National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/63360	**Date: August 09, 2024**
Circular Ref. No: 361/2024	

To All NSE Members,

Sub: **SEBI order in the matter of front running the trades of Girik Wealth Advisors Private Limited and Girik Multicap Growth Equity Fund by Ashok Yashwant Bhogte**

This is with reference to SEBI Order No. QJA/GR/IVD-3/ID2/30657/2024-25 dated August 9, 2024, wherein SEBI has restrained following entity from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of Six (6) months, from the date of this order;

Sr. no.	Name of Noticee	PAN
1	Sachin Bhogte	AJFPB0762J

Further, SEBI has clarified that if the above entities have open positions, in the F&O segment of the recognized stock exchange(s), the same are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

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

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 email us at dl-invsg-all@nse.co.in

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National Stock Exchange of India

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI order in the matter of front running the trades of Girik Wealth Advisors Private Limited and Girik Multicap Growth Equity Fund by Ashok Yashwant Bhogte

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Section 11(1), 11(4), 11(4A), 11B (1), 11B (2) and 28(B) of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee.No.	Noticee Name	PAN No.
1.	Sachin Bhogte	AJFPB0762J
2.	Samir Bhogte	AEPPB5006E
3.	Suchita Bhogte	ALEPB5301J

In the matter of front running the trades of Girik Wealth Advisors Private Limited and Girik Multicap Growth Equity Fund by Ashok Yashwant Bhogte

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(The aforesaid entities are referred to by their corresponding names/numbers and collectively referred to as "Noticee)

Background

1. Securities and Exchange Board of India **("SEBI")** conducted an investigation into the trading activities of Noticee No.1 during the period from January 01, 2018 to December 31, 2021 **("Investigation Period"/"IP")** to ascertain as to whether there was any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")**, the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 **("PFUTP Regulations")** and/or any other Rules/Regulations made by SEBI thereunder.

2. Based on the findings of investigation, Show Cause Notice dated March 18, 2024 **("SCN")** was issued to the Noticees, which, inter-alia, stated as follows: -
   a) Girik Wealth Advisors Private Limited, i.e., **Big Client 1** is a SEBI registered Portfolio Manager and Girik Multicap Growth Equity Fund, i.e., **Big Client 2**, is a first scheme of Girik Capital Fund that is a SEBI registered CAT III Alternate Investment Funds (AIF). Big Client 1 & 2 are collectively referred as "**Big Clients/BC**".

b) Mr. Ashok Yashwant Bhogte ("**Front Runner/FR**") who was trading through Motilal Oswal Financial Limited observed to be consistently placing orders ahead of the orders of Big Clients in Equity segment and majorly squaring off his positions against Big Clients' orders.

c) During the investigation, Big Clients, vide letter dated June 19, 2023 submitted that there is an Investment Committee consisting of two Fund managers, Mr. Charandeep Singh and Mr. Varun Daga. The investment committee takes investment decisions and based on the instructions from the investment committee the mid office executive generates the orders in the system. Then the mid office executive sends the generated orders along with the price limit to the dealer of Big Clients, Mr. Sachin Bhogte (**Noticee No.1**), to place the orders to the brokers of the Big Clients. Accordingly, Noticee No.1 was aware of the impending trades of the Big Clients as he used to place the orders of Big Clients with the empanelled stock broker/s for execution.

d) It was revealed in the investigation that Mr. Sachin Bhogte (Noticee No.1) used trading account of his father Mr. Ashok Yashwant Bhogte to indulge in front running activity by placing orders in the said trading account of his father before the trades were executed in the account of Big Clients. In this connection, investigation found that Mr. Ashok Yashwant Bhogte had given an authorisation letter to the broker Motilal Oswal Securities Ltd. / Motilal Oswal Financial Services Ltd. authorizing his son, Mr. Sachin Bhogte (**Noticee No.1**) to operate his trading account. The trading by Mr. Sachin Bhogte (**Noticee No.1**) was done by installing the mobile application of Motilal Oswal Securities on his own device (vivo 1902) by using the log in credentials of his father's account. Based on the pattern of trades executed by Mr. Sachin Bhogte (Noticee No.1) in his father's trading account prior to the execution of the trades of Big clients and subsequent squaring off the position to make profit, it was alleged that Mr. Sachin Bhogte (Noticee No.1) was front running the trades of Big Clients by using his father's trading account, and made substantial profits through the activity.

e) On NSE, 222 instances of Buy-Buy-Sell (BBS) pattern and 356 instances of Sell-Sell-Buy (SSB) pattern were observed. Similarly, on BSE, 11 instances of BBS pattern and 2 instances of SSB pattern were observed.

f) Following are some of the instances demonstrating SSB and BBS pattern observed in the trades of FR during IP.

BBS Pattern- Order Timing

Date	Security Name /Contract	FR-Buy Timing				BC- Buy Timing				FR-Sell Timing			
		Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time	Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time	Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time
20/03/2018	ORBTEXP	10:46:52	10:46:52	10:53:22	11:37:18	10:50:32	15:21:56	11:38:34	15:29:49	11:43:58	11:43:58	14:10:07	14:11:38
25/11/2019	CONTROLPR	09:38:52	09:38:52	09:38:52	10:12:30	10:07:16	14:45:24	10:07:16	14:45:24	10:19:11	10:19:11	10:26:15	11:49:14
21/08/2020	COROMANDEL	11:34:38	12:24:54	11:34:40	12:27:40	11:56:35	12:37:19	11:56:41	12:40:18	12:27:40	13:00:06	12:32:45	13:00:06
03/12/2020	ICICIGI	09:06:21	11:51:49	09:15:06	11:53:27	09:26:46	12:23:34	09:26:46	12:23:34	09:27:57	11:54:57	09:30:07	12:03:20
03/08/2021	STOVEKRAFT	14:20:29	14:28:49	14:20:29	14:29:58	14:22:38	15:10:19	14:26:38	15:10:19	14:25:52	14:37:37	14:32:29	14:38:33

BBS Pattern-Quantity matched

Date	Security Name /Contract	Big Client Activity	Big Order Buy Qty.	Big Order Sell Qty.	FR Buy Qty.	FR Sell Qty.	Sell Qty. Match	Sell Qty. Match in %	Profit (Squared) of FR
20/03/2018	ORBTEXP	Buy	14200	0	781	781	741	94.88%	4,110.40
25/11/2019	CONTROLPR	Buy	3419	0	2319	2319	2143	92.41%	10,494.65
21/08/2020	COROMANDEL	Buy	67094	0	5941	3000	2500	83%	36,297.44
03/12/2020	ICICIGI	Buy	38460	0	4000	3750	2877	77%	36193.03
03/08/2021	STOVEKRAFT	Buy	93098	0	5205	5205	4447	85.44%	43,878.80

