evidence available on records is sufficient enough to hold that the *Noticees* enjoyed connections amongst them or not. In this regard, the relevant factual observations made during SEBI's investigation are enumerated hereunder:

i. *Notice no. 1,* Shreenath Finstock Private Limited, shares common email id (XishoX@chamatXXX.com) and contact numbers (98XXX838XX and 28XX032X)[1] with other entities viz., CNI Research Limited, CNI Infoxchange Limited, Mr. Kishor Punamchand Ostwal, Kishor Punamchand Ostwal HUF and Mrs. Sangita Kishor Ostwal. Mr. Kishor Punamchand Ostwal and Mrs. Sangita Kishor Ostwal are common Directors in the abovementioned three companies including Shreenath Finstock Private Limited (*Noticee no.1*).

ii. Mr. B.N. Mittal was the Karta of the *Noticee no. 4*. His son *Mr. Manoj Mittal* enjoys directorship along with Mr. Kishor Puramchand Ostwal in a company namely CMI Limited. Further, the *Noticee no. 6* is the wife of the Mr. Manoj Mittal and daughter-in-law of the Karta of the *Noticee no. 4*.

iii. Mr. Kishor Puramchand Ostwal was also an Additional Director of Nutraplus Limited from September 26, 2016 to May 29, 2017 and further, he (Mr. Kishor) is the father of Ms. Anchal Kishor Ostwal (*Noticee no. 5*).

iv. Further, *Noticee no. 2* Bhavin S. Thakkar*,* is admittedly the Director of the *Noticee no. 3 and he along with* Kishor Punamchand Ostwal HUF and Ms. Sangita Kishor Ostwal also share a common contact number viz., 98XXX018XX.

24. From the aforesaid factual findings, it is evident that the *Noticee nos. 4* and *6* are connected with each other as the *Noticee no. 6* is the daughter-in- law of the Karta of the *Noticee no. 4*. Similarly, the *Noticee nos. 2* and *3* are also connected as the *Noticee no. 2* was a Director in the *Noticee no. 3.* Further, the *Noticee no. 5* is a daughter of Mr. Kishor Puramchand Ostwal, who (Mr. Kishor) was a Director of *Noticee no. 1* Company as well of Nutraplus Limited. Besides the above, the *Noticee no. 1* shares common email id and contact number with other corporate bodies wherein also the father of the *Noticee no. 5* was also a Director. The records before also show that husband of the *Noticee no. 6* (Mr. Manoj Mittal) was one of the Directors in a company namely, CMI Limited, wherein Mr. Kishor Puramchand Ostwal was also a Director. It is observed that the above facts have not been disputed by any of the *Noticees* and therefore, the consideration of the above undisputed facts, lead to an undeniable conclusion that the *Noticees* were connected to each other.

25. It is further noticed that the *Noticee no. 2* has asserted that the contact number/email id from the KYC data is incorrect and can't form the basis to make such allegation of connections. Having gone through the submission and materials placed on this aspect, it is observed that the said submission is a bald statement without any further details specifying as to which contact detail mentioned in the SCN is not correct. It is further observed that though the *Noticee* has submitted

[1] *Email Id and mobile numbers have been masked to maintain privacy*

that wrong contact number or email id can't be a basis to make an allegation, however, the said *Noticee* has not furnished any details pertaining to the contact number or email id, nor has he furnished the correct number or email to contradict/rebut the information furnished along with SCN to allege his connection with other *Noticees*. Therefore, in the absence of any credible supporting evidence to justify his submission, I am constrained to hold that the said statement is an empty claim having no substance and therefore deserve outright rejection without any further consideration.

26. Further, the submission that the time gap between the allotment of shares and the Directorship of Manoj Mittal on CMI Limited would dilute the alleged connection, also does not hold any water in the given facts of the case as Mr. Manoj Mittal was having close connection with CMI Limited where he was an Additional Director from July 29, 2016 to September 28, 2016 and then from September 28, 2016 till filing of reply, he was an Independent Director of CMI Limited. Furthermore, the crucial link in the chain was Mr. Kishor Punamchand Ostwal, who was a common Director between CNI Research Limited, CNI Infoxchange Limited and was also an Additional Director of Nutraplus Limited during September 26, 2016 to May 29, 2017. Therefore, after careful consideration of the afore-stated connections that existed amongst the *Noticees,* I observe that the SCN has been successful in demonstrating that the *Noticee nos. 1* to *6* are connected to each other, which now leads me to adjudge the allegations made against these *Noticees* treating them as one connected group, emanating from the trading activities in the scrip of Nutraplus Limited.

<u>Patch-1</u>

27. It is noted from the SCN that the *Noticee nos. 1* to *3* have, through their manipulative trades escalated the price of the scrip of the *Company* and further the *Noticee nos. 4* to *6* who had earlier received shares in preferential allotment made by the *Company,* successfully dumped their substantial holding in the *Company* at artificially inflated price. Further, in the process of inflating the price of the stock, *Noticees* have executed several trades, many of them in very small volume of one share etc., at prices above the LTP. Some of the *Noticees* have placed buy orders in single shares or in very small quantities at repeatedly higher price on several days during the relevant period thereby contributing to market positive LTP through their trades, which created a misleading appearance of trading in the scrip as well as manipulation of the price of the scrip upwards so as to help the other *Noticees* offload the stocks of their holding and take profitable exits to earn unlawful gains. By indulging in such kind of fraudulent trade practice, the *Noticees* have apparently violated the stated provisions of the PFUTP Regulations, 2003.

28. Coming back to the facts of the matter, it has been noticed that during the period of January 01, 2015 to February 03, 2016 (Patch-1 of the Investigation period), the price of the scrip

moved from INR 64.45, touched a high price of INR 494.40 and closed at INR 472.10. The total Last Traded Price (LTP) variance for the said price movement was INR 24086.60, and based on the analysis of trade details, it was observed that the *Noticee nos. 1* and *2* have contributed large amount of LTP to the market positive total LTP in scrip of the *Company*.