SSB Pattern-Order Timing

Date	Security Name /Contract	FR-Sell Timing				BC- Sell Timing				FR-Buy Timing			
		Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time	Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time	Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time
04/04/2018	TEJASNET	09:15:43	09:15:43	09:30:25	09:30:25	09:31:33	10:49:46	09:31:33	11:18:51	09:39:50	09:39:50	10:13:05	10:13:44
07/06/2019	PNB	09:15:50	09:15:50	09:15:54	09:15:56	09:16:44	09:48:37	09:16:44	09:48:37	09:17:51	09:17:51	09:18:57	09:18:57
27/02/2020	MANAPPURAM	10:29:32	10:29:32	10:29:34	10:30:27	10:29:02	10:38:33	10:29:15	10:38:33	10:30:47	10:30:47	10:38:31	10:39:04
25/11/2020	CDSL	10:37:05	11:48:18	10:37:08	11:52:47	09:20:26	12:08:07	09:20:26	12:08:07	10:45:11	11:55:27	10:55:56	12:07:44
02/07/2021	CHOLAFIN	13:36:42	13:41:59	13:36:42	13:42:36	13:43:56	14:10:29	13:43:56	14:10:50	14:08:22	14:06:46	14:08:55	13:54:19

SSB Pattern-Quantity Matched

Date	Security Name /Contract	Big Client Activity	Big Order Buy Qty.	Big Order Sell Qty.	FR Buy Qty.	FR Sell Qty.	Buy Qty. Match	Buy Qty. Match in %	Profit (Squared) of FR
04/04/2018	TEJASNET	Sell	0	30164	2500	2500	2500	100%	12,501.95
07/06/2019	PNB	Sell	0	1133937	20000	20000	18736	93.68 %	10,000.00
27/02/2020	MANAPPURAM	Sell	0	144156	5000	5000	4156	83.12%	2,917.80
25/11/2020	CDSL	Sell	0	145110	16590	16590	9496	57.24%	74,540.60
02/07/2021	CHOLAFIN	Sell	0	305454	12742	12742	11718	100%	35,896.50

g) It is alleged that Front Runner, Mr. Ashok Yashwant Bhogte had made a profit of Rs.1,08,29,597.27 from the 591 instances of front running trades.

Summary of unlawful gains made through front running activities

Name of the FR	Trading Account operated by	Stock Exchange	Total Unlawful gains (Rs.)
Mr. Ashok Yashwant Bhogte	Mr. Sachin Bhogte	BSE	1,50,315.55
		NSE	1,06,79,281.72
		Total	**1,08,29,597.27**

h) During statement recording, Noticee No.1 confirmed that he has been working as dealer of Big Clients since 2010. Fund Managers Mr. Varun Daga and Mr. Charandeep Singh take trading decisions of Big Clients. Then Mr. Charandeep Singh communicate orders to him and he place the orders with empanelled stockbrokers.

i) Further, Noticee No.1 submitted that he was placing orders from the account of his father and confirmed that he was authorized by his father to trade in his account. He also admitted that he has been doing front running activity in his father's account while he was acting as dealer and placing orders for Big Clients during the IP.

j) During the investigation, while recording the statement of Noticee No.1, it was informed that Mr. Ashok Yashwant Bhogte, father of Noticee No.1, passed away on April 30, 2023 and the death certificate was also produced on the same. In this connection, for issuing appropriate directions regarding the disgorgement of aforesaid unlawful gains amounting Rs. 1,08,29,597.27 made out of the alleged front running activities of late Mr. Ashok Yashwant Bhogte, the details of his legal heirs/representatives were sought during investigation as per the provision of Section 28B(2)(b) of SEBI Act. In this regard, it was informed that Mr. Sachin Bhogte (son) Noticee No. 1, Mr. Samir Bhogte (son) ("**Noticee No. 2**") and Mrs. Suchita Bhogte (wife) ("**Noticee No. 3**") are legal heirs/representatives of late Mr. Ashok Yashwant Bhogte. Accordingly, the provision of Section 28B(2)(b) of SEBI Act was invoked against the Noticees.

k) In view of the above, it was alleged that Noticee No. 1, while being the dealer of the Big Clients and having knowledge of Big clients' impending orders front ran the trades of Big Clients by using trading account of his father and has violated the provisions of Sections 12A (a), (b), (c) and (e) of SEBI Act, Regulations 3 (a), (b), (c) and (d), 4 (1) and 4 (2) (q) read with Regulation 2 (1) (c) of PFUTP Regulations.

l) In addition, it was alleged that late Mr. Ashok Yashwant Bhogte by allowing his son Noticee No.1 to use his trading account for engaging in front running activities has violated Sections 12A (a), (b), (c) and (e) of SEBI Act, Regulations 3 (a), (b), (c) and (d), 4 (1) and 4 (2) (q) read with Regulation 2 (1) (c) of PFUTP Regulations. Since, Mr. Ashok Yashwant Bhogte was deceased at the time of initiation of present proceedings, Section 28B(2)(b) was invoked and the legal heirs/representatives of late Mr. Ashok Yashwant Bhogte i.e. Noticee No.1,2 and 3 were made party to the present proceedings on his behalf.

m) Accordingly, thereafter, vide the SCN, the Noticees were called upon to show cause as to why suitable direction(s), under 11(1), 11(4), 11(4A), 11B(1), 11B(2), 15HA and 28B of the SEBI Act, 1992 should not be issued against them for the alleged violations mentioned above including directions to prohibit from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period, directions not to be associated with any registered intermediary/ listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever also why imposition of monetary penalties should not be issued. Further, Noticees were also show caused as to why any directions for disgorgement of total wrongful gain of Rs.1,08,29,597.27, jointly and/or severally should not be issued against them.

SERVICE OF SCN, REPLIES AND HEARING

3. The SCN along with annexures was served on the Noticees through speed post and acknowledgement due. It was duly delivered to all the Noticees. In response to the same, the Noticees submitted their replies. The same are summarised as under:

a. Mr. Sachin Bhogte (Noticee No.1) without contending the allegations of front running, only submitted his disagreement with the amount of unlawful gains mentioned in the SCN and stated that the said amount is less than Rs.1,08,29,597.27. In support of this submission, Mr. Sachin Bhogte (Noticee No.1) forwarded Capital Gain statement and Income tax return statement for the last 4 financial years i.e. 2018-19 to 2021-22 of late Mr. Ashok Yashwant Bhogte.

b. Mr. Sachin Bhogte (Noticee No.1) also forwarded the replies of the SCN of Noticee No. 2 and 3. Therein the said Noticees submitted that they were not aware about the transactions done in their father's trading account. Noticee No. 2 and 3 also stated that the profit made was less than what is stated in the SCN.

4. Thereafter, in accordance with the principles of natural justice, the Noticees were granted an opportunity of personal hearing. In this connection, SEBI vide email dated May 08, 2024 informed the Noticees that personal hearing is scheduled on May 17, 2024.

5. Mr. Sachin Bhogte (Noticee No.1) vide email dated May 13, 2024 requested to reschedule the personal hearing. In this regard, SEBI vide email dated May 14, 2024 responded to the Noticee's email and informed that the Noticees may present themselves for personal hearing on May 16, 2024.

6. On May 16, 2024, Mr. Sachin Bhogte (Noticee No.1) appeared and represented all the Noticees. During the said hearing, Noticee No.1 admitted the charges levelled against them. The Noticee further requested one week's time to submit documents in support of the claim of lower unlawful gains made by the Noticees as against what was alleged in the SCN. The same was accepted. However, no response was received from the Noticees in this regard.

7. From the above, I note that the SCN and Hearing Notice were duly served to the Noticees and sufficient time was provided to submit their replies. Further, an opportunity of personal hearing was also given to the Noticees, which was availed by them. Hence, the principles of natural justice were complied with respect to the Noticees and I shall now proceed to deal with the key issues involved in the instant matter.

ISSUES FOR CONSIDERATION

8. On a perusal of the observations and allegations brought out in the SCN, the replies filed by the Noticees, oral / written submissions filed by them and other material available on record, the following issues arise for consideration in the present proceedings:

(1) ***Whether Noticee No.1, using the trading account of his father late Mr. Ashok Yashwant Bhogte, front ran the trades of Big Clients during the IP and have consequently violated the provisions of SEBI Act and SEBI PFUTP Regulations as alleged in the SCN?***

(2) ***If the answer to the above issue is in affirmative, whether the Noticees by virtue of being the legal representatives/heirs of late Mr. Ashok Yashwant Bhogte can be held liable for the violations of late Mr. Ashok Yashwant Bhogte?***

(3) ***What directions, if any, including the amount of monetary penalty, is required to be imposed on the Noticee(s)?***

9. Before proceeding to consider the matter on merits, I find it appropriate to refer to relevant provisions of law which are as follows: -

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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;

…

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

<u>PFUTP Regulations</u>

Definitions* 2. *(1) …

…

…

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

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

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

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

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

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

(6) any such act or omission as any other law specifically declares to be fraudulent, (7) deceptive behaviour by a person depriving another of informed consent or full participation,

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

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

And "fraudulent" shall be construed accordingly;

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to *manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.*

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

…

…

…

(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;

10. I shall now proceed to address the above issues in light of the facts of the case, material available on record and the submissions made by the Noticees.

FINDINGS ON ISSUES

(1) Whether Noticee No.1, using the trading account of his father late Mr. Ashok Yashwant Bhogte, front ran the trades of Big Clients during the IP and have consequently violated the provisions of SEBI Act and SEBI PFUTP Regulations as alleged in the SCN?

Definition of Front Running

11. In order to examine the veracity of allegations raised in the SCN, it is pertinent to mention what constitutes front running in the securities market and the jurisprudence surrounding it. The Hon`ble Supreme Court, for the first time, in the matter of ***SEBI Vs. Kanaiyalal Baldevbhai Patel*** [(2017) 15 SCC 1], set out contours within which any conduct alleged to be front running must be examined. Hon`ble Court referred to wide range of authoritative resources to arrive at proper definition of front running in India, this included examination of definition thereof in Major Lax Lexicon by P. Ramanatha Aiyer, Black`s Law Dictionary, as also Wall Street Journal.

"As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:

Buying or selling securities ahead of a large order so as to benefit from the subsequent price move. This denotes persons dealing in the market, knowing that *a large transaction will take place in the near future and that parties are likely to move in their favour. The illegal private trading by a broker or market-maker who has prior knowledge of a forthcoming large movement in prices."*

The Black's Law Dictionary (Ninth Edition) defines the term 'front running' as under:

Front running, n. Securities. A broker's or analyst's use of non-public information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares.

Nancy Folbre –In the world of financial trading, a front-runner is someone who gains an unfair advantage with inside information.

SEBI has defined front-running in one of its circular of 2012 in the following manner-

"Front-running; for the purpose of this circular, front running means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change."

12. Further, a consultative paper issued by SEBI had grouped front running to be an undesirable manipulative practice in the following manner-

*'However, SEBI Act does not prescribe or specify as to which practice would be considered to be fraudulent and unfair trade practices. While the fraudulent and unfair trade practices are commonly understood, it would be desirable if these practices are defined specifically...this will bring about clarity among the intermediaries, issuers, investors and other connected persons in the securities markets about the practices that are prohibited, fraudulent and unfair. ...The draft defines fraudulent and unfair trade practices. These regulations seek to cover market manipulation on the stock exchanges also. Practices like wash sales, **front-running**, price rigging, artificial increasing or decreasing the prices of the securities are brought within the ambit of the regulations'*

13. Thus, I note from the above that any trading activity in securities having following features can be classified as front running: -

    a) Information regarding substantial order of the *Big client* in a particular security, which is not publicly available;

    b) Placing of order (directly or indirectly) by the *Front Runner* ahead of the orders of the *Big client*, while in possession of above-mentioned non-public information.

Types of Front Running

14. Placing of orders based on non-public information i.e. pre-existing knowledge about impending order of the Big client that can potentially change price of a security, can be executed in following two ways to extract economic gains: -

    a) **Buy-Buy-Sell ("BBS")** –In this type of front running behaviour, the alleged Front Runner, by using the non-public information regarding an impending Buy order of the Big Client, places his Buy order before the execution of the Big Client's Buy order. As and when the Buy order of the Big Client gets executed, the price of the security rises and then the alleged Front Runner Sells the securities bought earlier, at the raised price, thereby, pocketing the difference between the new raised price of the security which is established during / post Big Client's Buy trade(s) and the price at which he had bought his securities. The BBS pattern of front running denotes 'Buy' by the alleged Front Runner, 'Buy' by the Big Client, 'Sell' by the alleged Front Runner in the sequence mentioned.

    b) **Sell-Sell-Buy ("SSB")** -In this type of front running behaviour, the alleged Front Runner by using the non-public information regarding an impending Sell order of the Big Client, places his Sell order(s) before the execution of the Big Client's Sell order. As and when the Sell order of the Big Client gets executed, the price of the security falls which gives an opportunity to the alleged Front Runner to buy back the securities at a lower price to meet his obligations which he had created earlier by selling securities. Thus, pocketing the difference between the price at which he had sold his securities and the new lower price, which is established during / post Big Client's Sell trades. This pattern of front running is labelled as SSB denoting 'Sell' by the alleged Front Runner, 'Sell' by the Big Client, 'Buy' by the alleged Front Runner in the sequence mentioned.

15. The second leg of the Front Runner's order which encashes the "advantage" of the first leg, need not necessarily be placed after the Big Client order since the Stock Exchanges permit "limit orders" i.e., contingent orders like "sell if the price is more than Rs. X" or "buy if the price is lower than Rs. Y". Such limit orders can be placed in advance / "waiting" for the Big Client order to come and impact the price of the scrip.