29. It was noticed that the *Noticee no. 1* had during the relevant period, executed 9586 trades in 214 trading days and cumulatively, a positive LTP of INR 9215.90 was contributed by it through such trades. Further, out of such trades, an amount of INR 202.25 (0.84% of the total market positive LTP) was contributed by the *Noticee no. 1* while trading with connected entities. A further analysis of the trades of the *Noticee no. 1* indicated that in as many as 4497 instances, the *Noticee no. 1* has placed buy orders of only 1 share each and has made LTP contribution of INR 5694.85 (23.64% of the total market positive LTP). Similarly, during the Patch-1, the *Noticee no. 2* has also executed 2446 trades by placing buy orders of 1 share each and in such process, a LTP contribution of INR 2737.10 (11.36 % of the total market positive LTP) was made by the *Noticee no. 2*.

30. I note that in order to defend the allegations against aforesaid trades that were executed involving 1 share each, the *Noticee no. 1* has asserted that being a jobber, it always buys shares in the quantities which are available on the stock exchange platform and the same cannot be termed as violative of any law. In this connection, my attention gets drawn to the Table under para no. 2.13 of the SCN (also reproduced above as Table no. 3), which shows that the quantities of shares on offer (when *Noticee no. 1* placed its orders) were in the range of 1-12000 and despite availability of such large number of shares, the *Noticee no. 1* chose to buy 1 share only. Such a peculiar trade practice to buy only 1 share when the range of sell orders available in the market was 1-12000, renders the submission of the *Noticee* as a completely specious claim. Further, the buy trades of the *Noticee no. 1* involving 1 share in each trade was not a one off incidence which could be ignored, but was executed repeatedly in as many as 4497 instances. By executing all such trades involving only one share in each such trade, the *Noticee no. 1* was successful in contributing towards the positive LTP of the scrip and on a cumulative basis, a total positive LTP of 5694.85 contributed by it through such 4497 trades, i.e., contribution of INR 1.26 by every such trade (involving a single share each time) on an average basis. It has been submitted before me that the *Noticee no. 1* has also traded in 21 other scrips during the investigation period, however, the said submission is an evasive statement as it only makes a statement about trading in different scrips, but does not itself demonstrate that it had adopted similar trading pattern in those scrips of buying single share at higher market price. The above claim of trading in other 21 scrips has fallen short of instilling any confidence as no document to demonstrate that similar and identical trade practice was followed by it in all those 21 scrips as well, so as to explain or justify its business model as a jobber. Further, no logic has been advanced to persuade me as to why and how, the above noted trading

pattern of buying 1 share each at time at higher prices on numerous occasions was commercially beneficial to him and was in true compliance of the market mechanism as well.

31. It has also been submitted that the SCN does not make any insinuation with respect to the trades executed by the *Noticee no. 1* with its connected counter parties and has termed such LTP contribution to be negligible. In this connection, I observe that such a submission made by the *Noticee* is completely misplaced on facts, since the *Noticee* is confronted here with the allegation of manipulating the price of the scrip by buying 1 share at a time on numerous instances and by increasing the price of the scrip through every such 4497 trades that have been executed by it. I observe that the SCN has made quite a fair statement that the trades executed by the *Noticee* along with its other connected entities have together contributed substantial amount of positive LTP in the scrip, and based on such a fair statement of facts, the *malafide* that is writ large in the aforesaid 4497 trades of the *Noticee* comes to the fore as all such trades involving 1 share each have been executed with an intention of increasing the price of the scrip and the same cannot be washed away.

32. It has further been submitted that though the SCN records about the trades contributing negative LTP to the price of the scrip, however, such trades have not been considered appropriately by SEBI while making allegation of contribution to positive LTP and no weightage was accorded to the trades that had resulted in negative contribution to price of the scrip. In this connection, I reiterate my observations that the SCN has laid down a fair factual picture by extracting all the trades executed by the *Noticees* during the investigation period presenting the trades in different categories in terms of their LTP contributions like positive LTP, negative LTP and no LTP. However, as observed earlier, the said trades (involving negative LTP) are not relevant for the present proceedings even though the quantities of shares in such trades was higher than the positive LTP contributing trades, because, in the present matter, the categorical allegation on the *Noticee* is that they have manipulated the scrip price by entering into numerous trades of one share each at a time at higher LTP. I note that the though the SCN fairly captured and narrated all the trades including the trades involving negative LTP and no LTP, however, the allegations were made in the SCN *qua* the positive contributing trades only primarily due to the manner in which they have traded to manipulate the price of the scrip as part of a scheme and therefore, it would be incumbent upon the *Noticees* to confine their submission justifying the alleged trades only. Irrespective of the above, it is observed that similar contentions also came up for consideration before the Hon'ble Tribunal in the matter of *Farooq Kasam Hawa Vs. SEBI (Appeal no. 448 of 2020; date of decision: December 14, 2021)*, wherein while dealing with a contention of trading at negative LTP, the Hon'ble Tribunal has *inter alia* observed as: "*In our opinion, the trades above LTP or below LTP becomes immaterial especially when the trades executed by these noticees created an artificial volume which was fraudulent.*" In view of the above, I find no merit in the submission that *Noticees* have also executed

trades contributing zero LTP as well as negative LTP, hence, the trades contributing the positive LTP should be ignored and not be alleged. I find it very strange that the *Noticees,* instead of providing logic and rationale behind the execution of the alleged manipulative trades are desperately seeking exoneration by taking plea that they had also executed other types of trades in the said scrip, which are of no relevance to the specific allegations made against the *Noticees* in the SCN. I note that when the SCN has not alleged those trades, it may not be appropriate to make reference and attempt justifying those trades within the realm of the limitation of the instant proceedings. In any event, the *Noticees* are first required to provide justification behind the execution of those alleged trades which were noticed to have contributed significant positive contribution to the LTP of the scrip of the *Company* and such positive contributing trades involving one share at a time, were executed on frequent basis for which, no plausible justification has been advanced. Therefore, in the absence of any strong evidence and plausible justification, the aforesaid submission advanced by the *Noticees* regarding their negative/zero LTP trades is out of place and the same cannot come to rescue when it comes to justification of the impugned manipulating trades executed by the *Noticees* as alleged in the SCN.

33. Similarly, the submission of the *Noticees* that in many other trades, the quantities of shares traded were 11 or more, and that only a few percentage of trades of the *Noticee* (involving 1 share each) have been alleged to be manipulative while other trades have been considered to be genuine and not alleged, also does not hold any strength for the reasons stated above.