16. The aforesaid front running behaviour, which is executed in the cash segment of the market, can also be mirrored in the derivative segment of the market. In this case the Front Runner, in anticipation of the impact of the imminent substantial Buy order of the Big Client, will take a long position i.e., he will buy the securities/contracts and when the price of the contracts has started being impacted by the Big Client order, the alleged Front Runner will exit his position. Similarly, the alleged Front Runner will take a short position i.e., he will sell the securities / contracts, if a substantial Sell order is imminent from the Big Client and will subsequently exit his position, as and when the impact of the Big Client order prices is felt. It is clarified that the first leg of the order placed by the Front Runner, prior to the order of the Big Client qualifies as front running while the second leg of the order does not qualify as front running, but is the leg where the FR enchases the advantage that has accrued to him by front running the order(s) of the Big Client(s).

17. The BBS or SSB pattern of front running behaviour, as discussed above, if executed intra-day has the potential for generating maximum proceeds. The reason being, the impact of the substantial order of the Big Client on the price of the scrip will be more on the same day as opposed to next day as the price of the scrip may "revert" post Big Client's trade. In other words, the probability of getting a better price difference between the two legs of the orders of the front-runner is higher, if executed on the same day, as opposed to the two legs being executed over two days.

Legal Position regarding Front Running

18. The act of front running involves dealing in securities, the law which is invoked in such cases, inter alia, is SEBI PFUTP Regulations. The specific provision in this regard is:

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

(1) …

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(q)any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;"

19. The above provision was not part of the PFUTP Regulations initially but was added later. The above provision was substituted vide SEBI (PFUTP) (Amendment) Regulations, 2018, which came into force on <u>February 1, 2019</u>. Before the substitution the provision read as follows:

"(q) <u>an intermediary buying or selling securities in advance of a substantial client order</u> or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract;"

20. I note from the above that prior to February 01, 2019 as per erstwhile Regulation 4(2)(q) only *intermediaries* could be charged for front running the trades of clients with substantial orders. In the instant matter the period of investigation is spread over both the periods i.e. prior to and subsequent to the amendment of Regulation 4(2)(q) of PFUTP Regulations. However, both Hon'ble Supreme Court and Hon'ble Securities Appellate Tribunal (SAT) have resorted to liberal interpretation of the said erstwhile regulation and held that a non-intermediary can also be charged for front running under PFUTP regulations. The Hon'ble SAT in Order dated September 04, 2013 in the matter of ***Vibha Sharma and another vs. SEBI*** - Appeal No. 27 of 2013 has observed the following with respect to *front running*:

"33. A minute perusal of the judgment of Dipak Patel makes it evident that act of front running is always considered injurious be it an intermediary or any other person for that reasons. We would like to give a liberal interpretation to the concept of front running and would hold that any person, who is connected with the capital market, and indulges in front running is guilty of a fraudulent market practice as such liable to be punished as per law by the respondent. The definition of front running, therefore, cannot be put in a straight-jacket formula."

21. Similarly, the Hon'ble Supreme Court in ***Securities and Exchange Board of India and Ors. Vs. Kanaiyalal Baldevbhai Patel and Ors.*** *(Supra)* had held that:

"43. Accordingly, non-intermediary front running may be brought under the prohibition prescribed Under Regulations 3 and 4 (1), for being fraudulent or unfair trade practice, provided that the ingredients under those heads are satisfied as discussed above. From the above analysis, it is clear that in order to establish charges against tippee, Under Regulations 3 (a), (b), (c) and (d) and 4 (1) of FUTP 2003, one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence, further such breach of duty was known to the tippee and he still trades thereby defrauding the person, whose orders were front-runned, by inducing him to deal at the price he did.

44. Taking into consideration the facts and circumstances of the case before us and the law laid down herein above and SEBI v. Kishore R. Ajmera (Supra) can only lead to one conclusion that concerned parties to the transaction were involved in an apparent fraudulent practice violating market integrity. The parting of information with regard to an imminent bulk purchase and the subsequent transaction thereto are so intrinsically connected that no other conclusion but one of joint liability of both the initiator of the fraudulent practice and the other party who had knowingly aided in the same is possible."

22. The Hon'ble SAT in ***Rajiv R.Sanghvi Neelam v.SEBI*** (Appeal 329 of 2014 decided on 21 December 2017) also held that even a non-intermediary can be found guilty of Front Running, provided that the trade under investigation ought to be shown to have been carried with the help of non-public information.

23. From the above judgments, I note that, prior to the amendment of 2018, which came in force on February 01, 2019, the entities other than intermediaries could be charged for front running under Regulation 3 and 4(1) of SEBI PFUTP Regulations. However, post amendment the provision 4(2) (q) was modified and the term '*person*' is used instead of *'intermediary'* resultantly widening the scope of its applicability.

Examination of Issue (1)

24. In the present case, SEBI found during the investigation that Mr. Ashok Yashwant Bhogte (FR) trading through Motilal Oswal Financial Limited was consistently placing orders ahead of the orders of Big Clients in Equity segment and majorly squaring off his positions against Big Clients' orders.

25. In front running trades of late Mr. Ashok Yashwant Bhogte, the following pattern was observed:

23.1 A buy order was placed first by him based on the information of an impending buy order from the big clients and then a sale order was placed by the FR. These are referred to as Buy(FR) Buy(BC) Sell(FR) or BBS trades; or

23.2 A sell order was placed by the FR based on the information of an impending sell order from the big clients and then a buy order is placed by the FR. These are referred to as Sell (FR) Sell (BC) Buy (FR) or SSB trade.

- ***Trading Pattern of Front Runner in the present matter***

26. I note from the material available that order log analysis was done to identify the front-running patterns in the trades of FR. Upon perusal of the same, I note that, during the IP on NSE 222 instances of BBS pattern and 356 instances of SSB pattern were observed whereas on BSE, 11 instances of BBS pattern and 2 instances of SSB pattern were observed. Details of all such transactions were shared with the Noticees alongwith the SCN. Following are some of the instances demonstrating SSB and BBS pattern observed in the trades of FR during IP.

BBS Pattern- Order Timing

Date	Security Name /Contract	FR-Buy Timing				BC- Buy Timing				FR-Sell Timing			
		Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time	Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time	Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time
20/03/2018	ORBTEXP	10:46:52	10:46:52	10:53:22	11:37:18	10:50:32	15:21:56	11:38:34	15:29:49	11:43:58	11:43:58	14:10:07	14:11:38
25/11/2019	CONTROLPR	09:38:52	09:38:52	09:38:52	10:12:30	10:07:16	14:45:24	10:07:16	14:45:24	10:19:11	10:19:11	10:26:15	11:49:14
21/08/2020	COROMANDEL	11:34:38	12:24:54	11:34:40	12:27:40	11:56:35	12:37:19	11:56:41	12:40:18	12:27:40	13:00:06	12:32:45	13:00:06
03/12/2020	ICICIGI	09:06:21	11:51:49	09:15:06	11:53:27	09:26:46	12:23:34	09:26:46	12:23:34	09:27:57	11:54:57	09:30:07	12:03:20
03/08/2021	STOVEKRAFT	14:20:29	14:28:49	14:20:29	14:29:58	14:22:38	15:10:19	14:26:38	15:10:19	14:25:52	14:37:37	14:32:29	14:38:33

BBS Pattern-Quantity matched

Date	Security Name /Contract	Big Client Activity	Big Order Buy Qty.	Big Order Sell Qty.	FR Buy Qty.	FR Sell Qty.	Sell Qty. Match	Sell Qty. Match in %	Profit (Squared) of FR
20/03/2018	ORBTEXP	Buy	14200	0	781	781	741	94.88%	4,110.40
25/11/2019	CONTROLPR	Buy	3419	0	2319	2319	2143	92.41%	10,494.65
21/08/2020	COROMANDEL	Buy	67094	0	5941	3000	2500	83%	36,297.44
03/12/2020	ICICIGI	Buy	38460	0	4000	3750	2877	77%	36193.03
03/08/2021	STOVEKRAFT	Buy	93098	0	5205	5205	4447	85.44%	43,878.80

SSB Pattern-Order Timing

Date	Security Name /Contract	FR-Sell Timing				BC- Sell Timing				FR-Buy Timing			
		Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time	Sell order start time	Sell order end time	Sell Trade Start Time	Sell Trade End Time	Buy order start time	Buy order end time	Buy Trade Start Time	Buy Trade End Time
04/04/2018	TEJASNET	09:15:43	09:15:43	09:30:25	09:30:25	09:31:33	10:49:46	09:31:33	11:18:51	09:39:50	09:39:50	10:13:05	10:13:44
07/06/2019	PNB	09:15:50	09:15:50	09:15:54	09:15:56	09:16:44	09:48:37	09:16:44	09:48:37	09:17:51	09:17:51	09:18:57	09:18:57
27/02/2020	MANAPPURAM	10:29:32	10:29:32	10:29:34	10:30:27	10:29:02	10:38:33	10:29:15	10:38:33	10:30:47	10:30:47	10:38:31	10:39:04
25/11/2020	CDSL	10:37:05	11:48:18	10:37:08	11:52:47	09:20:26	12:08:07	09:20:26	12:08:07	10:45:11	11:55:27	10:55:56	12:07:44
02/07/2021	CHOLAFIN	13:36:42	13:41:59	13:36:42	13:42:36	13:43:56	14:10:29	13:43:56	14:10:50	14:08:22	14:06:46	14:08:55	13:54:19

SSB Pattern-Quantity Matched

Date	Security Name /Contract	Big Client Activity	Big Order Buy Qty.	Big Order Sell Qty.	FR Buy Qty.	FR Sell Qty.	Buy Qty. Match	Buy Qty. Match in %	Profit (Squared) of FR
04/04/2018	TEJASNET	Sell	0	30164	2500	2500	2500	100%	12,501.95
07/06/2019	PNB	Sell	0	1133937	20000	20000	18736	93.68 %	10,000.00
27/02/2020	MANAPPURAM	Sell	0	144156	5000	5000	4156	83.12%	2,917.80
25/11/2020	CDSL	Sell	0	145110	16590	16590	9496	57.24%	74,540.60
02/07/2021	CHOLAFIN	Sell	0	305454	12742	12742	11718	100%	35,896.50

27. **BBS pattern in the scrip of STOVEKRAFT**- On 03/08/2021 the FR started placing the buy orders in the scrip at 14:20:29 hrs. In the same scrip, the Big Client placed buy order/s on 03/08/2021 at 14:22:38 hrs i.e. two minutes after the buy order/s were placed by FR. Buy order/s of FR started getting executed at 14:20:29 hrs (before the buy orders were placed by BC). On the same day, at 14:25:52 hrs (after five minutes of buying the scrip and after three minutes of buy order/s placed by BC), the FR started entering sell order/s of the scrip. The FR sold the entire 5205 shares of STOVEKRAFT bought on 03/08/2021 in the first leg of transaction. Out of 5205 shares, 4447 shares were sold to the Big Client i.e. 85.44%. From the aforesaid squaring off by FR in the scrip of STOVEKRAFT, FR made a profit of Rs.43,878.80.

28. **SSB pattern in the scrip of CHOLAFIN**- On 02/07/2021 the FR started placing sell order/s in the scrip at 13:36:42 hrs. In the same scrip, the Big Client placed sell order/s on 02/07/2021 at 13:43:56 hrs i.e. seven minutes after the sell orders were placed by the FR. The sell order/s of FR started being executed at 13:36:42 hrs (before the sell orders were placed by BC). On the same day, at 14:08:22 hrs (after thirty-two minutes of selling the scrip), the FR started entering buy order/s of the scrip. The FR bought the entire 12472 shares of CHOLAFIN which were sold on 02/07/2021 in the first leg of transaction. Out of 12472 shares, 11718 shares were purchased from the Big Client i.e. 91.96%. From the aforesaid squaring off by the FR in the scrip of CHOLAFIN on 02/07/2021, FR made the profit of Rs.35,896/-.

29. **SSB pattern in the scrip of CDSL**- On 25/11/2020 the FR started placing sell order/s in the scrip at 10:37:05 hrs. In the same scrip, the Big Client placed sell order/s on 02/07/2021 between 09:20:26 hrs and 12:08:07 hrs. All the sell orders of FR of the first leg were executed by 11:52:47 hrs (sixteen minutes before all the sell orders were placed by the Big Clients). On the same day, at 10:45:11 hrs, the FR started entering buy order/s of the scrip. The FR bought the entire 16590 shares of CDSL, which were sold on 25/11/2020 in the first leg of transaction. The FR finished buying the scrip at 12:07:44 hrs whereas the Big Client placed last order to sell the scrip at 12:08:07 hrs (difference of less than one minute). Out of 16590 shares, 9496 shares were purchased from the Big Client i.e. 57.24%. From the aforesaid squaring off by the FR in the scrip of CDSL on 25/11/2020, he made the profit of Rs.74,540.60.

30. Trading activity / profile of Mr. Ashok Yashwant Bhogte in the equity and equity derivative segment on NSE and BSE during the IP can be summarized as follows:

Trading profile of FR on NSE:

Particulars	Equity Segment					Equity Derivative Segment				
	Calendar days	No of instances	Gross Traded Value (GTV) (Rs. In lac)	Average Gross Traded Value (Rs. In lac)	Square off earned (Rs. In lac)	Calendar days	No of instances	Gross Traded Value (Rs. In lac)	Average Gross Traded Value (Rs. In lac)	Square off earned (Rs. In lac)
No of Scrip days/Contract days traded	718	1679	21092.07	12.56	88.83	492	1883	2534.78	1.35	1.89
Common Scrip days/Contract days	463	711	18020.84 (85.44% of GTV)	25.35	86.74	14	16	2.21 (0.09% of GTV)	0.14	0.03