34. It is further noted that in its written reply, the *Noticee no. 1* has asserted that even the trades involving single share each, need to be seen in the context of order placement mechanism on the market as even an "order" of 5 shares can translate into 5 different "trades" involving one share each. In this regard, I observe that though the said submission cannot be theoretically disputed, however, while making such a submission, there lies a greater onus on the *Noticee* to demonstrate as to how such market mechanism operated in the execution of its trades so as to dilute the allegations of price manipulation against the *Noticee.* In other words, it is observed that a feeble attempt has been made to evade the allegation of price manipulation based on the functioning of the securities market, however, no illustration from the trades of the *Noticee* carrying any such attribute has been cited. In this respect, I further note that a common submission has been advanced by the *Noticees* stating that they had traded in large volumes and therefore, considering the volume of their trades, the contribution to LTP was negligible and therefore, they deserve exoneration from the outcome of the instant proceedings. The above justification may look attractive on its face, however, on a closer scrutiny, it is observed that the SCN in clear and specific terms has alleged that during the Patch-1 period, *Noticee no. 1* through its 9586 trades, had contributed INR 9215.90 to the market positive LTP, which was 38.26% to the total market positive LTP in the scrip and further, through its large number of trades involving 1 share each

that were found in 4497 instances, the *Noticee no. 1* had contributed INR 5,694.85 to the positive LTP, which was 23.64% of the total market positive LTP. Similarly, the *Noticee no. 2,* through his 3841 trades was noticed to have contributed INR 3,855 to the market positive LTP of the scrip, which was 16.01% to the total market positive LTP and the said *Noticee no. 2* through his trades involving 1 share each on 2446 instances, has also contributed INR 2,737.10 to the positive LTP in the said scrip of the *Company*, which was 11.36% of the total market positive LTP. Considering the frequency of their trades involving 1 shares at a time, I find it very difficult to convince myself that these two *Noticees* have put forward any logic or commercial justification, the appreciation of which, would be sufficient to warrant exoneration for them. It is observed that no logical and practical explanation has been forwarded by the *Noticees* justifying their rationale of buying 1 share each on numerous occasions, when the *Noticee* is claiming that it had traded out its own interest in the scrip of the *Company* with the intent of making profit but the manner in which the *Noticee* has resorted to those LTP contributing trades (of 1 share in each trade) without any prudent reason, the fraudulent aspect of such trades becomes manifest when such trades are linked to the trades indulged in by other *Noticees* in the same scrip.

35. I note that the SCN has portrayed a brief profile of the trades alleged to be manipulative in nature while the Trade Log of the scrip as annexed to the SCN would provide the finer details of all these alleged trades.

36. A further analysis of the alleged 4497 trades executed by the *Noticee no. 1*, more particularly, the timing of the placement of orders by the *Noticee no.1* would indicate that out of such 4497 trades, in as many as 4376 instances, the *Noticee no. 1* had placed its buy orders only after the seller had placed the sell orders on the market platform. Or in other words, at the time of placing buy orders at prices above the last traded price, the *Noticee no. 1* was well aware of the sell order available on the market platform. Furthermore, it is also of pertinence to mention that in any many as 77 instances, the time difference in the buy order of the *Noticee no. 1* containing single share, was more than 5 hours as compared to sell orders available on the market platform. It is noted that similar trading pattern has been followed by the *Noticee no. 2,* since out of the total 2446 trades involving purchase of 1 share each, the buy orders on behalf of the *Noticee no. 2* was placed after the sale orders in as many as 2365 instances. Further, in 28 instances, the buy order of the *Noticee no. 2* was place after more than 5 hours of the placement of respective sell orders. Thus, the identical pattern of trading exhibited by the *Noticee no. 1* and *2* is shorn of any *bonafide* element of buying the shares as genuine buyers who are really interested to buy the shares to hold and make profit after some days of holding and instead, the facts narrated above speak volumes about their illicit conduct while dealing in the shares of the *Company*.

37. The next submission made by the *Noticee no. 1* is that the allegation of not having any intention to buy the shares is not proved as it had purchased 343050 shares by placing buy orders

in the range of 11-31080 shares. I observe that the said contention of the *Noticee* is also irrelevant, to the allegations made in the SCN which it needs to answer. By citing other trades executed by the *Noticee,* the unusual pattern of the trades alleged in the SCN which was not having any trait of a normal trading behaviour for any active entity in securities market, does not ipso facto get diluted. I may add here that the market screen that is visible to the general public during trading hours would at any given time, reflect the LTP of a scrip and if the same is moved up even by a trade of single share, the same would be sufficient to change the LTP of that scrip.

38. It is noted that reliance has been placed by the *Noticee* on the order passed by the Hon'ble SAT in the matter of *M/s Nishith M. Shah HUF v. SEBI [Appeal No. 97 of 2019]* etc., so as to contend that the act of selling miniscule number of shares cannot be termed as manipulative in the absence of any collusion with counter parties. Insofar as the said judgment is concerned, I observe that the same is factually distinguishable from the facts of the present case as the number of instances which are alleged to be manipulative trades is overwhelmingly against the *Noticee.* In making such an observation, I also draw strength from another order of the Hon'ble Tribunal, i.e., *Tanuj Khandelwal Vs. SEBI (Appeal no. 357 of 2020; date of decision: October 22, 2020)*, wherein the Hon'ble Tribunal had *inter alia* upheld the findings of manipulative trades even in the absence of collusion with other parties by *inter alia* holding that:

> "7. *Having heard the learned counsel for the appellant and upon perusal of the impugned order we are of the opinion that the case of the appellant is distinguishable and consequently the decision in M/s. Nishith M. Shah HUF (supra), Rajesh Marchya (supra) and Mr. Jayant Indulal Sethna (supra) cases are not applicable and are distinguishable on facts. We find that except on three occasions the appellant only sold one share at a time on a daily basis. This trading pattern created misleading appearance with intention to manipulate the market if not the price. Thus, even if there is no connection with the buyer the trading pattern shows a concerted effort to manipulate the market and therefore we are of the opinion that the appellant was not acting as a genuine seller. We also find that the appellant had no bonafide intention to sell because inspite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons."*

39. Further, the Hon'ble Tribunal in the matter of *Mrs. Kalpana Dharmesh Chheda and Anr. Vs SEBI* (Appeal no. 454 of 2019, date of decision February 25, 2020) while taking into consideration its own decision in the matter of *M/s. Nishith M. Shah HUF vs. SEBI (Supra)* have observed that:

> *"9. We do not find much merit in the submissions made by the learned counsel for the appellants though generally it can be stated that selling at a price higher than the LTP particularly when buy orders are available in the system cannot be considered as manipulative in itself. However, 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. <u>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</u>. It is on record that the appellants were among the top two net sellers during the relevant period. Therefore, when the appellants were holding a large number of shares (Appellant No. 1 – 15045 shares and Appellant No. 2 – 1009 shares), their selling miniscule quantity of one share each on more than four dozen occasions is nothing but a strategy of manipulation and unfairly benefiting by off-loading the entire shareholding after raising the price to considerable levels." (underline supplied)

40. In the present case, it has been elaborated in the preceding paragraphs as to how the *Noticee no. 1* has executed 4497 trades in Patch-1 of the investigation period involving purchase of 1 share each and through all such trades, the price of the scrip of the *Company* was pushed upwards. It requires no reiteration that the sell quantities available in the trading platform at the relevant time was indeed higher (1-12000 shares during Patch-1); however, the *Noticee no. 1* chose to buy only one share at a time which did not result in much addition to the shareholding by the *Noticee no. 1* in the scrip of the *Company* but indeed impacted the price of the scrip positively. Under the circumstances, I find that the present case is quite akin to the case of *Mrs. Kalpana Dharmesh Chheda (supra)* as the *Noticee no .1* has been found to have indulged in repeated buying of single share on multiple occasions at higher LTP.

41. I further note that apart from the allegation of contributing to the positive LTP, the *Noticee no. 1* is also confronted with the allegations of creating New High Price of the scrip of the *Company*. New High Price, as the name suggest, is the highest price of shares of a particular company that has earlier been not achieved. I observe that when the scrip is witnessing persistent upward push by contribution of market positive LTP by repeated trades of miniscule quantity of shares, it is but natural for the price to reach those levels which have not been achieved earlier. The only submission made by the *Noticee* pertaining to creation of NHP is that only in 26 instances during Patch-1, by trading in single share, the *Noticee* has created NHP, and the said number is miniscule, as the *Noticee* has executed 4503 trades involving single share.

42. Insofar as the aforesaid submission is concerned, I observe that creation of a NHP in any scrip carries a strong potential to induce the general investing public to invest in the said shares. When a NHP is created repeatedly in a particular scrip, more and more number of investors may get attracted to it by perceiving it as a positive signal of further growth and increase in the market price of said scrip. However, as can be seen in the facts of the present case, when a single entity is found behind creation of NHP on multiple occasions that too by way of trades involving only 1

share in each trade repeatedly, the projection that the general investors would perceive from such NHPs is actually an illusion and far removed from the realty. Thus, creation of NHP by an entity on repeated basis cannot be justified merely by stating that such NHP creating trades are miniscule to the total trades involving single share each.

43. I further note that the role of the *Noticee no. 2* during Patch-1 is identical to the role played by the *Noticee no. 1*, with only difference between them relating to the number of trades, i.e., 2446 trades contributing INR 2737.10 to the positive LTP of the scrip. Further, the *Noticee no. 2* has also created NHP of INR 22.80 (5.30% of the total market positive NHP) during the Patch-1 by buying 1 share each in 37 instances.

44. It is also noted that while elaborating on the concept of matching of single order with multiple counter party sell orders, the *Noticee no. 2* has provided an illustration of trades executed by him which arose form a single order. It has been stated that on April 21, 2015, at 15:27:10:756824 pm, a sale order was placed by the *Noticee no. 2* for 3351 shares, however, the said order resulted in multiple trades of 1 share each. I observe that the said submission may be looking attractive on its face, however, when the same is carefully examined, it emerged that the *Noticee no. 2* has actually provided the details of "sell" order placed by him that resulted into multiple trades. In the context of the present case, when the allegation upon the *Noticee no. 2* is of commission of manipulation of price by executing buy trades for 1 share each, the *Noticee no. 2* was under an obligation to trace out any such instance from his trade details to show how his buy orders for a large quantity got split into many trades of 1 quantity each, but no such instances appears to be existing in the trade log when he was a buying entity. Under the circumstances, the illustration carved out by the *Noticee no. 2* which only shows a market mechanism of execution of multiple trades from a single order, is not relevant in the facts, as stated above.

45. I find the other submissions made by the *Noticee no. 2* are also more or less the same as made by the *Noticee no. 1,* to which my findings as recorded above while dealing with those submissions made by the *Noticee no. 1* are reiterated and I find that the *Noticee no. 2* has also not been able to persuade me to justify that his trades in the scrip of the *Company* was a result of *bonafide* trading activities carried out by him.

Patch-4

46. After recording my observations with respect to the charges against the trades executed during the Patch-1 of the investigation period, now I move to the adjudicate the charges of price rise caused by *Noticee no. 1* to *3* with respect to Patch- 4 (no allegations against them for the Patch-2 and 3), i.e., the period of March 30, 2017 to July 27, 2017. During Patch-4, the price of the scrip opened at INR 25.05, touched a high of INR 40.95 and closed at INR 36.65, thereby indicating an increase of INR 15.90 (63.47%). The SCN records allegation of LTP contribution made by *Noticee*

no. 1 and *Noticee no. 3* and NHP creation by the *Noticee nos. 1, 2* and *3,* during the Patch-4 of the investigation period.

47. It has already been noted above how the *Noticee no. 1* has contributed to the positive LTP in the scrip during the Patch-1. During Patch-4 also, the *Noticee no .1* has contributed positive LTP of INR 521.85 (36.25% of the total market positive LTP) through its 2599 trades executed on 38 trading days. Further, as has been noted for the trades executed during the Patch-1, during Patch-4 also, the *Noticee no. 1* has executed 1765 different trades involving 1 share each, whereas the counter party sell orders at the relevant points in time were available on the trading platform in the range of 1-62000. In such 1765 trades, the *Noticee no. 1* has contributed INR 392 to the positive LTP, which was 27.23% of the total market positive LTP in the scrip of the *Company*.

48. Further, during the Patch-4 of the investigation period, the *Noticee no. 3* has also contributed 34.15% of the total market positive LTP as it contributed INR 491.70 through 2129 trades on 82 trading days. It is also noted from the SCN that the *Noticee no. 3* has executed 872 trades wherein it had purchased 1 share in each such trade as against the sell quantities available in the system in the range of 1-60713. In such 872 trades, positive LTP contribution of INR 228.10 was made by the *Noticee no. 3*, which was 15.84% of the total market positive LTP.