No of Other Non-Common Scrip days/Contract days	457	968	3071.23 (14.56% of GTV)	3.17	2.09	491	1867	2532.57 (99.91% of GTV)	1.36	1.86
No of Scrip days/Contract days wherein day trading has been carried out	590	1181	20118.45 (95.38% of GTV)	17.04	88.04	422	1585	2140.8 (84.46% of GTV)	1.35	1.61
No of Scrip days/Contract days wherein day traded and commonly traded	423	637	17608.34 (83.48% of GTV)	27.64	85.74	3	3	1.3 (0.05% of GTV)	0.43	0.03
No of Scrip days/Contract days wherein client Ashok Yashwant Bhogte has front run the trades with a positive square off difference	336	500	16594.3064 78.68% of gross traded value	33.19	90.99	NA	NA	NA	NA	NA

31. I note from the SCN that several trades were executed prior to Big clients and were subsequently squared up with Big clients. In the second leg of transaction, the FR placed buy/sell orders in order to take advantage of price impact caused by the buy/sell order of the big client and earned profit from the same. Further, I note from table above that in equity segment on NSE, FR carried out day trading comprising 95.38% of its Gross Traded Value ("**GTV**") during the IP and 78.68% trades of his GTV were alleged to be front-running the trades of Big Clients with a positive square-off difference. In Derivative segment of NSE, FR carried out day trading comprising 84.46% of its GTV during the IP, however, investigation concludes that none of these trades were front running trades. Hence, as per SCN, FR has generated Rs.90.99 lac by squaring off the front-run trades on NSE in equity segment during the IP.

Trading profile of FR on BSE:

Particulars	**Equity Segment**				
	Calendar days	**No of instances**	**Gross Traded Value (Rs. In lac)**	**Average Gross Traded Value (Rs. In lac)**	**Square off earned (Rs. In lac)**
No of Scrip days/Contract days traded	44	46	248.26	5.40	2.14
Common Scrip days/Contract days with Girik Wealth Advisors Private Limited	20	20	211.28 85.10%	10.56	1.84
	24	26	36.98	1.42	0.30

No of Other Non-Common Scrip days/Contract days with Girik Wealth Advisors Private Limited			14.90%		
No of Scrip days/Contract days wherein day trading has been carried out	26	26	216.88 87.36%	8.34	2.01
No of Scrip days/Contract days wherein day traded and commonly traded with Girik Wealth Advisors Private Limited	18	18	186.33 75.05%	10.35	1.71
* No of Scrip days/Contract days wherein client Ashok Yashwant Bhogte has front run the trades of Girik Wealth Advisors Private Limited with a positive square off difference	20	20	211.28 85.10%	10.56	1.84

32. I note from the table above that in equity segment on BSE, FR carried out day trading comprising 87.36% of its GTV during the IP and 85.10% trades of his GTV were alleged to be front-running the trades of Big Clients with a positive square-off difference. As per SCN, FR has generated Rs.1.84 lac by squaring off the front-run trades on BSE in equity segment during the IP.

Summary of trades executed by Front Runner and Big Clients

33. I note from SCN that there were several common scrip days between FR and Big Clients. Summary of trades that were in the same scrip(s) in which big clients had traded on same day on NSE during the IP are as follows:

Summary of Common Scrips between FR & BCs at NSE

PAN	Name	No of Common Trades (scrip days) in CM segment	No of Common Trades (scrip/contract days) in F&O segment	% of Common Trades (scrip days) in CM segment (compared to total trades of the entity)	% of Common Trades (scrip days) in F&O segment (compared to total trades of the entity)
AAQPB6449J	Ashok Yashwant Bhogte (FR)	711	16	42.35	0.85

Summary of Common Scrips between FR & BCs at BSE

PAN	Name	No of Common Trades (scrip days) in CM segment	% of Common Trades (scrip days) in CM segment (compared to total trades of the entity)
AAQPB6449J	Ashok Yashwant Bhogte (FR)	20	43.47

Summary of Common Scrips with Big Clients at NSE

PAN of Big Clients	Names of Big Clients	NSE			BSE		
		No of Trades (scrip days/ contract days) (BC1 +BC 2)	No of Trades (scrip days) front-run by FR	% Trades (scrip days) front-run by FR (compared to total trades of the Big Clients)	No of Trades (scrip days/ contract days) (BC1 +BC 2)	No of Trades (scrip days) front-run by FR	% Trades (scrip days) front-run by FR (compared to total trades of the Big Clients)

AACCE0700G	Girik Wealth Advisors Private Limited (Big client -1)	9832	500	5.08	719	20	2.78
AADTG0614P	Girik Multicap Growth Equity Fund (Big Client 2)						

34. Based on the above tables, it was alleged that 5.08% of Big Clients' trades on NSE were front-run by FR while 2.78% of Big Clients' trades on BSE were front-run by FR.

35. From the aforesaid trading pattern of late Mr. Ashok Yashwant Bhogte, I can conclude that late Mr. Ashok Yashwant Bhogte would not have entered into the transactions in question, had he was not in prior possession of information regarding the substantial orders of Big Clients. This inference is in line with the judgment of Hon'ble Supreme Court in ***Securities and Exchange Board of India vs. Kishore R. Ajmera*** [(2016) 6 SCC 368] wherein it was held that it is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled.

- ***Communication of Information regarding substantial order of the Big Client to FR***

36. Upon examining the trading pattern of late Mr. Ashok Yashwant Bhogte, I shall proceed to examine the flow of information to FR regarding impending substantial trade orders of the Big clients which was not publicly available. Further, whether the FR was aware about the said information while placing the trade orders with his broker during the IP. For the said purpose, it is pertinent to understand the process through which the Big Clients take trading decisions and if there was any leakage of the said information before the said trades were executed on behalf of the Big Clients.

37. In this regard, I note from the SCN that Noticee No.1, who is also the son of late Mr. Ashok Yashwant Bhogte, was working as the dealer of Big Clients i.e. Girik Wealth Advisors Private Limited and Girik Multicap Growth Equity Fund during the IP. From the information received from the Big Clients, I note that, Noticee No.1 acting as dealer of Big Clients used to place the orders for them with the empanelled stockbroker/s for execution.

38. In this regard, reliance is placed on the information received from the Big Clients wherein vide letter dated June 19, 2023 it was submitted by them to SEBI that there is an Investment Committee consisting of two Fund Managers namely, Mr. Charandeep Singh and Mr. Varun Daga. This committee takes the investment decisions and the mid office executive generates the orders in the system based on the instructions from the investment committee. Then the mid office executive sends the generated orders along with the price limit to the dealer, Noticee No. 1 (Mr. Sachin Bhogte). The dealer places the orders to the brokers of the Big Clients. Therefore, I note that Noticee No.1 was aware of the impending trades of Big Clients before the same were executed and hence is the '*Information Carrier*'. I also infer from the flow of information mentioned above that only the persons authorised by the Big Clients were privy to the decisions related to buying and selling of securities before the same were executed and hence there was no public disclosure of the same.