49. Further, during Patch-4, the *Noticee nos. 1, 2* and 3 were found to have created NHPs, details of which are captured in the following table:

Table no. 12

Entity Name	PAN	BSE						
		NHP Diff (Rs)	% of NHP Diff to total Mkt NHP Diff	Traded Qty	No. of Trades	Entity's Net LTP Contribution	Entity's +ve LTP Contribution	% of positive LTP contributed by entity to Total Market positive LTP
Shreenath Finstock Private Limited (Noticee no. 1)	AABCS6025R	3.55	22.33	3463	27	315.35	521.85	36.25
Gedalia Multitrading Private Limited (Noticee no. 3)	AAFCG0456N	3.25	20.44	7407	29	264.15	491.7	34.15
Bhavin Sureshbhai Thakkar (Noticee no. 2)	AFCPT8628L	2.00	12.58	17	17	46.8	62.1	4.31
Total		8.8	55.35	10887	73	626.3	1075.65	74.71
Total - Market		**15.9**	**100.00**	**36980**	**132**	**12.55**	**1439.7**	**100.00**

50. I note from the records that the *Noticee no. 1* has made common submissions to deal with the allegations made against it in the SCN with respect to its trades executed in both Patch-1 and Patch -4. As the said submissions have already been dealt with elaborately by me while recording my findings with respect to Patch-1, there does not appear to be a need to again deal with such

submissions in the context of its trades executed during Patch-4 of the investigation. I may however hasten to add here that the execution of similar *modus operandi* followed by these *Noticees* while trading in the scrip of the *Company* during Patch-4 (March 30, 2017 to July 27, 2017) i.e., after a time gap of 1 year from the Patch-1 (January 01, 2015 to February 03, 2016) further strengthens the preponderance of probabilities against the claims of the *Noticee no. 1* that its trades were *bonafide* trades executed by it as a jobber. An analysis of the said 1765 trades through which the *Noticee no. 1* has purchased 1 share each and contributed to positive LTP would further indicate that on a total of 1752 such instances, the buy orders were placed by the *Noticee no. 1* only after the sell orders were placed on the market platform. Further, in as many as 26 instances, the time difference between the buy order placed by the *Noticee no. 1* was more than 5 hours from the time of placement of sell orders with which the buy price was matched by the *Noticee no. 1 albeit* for trade of 1 share only.

51. It may be seen from the above details that the *Noticee no. 1* has executed trades and increased the LTP of the scrip during Patch -4 also and has also created NHP for the scrip. Thus, when one sees that the same entity has followed the same pattern of unusual and manipulative trades again after a gap of 1 year, the claimed *alibi* of *Noticee no. 1* that it was merely testing the market by buying single share turns out to be a false claim and an afterthought exercise.

52. Insofar as the culpability of the *Noticee no. 3* is concerned, I observe that it is also seen to have indulged in contribution to market positive LTP in the scrip by its trades involving single/1 share on each such trade when the counter party selling entities were offering to sell shares in larger quantities as high as 60713 on the exchange platform at the relevant points in time on those trading days. In this respect also, no plausible explanation has come forward from the *Noticee no. 3* so as to justify such a peculiar trading behaviour nor any explanation has been furnished to justify as to why 1/single share was being repeatedly purchased at prices higher than the market price. As noted from the SCN, such a unique pattern of buying shares at higher prices was demonstrated repeatedly and in 872 different instances of trading, the *Noticee no. 3* was successful in contributing INR 228.10 to the market positive LTP of the scrip. It is also noted that the submissions made by the *Noticee no. 3* are identical to those made by the *Noticee no. 1,* and to avoid prolixity, I reiterate my findings recorded earlier *qua* the *Noticee no. 1*. It is noted from the analysis of the details of trades captured in the trade log that out of 872 trades through which *Noticee no. 3* had increased the price of the scrip by buying one share in each such trade, the buy order was placed by it before the sell orders came to the trading system in 869 instances and interestingly, in the remaining 3 instances, the buy orders of the *Noticee no. 1* and counter party sell orders were placed at the same time. Further, in 18 instances, the time difference in placing of buy order by *Noticee no. 3* was more than 5 hours as compared to the time of placing sell orders. Under the circumstances, the afore-cited trades of buying 1 share each at a time over a period and constantly contributing market

positive LTP to the scrip of the *Company*, defy all logic and commercial prudence and constrains me to hold that those LTP contributing trades executed by the *Noticee nos. 1* and *3* are nothing but deliberate acts of unfair and manipulative trades executed by them with an ulterior motive, hence shall be falling squarely within the ambit of fraudulent trades as defined under the PFUTP Regulations, 2003.

53. As can be noted from the Table no. 12 above, during Patch-4 the *Noticee no. 2* has through his 29 trades contributed NHP of INR 2.00 in the scrip of the *Company* which was 12.58% of the total market NHP during Patch-4, whereas the *Noticee no. 3* has created NHP of INR 3.25 in the scrip which was 20.44% of the total market NHP created in the said scrip. I have already recorded earlier as to how creation of NHP carries elements of strong inducement for the public alluring them to trade in a particular scrip. Further, after perusing the reply filed by the *Noticee no. 3*, it is noted that it has nothing tangible in it to justify its trades that have resulted in New High Prices for the scrip and in the said reply, only general submissions have been made to claim that it is a normal practice to place orders above the Last traded price and such order placement may result in creation of NHP. In this respect, I observe that the contribution of positive LTP by placement of buy orders of single share in each trade has already been held by me to be trades executed not in the course of normal transactions in securities market. With respect to creation of NHP, I observe that no justification has been furnished by the *Noticee nos. 2* and *3* to support its buy trades at prices which were never seen earlier in the said scrip. Under the circumstances, I observe that the *Noticee nos. 2* and *3* have deliberately executed such and unfair trades in the scrip of the *Company* only to create New High Prices, with a fraudulent design to pump up the market price of the scrip.

54. It is further observed from the Table no. 12 above that during the Patch-4 of the investigation period, the total NHP recorded in the scrip of the *Company* was INR 15.90, whereas the *Noticee nos. 1, 2* and *3* have collectively contributed INR 8.80, i.e., the collective NHP created by only 3 entities was 55.35% of the total market NHP created during the said period. The above said glaring facts not only strengthen my findings recorded for the respective *Noticees*, but also indicate that the *Noticee nos. 1, 2* and *3* were acting in a uniform manner to manipulate the price of the scrip. To briefly recall the connections enjoyed by them, I observe that admittedly, the *Noticee no. 2* was the Director of *Noticee no. 3* (Gedalia Multitrading Private Limited); while *Noticee no. 2* shared common contact number with Ms. Sangita Kishor Ostwal, who was the Director of *Noticee no. 1*. Further, as noted earlier, Ms. Sangita Kishore Ostwal shared common contact details and address with Mr. Kishor Punamchand Ostwal, who was one of the Directors of Nutraplus Limited during the period September 26, 2016 to May 29, 2017. Thus, when the entities having close nexus with each other and when they trade in a similar manipulative fashion in a scrip, such a conduct on their part only goes on to further corroborate the allegations made in the SCN, that the trades were executed by them in the scrip of the *Company* only to create a false and misleading appearance

of trading in the said scrip and such ill-intentioned trades certainly amount to manipulation of the price of the scrip. It is relevant to mention here the observations of the Hon'ble Tribunal in the matter of *Hemant Sheth & Ors Vs. SEBI (Appeal No. 205 of 2019; date of Decision March 04, 2020),* as reproduced herein below:

> *"In a scheme of manipulative and unfair trading it is not necessary that every participant should be indulging in every type of trading violation or even in the same / similar magnitude. Once they are found to be part of a group trying to manipulate the volume or price of the scrip they became party to the violation. Hair splitting arguments that some traded more than others or on more days or some indulged in synchronized reversal and self trade while others did only one of those types do not cast away their violations."*

55. Before parting with the proceedings, it has also been brought to my notice that for the same set of facts and violations, SEBI had initiated a separate proceeding which ended with the imposition of monetary penalty on the *Noticee nos. 1* to *3*. The above three *Noticees*, being aggrieved by the order dated April 27, 2020 have preferred to appeal against the said order before the Hon'ble Appellate Tribunal and the Hon'ble Tribunal having heard the appellants has already dismissed their appeals vide its order dated March 22, 2021. While dismissing the appeals, the Hon'ble Tribunal has held that:

> " *Having heard the learned counsel for the parties and having perused the documents placed before us we are of the considered view that the pattern of trading conducted by the appellants clearly establishes an attempt to manipulate the price of the scrip of Nutraplus. While it can be argued that no law prevents a trader from placing orders for one share, placing such orders thousands of times repeatedly, as in the instant case, is clearly manipulative in nature. A few such trades occasionally may not fall within the ambit of such manipulation as under Section 12A(a), (b), (c) of SEBI Act, 1992 and the PFUTP Regulations. But by no stretch of imagination we can extend that benefit of doubt to the appellants herein who have indulged in such single share trades a large number of times (4497, 2446 and 1765 etc) times during a limited period. Therefore, irrespective of the connection by the appellants and others or providing exit to only three preferential allottees etc. partly only these appeals do not have any merit. Nor these issues are very relevant when it is clear that the pattern of trading conducted by the appellants were clearly of manipulative nature squarely falling under the provisions of the PFUTP Regulations. Therefore, we have no doubt that the impugned order does not suffer from any deficiencies in this regard."*

56. In this respect, it has been however submitted that the *Noticees* have challenged the said order of Hon'ble SAT before the Hon'ble Supreme Court and vide its order dated August 06, 2021, the Hon'ble Supreme Court has stayed the said order of the Hon'ble SAT on the basis of submissions of the *Noticees* pertaining to the alleged discrimination made by SEBI by not imposing any penalty on ARG Management Private Limited. In this connection, I observe that the under

the regulatory framework of the SEBI Act, 1992, the proceedings under Section 11B of the SEBI Act, 1992 (which result in passing of directions) are separate and independent from those initiated under Chapter VI-A of the SEBI Act, 1992 (which result in imposition of monetary penalty), as held by the Hon'ble SAT in the matter of *Ms. Sunita Gupta Vs. SEBI (Appeal no. 193 of 2016; date of decision: April 24, 2017)*. In exact words, the Hon'ble Tribunal has held as:

> "*Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act.*"

57. Moreover, as regards the submission that a stay has been granted by the Hon'ble Supreme Court on the basis of pleadings made by the *Noticees* before the Hon'ble Court pertaining to the purported discrimination against them while dealing with the case of ARG Management, it has already noted above that the order that was earlier passed granting exoneration to ARG Management has been set aside by SEBI vide its order dated September 27, 2022, while exercising its power under Section 15I(3) of the SEBI Act and vide the aforesaid order, even ARG Management has been held guilty of the violation of the provisions of SEBI Act, 1992 and PFUTP Regulations. It is further observed that a comparison to seek parity with ARG Management was also raised by the three *Noticees* before the Hon'ble Tribunal, however, the same was not found to be convincing to the Hon'ble Tribunal. In any event, as no date, the above plea of discrimination has lost its relevance and no more available to augment the case of the three *Noticees* as order granting exoneration to ARG Management has been set aside.

58. In view of the above discussion, upon appreciation of materials on record and the submissions advanced by the respective *Noticees* in their defence against the allegations made in the SCN, I find that the materials on record are more than sufficient to hold that the SCN has been successful in bringing home the charge of violation of Section 12A(a), (b), (c) of SEBI Act and Regulation 3 (a), (b), (c), (d), 4 (1), 4 (2) (a) & (b) of PFUTP Regulations by the *Noticee nos. 1, 2* and *3* by their manipulative trades as discussed above.

59. The next set of allegations made in the SCN is that the *Noticee nos. 4, 5,* and *6*, who were allotted shares in preferential allotment carried out by the *Company,* had sold majority of their shareholding at prices artificially inflated by the *Noticee nos. 1, 2* and *3* by way of their LTP contributing manipulative trades as discussed in the foregoing paragraphs. The SCN also alleges that a part of the shares sold by the above three *Noticees* was bought by the *Noticee nos. 1, 2,* and *3* who had manipulated the price of the scrip, and in this manner also, they have facilitated profitable exit to the above named three preferential allottees at artificially created prices. The details of the

shares sold by the *Noticee nos. 4, 5* and *6* have already been recorded in Table no. 10 above [Para no. 2 (xxvi)] and it is noted that the unlawful gains made by them stand at INR 5,15,240.91, INR 4,14,708.60 and INR 4,41,175.84, respectively.