39. Further, I note from the SCN that late Mr. Ashok Yashwant Bhogte had submitted an authority letter to the broker Motilal Oswal Securities Ltd. / Motilal Oswal Financial Services Ltd. Upon perusal of the said authority letter dated April 02, 2018, I note that Mr. Ashok Yashwant Bhogte authorized his son Mr. Sachin Bhogte (Noticee No.1) to operate his trading account. Accordingly, it was alleged that Noticee No.1 (who is also the information carrier) was using his father's trading account to front run the trades of Big Clients during the IP.

40. In order to determine the person responsible to carry out trades from the trading account of late Mr. Ashok Yashwant Bhogte, details were sought from his broker i.e. Motilal Oswal Securities Ltd. The broker (Motilal Oswal Securities Ltd.) submitted vide email dated August 28, 2023 that during the IP, all trades in the account of late Mr. Ashok Yashwant Bhogte were placed through the mobile application. In this regard, the broker further submitted that following devices were used to place trades from the account of Mr. Ashok Yashwant Bhogte during the IP.

Device Model	Device Vendor
vivo 1902	vivo
vivo 1902	vivo
V2052	vivo

41. Subsequently details of mobile devices of Noticee No.1 and his father, which were in use during IP were sought from Noticee No.1. The flowing details were provided:

Name of person	Device Model	Device Vendor
Sachin Bhogte	vivo 1902	vivo
Ashok Yashwant Bhogte	VY20A	vivo

42. Hence, I note from the above that Noticee No. 1 through his mobile device (vivo 1902) had used the trading account of his father to deal in securities market by installing the mobile application of Motilal Oswal Securities on his own device (vivo 1902) and using the log in credentials of his father's account during the IP.

43. Considering the number of scrips which was common in trades of the Big client and that of FR, the time difference between trades of the FR and the Big clients, Noticee No.1 having access and possession of information about impending orders of the Big client and placing of orders by Noticee No.1 from account of his father late Mr. Ashok Yashwant Bhogte (FR) to avoid detection, I find no reason to defer from the findings of the SCN regarding front running activities carried out by Noticee No.1. This inference is in line with the principle set out by the Hon'ble Supreme Court in ***Kishore R. Ajmera*** (supra).

44. Further, I note that Noticee No.1 has admitted to the charges of front running the trades of Big Clients during the IP by using his father's trading account, at the time of investigation and also during the personal hearing. In view of the above, I conclude from the examination of facts and material, the pattern of trades executed by Noticee No.1 in his father's trading account prior to trades of Big clients and subsequent squaring off the position to make profit, the charges of front running as made out in the SCN stands established against Noticee No. 1.

45. With respect to late Mr. Ashok Yashwant Bhogte, I note that the entity was deceased prior to initiation of the instant proceedings. Accordingly, Section 28B of SEBI Act was invoked, the relevant part of the provision is:

'(2)(b)any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.'

46. I note from the SCN that upon seeking the details of legal heirs/representatives of late Mr. Ashok Yashwant Bhogte from the Noticees the following details were received:

Name of Legal heir/ representative	**Relation with late Mr. Ashok Yashwant Bhogte**
Sachin Bhogte (Noticee No. 1)	Son
Samir Bhogte (Noticee No. 2)	Son
Suchita Bhogte (Noticee No. 3)	Wife

47. In this regard, for the allegations levelled against late Mr. Ashok Yashwant Bhogte, Noticee No.2 and 3 have submitted that they were not aware about the transactions done in late Mr. Ashok Yashwant Bhogte's trading account. However, as mentioned in the previous paragraphs, Noticee No.1 has admitted to the charges.

48. With regard to the fund transfer to the stock broker from the bank account of late Mr. Ashok Yashwant Bhogte, I note from SCN that upon examination of the said bank account statements (Erstwhile Oriental Bank of Commerce now PNB Account no.- 04562011002931), it was observed that during IP, funds were given to the broker Motilal Oswal Securities Ltd. by way of cheques to carry out the trades. These cheques were signed by late Mr. Ashok Yashwant Bhogte. Copy of Cheques and bank account statement are placed on record. Further, it was observed that proceeds of trades were credited in the same bank account.

49. In view of the above, by authorising/allowing Mr. Sachin Bhoogte (Noticee No. 1) to use his trading account for engaging in front running activities during the IP, Mr. Ashok Yashwant Bhogte along with Noticee No.1 is also liable.

50. I also refer and rely on the following observations made by the Hon'ble SAT in the matter of ***V. Natarajan vs. SEBI*** (Order dated June 29, 2011 in Appeal No. 104 of 2011):

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. ...."

51. In *Kanhaiyalal Baldevbhai Patel* (supra) the Hon'ble Supreme Court held, *"It should be noted that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted…"*

52. Thus keeping in mind the aforesaid findings, I note that Noticee No. 1, while being dealer of the Big Clients and having knowledge of Big clients' impending orders, front ran the trades of Big Clients by using trading account of his father (late Mr. Ashok Yashwant Bhogte) during the IP and gained benefit from non-public information. I note that the Noticee(s) in the process of front running trades of the Big client have not only interfered with the market forces of supply and demand of a particular scrip but have also artificially influenced the price and volume of the scrip and have thus, prima facie distorted them. The aforesaid is tantamount to *fraud* within the meaning provided in Regulation 2(1)(c) of the PFUTP Regulations. Therefore, I note that Noticee No.1 and late Mr. Ashok Yashwant Bhogte have violated Section 12A(a), (b), (c), (e) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(q) read with Regulation 2 (1) (c) of PFUTP Regulations.

(2) If the answer to the above issue is in affirmative, whether the Noticees by virtue of being the legal representatives/heirs of late Mr. Ashok Yashwant Bhogte can be held liable for the actions of late Mr. Ashok Yashwant Bhogte?

53. The violations against Noticee No.1 and late Mr. Ashok Yashwant Bhogte are established above. With regard to the liability of the legal heirs/representatives of deceased i.e. Noticee No. 1, 2 and 3, for the front running activities of late Mr. Ashok Yashwant Bhogte, Section 28B of SEBI Act, 1992 was invoked. At the outset, I note that all the proceeds of the trades undertaken from the said trading account of late Mr. Ashok Yashwant Bhogte were transferred to his bank account of erstwhile Oriental Bank of Commerce now PNB Account No.- 04562011002931. During the IP, Motilal Oswal Financial Limited (broker of FR) credited large sums in the said bank account. Accordingly, it is a proved fact that the unlawful gains made by front running the trades of big clients during IP were credited in the bank account of late Mr. Ashok Yashwant Bhogte.

54. In this regard, it is noteworthy that the general rule is that a personal action dies with the person, *actio personalis moritur cum persona,* however, Section 28B of SEBI Act is in the form of exception to this general rule where despite the death of the person, proceedings for *disgorgement, refund or recovery* can be initiated or continued against the legal representative/s of the deceased. Section 28B(2)(a) creates legal fiction of initiation of proceedings against the legal representatives, in case of death of the Noticee during the ongoing proceedings. Whereas, Section 28B(2)(b) enables *initiation* of legal proceedings against the legal representatives of the deceased.