60. At the outset, it is noted that the *Noticee no. 5* has contended that the SCN does not provide any material for arraigning the *Noticee* in the alleged scheme nor does it specify her role in the alleged scheme. Reliance has also been placed on the judgment of the Hon'ble Supreme Court passed in the matter of *Gorkha Security Services Vs. Government (NCT of Delhi) (supra)* to buttress the said submission. After carefully pondering on the said submission, I observe that the SCN has provided cogent information and piece of evidences to show the close connection that was subsisting amongst the *Noticees* including the *Noticee no. 5,* which needs no reiteration at this stage. Further, the SCN has also categorically alleged as to how the *Noticee no. 1, 2* and *3* marked up the price of the scrip higher and higher so as to facilitate the *Noticee nos. 4, 5* and *6* to easily off load their shares held in the *Company* quite profitably by selling at those high rates and in this manner how they have also made unlawful gains by selling their shares to the *Noticee nos. 1, 2* and *3*, at prices which were manipulated upwards by the unlawful trades by the *Noticee nos. 1, 2* and *3* themselves. Further, in the present case, the SCN has already specified the proposed directions that may be issued against the *Noticees*, therefore, the reliance placed on the judgment of *Gorkha Security Services* (*supra*) is clearly misplaced.

61. The next contention made by them is that the SCN records that a total number of 115 preferential allottees have sold their shares but SEBI has not charged the other preferential allottees. In this regards, I observe that the charges in the SCN have not been levelled merely due to selling of the shares which were received in preferential allotment, but the allegation have been made premised on the inter-se connections that existed amongst the entities three of whom have been found to have manipulated the share price as well as have purchased shares from the other three *Noticees* viz. *Noticee nos. 4, 5* and *6*. It is further noticed that similar and identical issue had also come up for consideration before the Hon'ble Tribunal in the matter of *Dukes Products (India) Limited vs SEBI (Appeal No 431/ 2020; Date of decision: January 03, 2023)*, wherein also It was urged that the majority of the preferential allottees have been exonerated who had gained the maximum by selling their shares and, the appellants therein have been indicted on the basis of sale of a few shares which were found to be above LTP. While rejecting the above contention, the Hon'ble Tribunal has held that it was not necessary to proceed against the group entities as there was no evidence against them. It has further been held that the mere fact that no action was taken against some other entities due to lack of evidence is no ground for exonerating the appellants therein. The contention that the other preferential allottees were let off is again misconceived as in respect of other preferential allottees, no findings of price manipulation or connection with price

manipulating entities were found in the investigation and consequently no action was taken against them.

62. In the instant matter also, nothing has been brought before me to show that the other entities (who have not been charged by SEBI) were also trading in a manner to contribute to the LTP and NHP upwards and having a connection with the preferential allottees selling their shares to the entities indulged in manipulating the price, so as to be held as identically placed. In the absence of any evidence being placed other than merely raising a bogey about SEBI letting off some preferential allottees who were not proceeded against, is not sufficient to allege that no intelligible differentia was exercised while issuing the show cause notice.

63. The Hon'ble Tribunal in the matter of *Dukes Products (India) Limited (supra)* while endorsing the stand of the SEBI has observed that the Board exercised intelligible differentia based on the material before it and issued show cause notice to the relevant entities in the attendant circumstances relating to the modus operandi of fraudulent trade practices committed by the appellants therein. Thus, the contention that the show cause notice issued to only a few of the entities (appellants therein) was not based on any intelligible differentia is patently erroneous. Notwithstanding the same, in order to provide further strength to my above findings, I refer to the decision of the Hon'ble Tribunal made in matter of *Systematix Shares & Stocks India Limited v. SEBI (2012),* where the Hon'ble SAT also had the occasion to deal with a similar argument advanced by the appellant therein, contending that the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone was discriminatory. In the said case, the Hon'ble SAT had observed that *"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."*

64. In view of the above and for the reasons recorded above, I find no merit in the above submission of the *Noticees* that they deserve exoneration on the ground that the preferential allotments were made to several entities and 115 other preferential allottees have also sold their shares but SEBI has not charged them in the SCN.

65. It is further noted that a submission has been made that the transaction in shares were executed on market platform which maintains anonymity of the counter parties. I observe in this regard that inspite of absence of any mechanism to know the counter party details, large number of trades of the *Noticee nos. 4, 5* and *6* have matched with the *Noticee nos. 1, 2,* and *3*. When the said fact is seen in the backdrop of the inter-se connection that existed between the aforesaid *Noticees,* it lends a larger perspective to the whole scheme of manipulation and it rather indicates meeting of minds between the buying and selling entities by virtue of which large number of shares being sold by the *Noticee nos. 4, 5* and *6* were purchased by the *Noticee nos. 1, 2* and *3*.

66. At this stage, I find it apt to refer to and rely on the observations made by the Hon'ble Supreme Court of India, in the case of *Securities and Exchange Board of India v. Kishore R. Ajmera [(2016) 6 SCC 368]*, wherein the Hon'ble Apex Court while dealing with the issue of degree of proof required to prove the culpability have observed that: "*...While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned....The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors....*"

67. The records before me clearly bear testimony to the fact that the *Noticee no. 4* has sold 43100 shares, *Noticee no. 5* has sold 129392 shares, while the *Noticee no. 6* has sold 112825 shares to the connected *Noticees (*viz*.,* Noticee nos. 1, 2 and *3).* A simple back of the envelope calculation would show that the *Noticee nos. 5* and *6* had sold around 59% and 47% of their respective total shares only to the connected *Noticees*. I observe that when such a glaring factual situation of matching of trades containing large number of shares comes to the fore, it speaks volumes about the underlying inter-se arrangement between the *Noticees* which was clearly arranged with precision so as to defy the anonymous market mechanism of trading based on price time priority. In the light of the factors laid down by the Hon'ble Supreme Court in the matter of *Kishore Ajmera (supra)*, the volume of trades matching between the two entities is a compelling evidence, corroborative enough to draw conclusion about the existence of prior meeting of minds between the seller and buyer *Noticees* before they punched their sell and buy trades on those trading days in a manner to ensure that their respective orders end up in matching with each other. As the trades executed by the said *Noticees* are not found to be genuine trades executed in normal course of trading, the arguments taken by the *Noticee* that they have sold only a small portion of their shareholding in the *Company* is not found to be mitigating enough to dilute my observations about their fraudulent trades as recorded above.

68. It is noted that the *Noticee no. 5* has submitted that she has purchased the shares of Nutraplus Limited even after the alleged transactions. Be that as it may, I observe that the allegations made in the SCN pertain to the selling of shares during the investigation period, during which large number of shares were purchased by the entities involved in manipulation of the stock price. In view thereof, the said contention is not worthy of any deliberation.

69. As the act of selling of the shares by the *Noticee nos. 4, 5* and *6* to the *Noticee nos. 1, 2,* and *3* is found to be manipulative and part of a pre-mediated plan devised by the *Noticees* acting in

concert, I observe that the said acts on their parts are grossly in violation of Section 12 A (a), (b), (c) of the SEBI Act, 1992 and 3(a), (b),(c),(d), 4(1) and 4(2)(b) of PFUTP Regulations,.

70. As stated earlier, the SCN has imputed the profits made by the *Noticee nos. 4, 5* and *6* by selling their shares to the *Noticee nos. 1, 2,* and *3* to be unlawful profits. It is observed that the only submission made in this regard is that the *Noticees* claim the alleged trades to be genuine *bonafide* trades. However, in the light of my findings recorded in the preceding paragraphs, the said trades being tainted with market manipulation, any profit accruing to the *Noticee nos. 4, 5* and *6* out of such manipulated and fraudulent trades is unlawful and the same deserves to be stripped off from the benefits of the said *Noticees.* I find it appropriate to refer to the order of the Hon'ble SAT passed in the matter of *Reliance Industries Vs. SEBI (Appeal no.120/2017, Date of decision: November 05, 2020),* wherein Hon'ble SAT have observed *inter alia* that disgorgement is an equitable remedy moreso when the amount is credited to Investor Protection Fund of SEBI for the benefit of small investors.

71. To sum up my observations recorded in the foregoing paragraphs of the present order, I note that the all the *Noticees* were enjoying inter-se connection amongst each other and the factual premise on which such connection has been observed, could not be shaken by them. The trades of the *Noticee nos. 1, 2,* and *3* as seen from the uncanny details discussed above, were executed with a malicious intention to artificially create volumes and also to push the price of the scrip by buying single share in each trade repeatedly over a sustained period of time at prices higher than the market prices. The falsehood of their arguments of having executed *bonafide* trades has been rendered bare open when it is noted that the *Noticee no. 1* alone has executed 6262 such trades (4497 during Patch-1 and 1765 during Patch-4); the *Noticee no. 2* has executed 2446 trades; and the *Noticee no. 3* has executed 872 such trades, without any rationale or justification which only went on to raise the market price of the scrip of the *Company* higher and higher. The manipulative streak of the aforesaid 3 *Noticees* was not restricted only to making contribution to the positive LTPs, but some of the trades of these *Noticees* were also the force behind creation of New High Prices of the scrip. Lastly, these 3 *Noticees* who in numerous instances were seen to be buying only 1 share in each of their trades, had also collectively purchased 2,85,317 shares from the *Noticee nos. 4, 5* and *6,* leading to a total unlawful profits of INR 13,71,125.35 generated in the hands of *Noticee nos. 4, 5* and *6*.

72. The *Noticee nos. 1* to *3* were the buyers during most of the days and it were but through their buy orders placed mostly in single shares each, no transaction would have fructified and no LTP would have been formed. The manner, mode and frequency of trading was glaring to be held as manipulative because instead of buying a large part of stock of the *Company* when supply was already available in the trading system these *Noticees* preferred for the reasons best known to them only to buy only 1 share each most of the time and had contributed considerably to the LTP

successively created over a long period of time and ultimately provided a windfall gain to the other three *Noticees* out of their transactions.

73. Having gone through the records carefully, I am constrained to observe that though generally it can be stated that buying a share in the system cannot be considered as manipulative in itself, however, looking at the pattern of trading done by these *Noticees* and the fact that subsequently, other *Noticees* have derived considerable financial benefit through that particular scheme or nature of trading, I find no option but to view that the trading pattern adopted by the these buying *Noticees* are certainly 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 8708 occasions (4497, 2446 and 1765) that the *Noticee nos. 1, 2* and *3* bought one share, when in fact the sell orders in larger quantities were available in the system. This behaviour cannot be justified in terms of normal rational expectations of a buyer. It is on record that the *Noticee no. 1 (Shreenath Finstock Private Limited), Noticee no. 2 (Bhavin Sureshbhai Thakkar)* and *Noticee no. 3 (Bhavin Sureshbhai Thakkar)* had been instrumental in raising the price of the scrip of Nutraplus Limited through manipulative trading and were further found to have bought 12.3%, 6.45% and 3.83% of the total trading in the scrip of Nutraplus and the same parties sold 12.3%, 6.24% and 3.70% during the period were the top three traders on both the buy side and sell side during this period. The three *Noticees* who through their manipulative and unfair trades escalated the price of the scrip and further also found to have engaged in facilitating the other three preferential allottees *Noticees* to off load their holding at artificially inflated prices are found to be acting in violation of the alleged provisions of the PFUTP Regulations, 2003.

74. In view of the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11B(1) hereby issue the following directions :

i. The *Noticee nos. 1, 2, 3, 4, 5*, and *6* are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 1 year from the date of this order.

ii. The *Noticee nos. 4, 5* and *6* shall disgorge the amount of unlawful profits INR 5,15,240.91, INR 4,14,708.60 and INR 4,41,175.84, respectively along with simple interest @ 9% per annum from July 27, 2017 till the date of actual payment. The aforesaid amounts along with interest shall be remitted to Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992, within 45 (forty five) days from the date of this order and intimation may be forwarded to "Division Chief, Enforcement Department-1, DRA-4, Securities and Exchange Board of India, SEBI

Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051".

iii. The *Noticee nos. 4, 5* and *6* are directed to provide a full inventory of all assets held in his name, individually or jointly, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, within 15 days from the date of receipt of this order.

iv. It is clarified that during the period of restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid debarred *Noticees*.

v. The obligation of the aforesaid debarred *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 only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticees debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

76. A copy of this Order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

Date: February 28, 2023 **S. K. Mohanty**

Place: Mumbai **Whole Time Member**

Securities and Exchange Board of India