55. I note that the Hon'ble Supreme Court has also, through various judgments, highlighted the limitations of the principle flowing through the maxim "*actio personalis* moritur *cum persona*" and the same have been repeatedly pointed out while quoting the maxim. The Hon'ble Supreme Court in ***Girijanandini vs Bijendra Narain*** [AIR 1967 SC 2110] held that a personal action dies with the person has a limited application. It operates in a limited class of *actions ex delicto* such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, or after the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed and or granting it would be nugatory.

56. The Hon'ble Supreme Court in the case of ***Andhra Bank v. N. Srinivasan*** [AIR 1962 SC 232] referring to Salmond's Jurisprudence, observed that the legal personality of the deceased judgement debtor (at whose behest the decree remains unsatisfied)

survives his death and in that sense the liability in respect of the estate of such a deceased survives and outlives his natural personality. The Court further observed that the term "*legal representative*" is a wide term, which encompasses any person who in law intermeddles with or represents the estate of the deceased, however, the scope of liability of such a person, who is a legal representative of the deceased judgement debtor, is limited to the extent of the property that is actually held by him.

57. The essence of the aforesaid judgments is captured in Section 28B of SEBI Act. The relevant part of Section 28B of SEBI Act is reproduced below:

"28B.Continuance of proceedings.

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

….

(2) For the purposes of sub-section (1),—

(a) …

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) …

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability."

58. In the instant matter, I note that, Mr. Ashok Yashwant Bhogte passed away on April 30, 2023, i.e. before the initiation of present proceedings. Accordingly, as per Section 28(2)(b) the proceedings for *disgorgement* of the alleged wrongful gains, were initiated against the Noticees (legal representatives/heirs).

59. The Black's Law Dictionary defines '*disgorgement*' as, *"disgorgement is the act of giving up something, such as illegally obtained profits, on demand or by legal compulsion."* Regarding the nature of the direction of disgorgement, Hon'ble Securities

Appellate Tribunal (SAT) has held in ***Dushyant N. Dalal v/s SEBI*** *2010 SCC Online SAT 328**,** "disgorgement is not a penal action but only an equitable remedy".*

60. With regard to the liability to disgorge the unlawful gains when the same has changed hands in due course of time, the order of the Hon'ble SAT in ***Gagan Rastogi and Anr vs. SEBI*** (Appeal No. 91 of 2015 decided on 12.07.2019) needs to be referred wherein it was held,

"*18. … equitable remedy demands that disgorgement has to be made from the point of unjust enrichment or where the chickens come to roost. However, we cannot accept the arguments that no such unjust enrichment has been made by the appellants nor disgorgement has to be made from where the unjust enrichment rests finally. If one entity who has unjustly enriched knowingly transferring those proceeds further to some other entity does not prevent the authorities from disgorging the same from the original beneficiary of unjust enrichment. The choice is clearly that of the authority to pursue and disgorge an illegal gain from any point of a chain, if such a chain exists."*

61. Keeping in view the above legal provisions and the precedents surrounding the concept of disgorgement, in the instant matter Noticee No. 1, 2 and 3 being the legal heirs/representatives of late Mr. Ashok Yashwant Bhogte are liable to disgorge the wrongful gains jointly and severally which were made by front running the trades of Big Clients and were credited to the bank account of deceased, late Mr. Ashok Yashwant Bhogte.

(3) What directions, if any, including the amount of monetary penalty, is required to be imposed on the Noticee(s)?

62. The charges against Noticee No.1 and Late Mr. Ashok Yashwant Bhogte are established above. As observed in the previous parts of this order, Noticee No.1, while having access and possession of information about impending trades of the Big clients, executed trades in NSE/BSE equity segment from the account of his father based on impending orders of the Big clients. Accordingly, I find that Noticee No.1 is liable to be imposed with appropriate penalty under Section 15HA of the SEBI Act. Further, I find that appropriate directions need to be issued to Noticees for such violations.

63. Section 15 HA of the SEBI Act provides for penalty which shall not be less than Rs.5 Lakh but which may extend to Rs. 25 Crore or 3 times the amount of profits made out of such practices, whichever is higher. While determining the quantum of penalty under the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act which are as follows: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default

64. As per the SCN, the FR made a total profit of Rs.1,08,29,597.27 by engaging in front running the details of the same are tabulated below:

Summary of unlawful gains made through front running activities

Period	Name of the FR	Trading Account operated by	Stock Exchange	Total Unlawful gains (Rs.)
01.02.2019 – 31.12.2021	Mr. Ashok Yashwant Bhogte	Mr. Sachin Bhogte	BSE	1,50,315.55
			NSE	1,06,79,281.72
			Total	**1,08,29,597.27**

65. I note that Noticee No. 1 was engaged in Front Running trades during the IP i.e. for period of three years. In view of the above, I find that necessary directions are required to be issued and appropriate penalty is required to be imposed on Noticee No.1.

DIRECTIONS

66. In view of the above, I, in exercise of powers conferred on me in terms of Section 11(4), 11(4A), 11B(1), 11B(2) and 19 of the SEBI Act, 1992, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 do hereby pass the following directions, in the interest of investors and market integrity:

a. Noticees are directed to disgorge, jointly and severally, a sum of **Rs. 1,08,29,597.27** (Rupees One crore eight lakhs twenty nine thousand five hundred and ninety seven and twenty seven paise) within 45 days from the date of this order and the same shall be credited into the Investor Protection and Education

Fund (IPEF) referred to in Section 11(5) of the SEBI Act, within 45 days from the date of this order;

b. The Banks, with whom the Noticees' accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held, by Sachin Bhogte, Samir Bhogte and Suchita Bhogte except for the purposes of compliance of this order.

c. Noticee No. 1 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **Six (6) months**, from the date of this order;

d. Further, during the period of restraint, the existing holding of securities including the holding of units of mutual funds of the Noticees shall remain frozen;

e. Noticee No. 1 is hereby imposed with penalty of **Rs.10,00,000/**- (Rupees Ten Lakhs Only) under Section 15HA of the SEBI Act, 1992.

f. Noticee No.1 shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee(s) may contact the support at portalhelp@sebi.gov.in.

g. The Noticee(s) shall forward details of the online payment made in compliance with the directions contained in this Order to the Division Chief, IVD-ID-2, SEBI, SEBI Bhavan II, Plot no. C -7, "G" Block, Bandra Kurla Complex, Bandra(E), Mumbai-400 051" and also to e -mail id: tad@sebi.gov.in in the format as given in table:

Case Name	
Name of the Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Bank details in which payment is made	
Payment is made for: Penalty or Disgorgement	

h. The obligation of the Noticee(s), restrained/ prohibited by this Order, 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, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of such Noticee(s) in the F&O segment of the recognised stock exchange(s) are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

67. This order shall come into force with immediate effect.

68. A copy of this order shall be sent to the Noticees, all the recognized Stock Exchanges, Depositories, Banks and Registrar, Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Date: August 09, 2024
Place: Mumbai

G RAMAR
QUASI-JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA