

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
FINAL ORDER

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

In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

In respect of:

S. No.	Name of the Entity	PAN
1.	M/s Shyam Rathi HUF	AAQHS7786D

In the matter of Shree Shaleen Textiles Limited

BACKGROUND

1. Shree Shaleen Textiles Limited (hereinafter referred to as “**SSTL / Company**”) was incorporated in the year 1980. SSTL’s key Products/ Revenue Segments include cloth trade. The company is listed only on BSE Ltd.
2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in the scrip of SSTL based on a reference received from the Principal Director of Income Tax (Investigation), Kolkata. The focus of the investigation was to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) by certain entities in the scrip of SSTL during the period November 01, 2011 to November 30, 2014 (hereinafter referred to as “**Investigation Period**”).

3. During the investigation period, corporate announcements broadly included declaration of financial results and meetings of the Board of Directors of the Company. Further, it is observed from the Investigation Report (hereinafter referred to as “IR”) that net sales of the company increased from ₹ 0.37 crore as on March 31, 2011 to ₹ 2.65 crore as on March 31, 2014. The profit of company increased from ₹ 0.30 crore for the year ended March 31, 2011 to ₹ 0.48 crore for the year ended March 31, 2014.
4. On the basis of price rise/fall, during the investigation period, 4 patches were identified. The open, high, low, close price of the scrip before, during and after the period of investigation are as under:

Patches	Period	Particulars	Open	High	Low	Close	Avg. Volume
Pre IP Period	01/09/2011 – 30/10/2011	Price in Rs	52.5 [16/09/2011]	70.15 [18/10/2011]	52.5 [16/09/2011]	70.15 [18/10/2011]	50
		Volume	50 [16/09/2011]	50 [Multiple Dates]	50 [Multiple Dates]	50 [18/10/2011]	
Patch-1 - Pre Bonus – IP Period	01/11/2011 – 29/03/2012	Price in Rs	73.65 [02/11/2011]	77.30 [06/02/2012]	73.65 [02/11/2011]	77.30 [06/02/2012]	50
		Volume	50 [02/11/2011]	50 [Multiple Dates]	50 [Multiple Dates]	50 [06/02/2012]	
Patch – 2 - Post Bonus – IP period	30/03/2012 – 05/03/2013	Price in Rs	4 [30/03/2012]	111.85 [05/03/2013]	4 [30/03/2012]	111.85 [05/03/2013]	142
		Volume	50 [30/03/2012]	5010 [15/02/2013]	2 [28/12/2012]	25 [05/03/2013]	
Patch – 3 - Post-Split – IP period	06/03/2013 – 31/12/2013	Price in Rs	23.45 [07/03/2013]	66.15 [07/10/2013]	23.45 [07/03/2013]	59.1 [31/12/2013]	251640
		Volume	10025 [07/03/2013]	831801 [31/12/2013]	15 [02/04/2013]	831801 [31/12/2013]	
Patch – 4 - Price Fall period	01/01/2014 – 30/11/2014	Price in Rs	59.1 [01/01/2014]	59.95 [06/04/2014]	4.93 [11/08/2014]	6.75 [28/11/2014]	392184
		Volume	281813 [01/01/2014]	6195523 [26/03/2014]	1 [12/02/2014]	959726 [28/11/2014]	
Post IP Period	01/12/2014 – 31/01/2015	Price in Rs	7.00 [01/12/2014]	7.12 [26/12/2014]	4.95 [09/12/2014]	6.06 [06/01/2015]	327443
		Volume	1136350 [01/12/2014]	1389650 [15/12/2014]	650 [19/12/2014]	1000 [06/01/2015]	

SHOW CAUSE NOTICE

5. Consequent to the investigation, a show cause notice dated July 28, 2017 (hereinafter referred to as “SCN”) was served on M/s Shyam Rathi HUF (hereinafter referred to as “Noticee”) in the extant matter. The SCN *inter alia* alleged as follows:

- a) The LTP analysis of the 4 patches was done and the details of Patch 2 qua the Noticees is given below:

LTP Analysis: Patch-2: Post Bonus – Price Rise Period – 30/03/2012 to 05/03/2013:

- During this period, the price of the scrip rose from ₹ 4 (Opening Price) as on March 30, 2012 to ₹ 111.85 (High Price and Close Price) as on March 05, 2013. Further, with ex-date of March 06, 2013, SSSL sub-divided face value of shares from ₹ 10/- to ₹ 2/. The list of shareholders received from RTI (Purva Shareregistry (I) Pvt Ltd.) was analyzed and it was observed that as on March 31, 2012, 85.34% of the share capital (5,76,050 shares out of 6,75,000 shares) were held in physical form or with entities which had converted warrants (shares issued on conversion of warrants were under lock-in till November 14, 2012). The top 10 net LTP sellers analysis were carried out as under:

PAN	Name	Net LTP			Pos. LTP			Negative LTP			Zero LTP			% of +ve LTP to Mkt +ve LTP
		Net LTP	Trade Qty	No.of Trades	Pos. LTP	Trade Qty	No.of Trades	Neg. LTP	Trade Qty	No.of Trades	Trade Qty	No.of Trades	Trade Qty	
AHQPK9496D	Anjana Arun Karwa	14.03	322	11	14.03	322	11	0.00	0	0	0	0	0	15.52
AAQHS7786D	Shyam Rathi Huf	12.98	70	7	12.98	60	6	0.00	0	0	10	1	14.36	
AABPG5669E	Jayeshkumar Narottamdas Gandhi	12.45	95	4	12.45	95	4	0.00	0	0	0	0	0	13.77
AAEHN5511R	Nishith M Shah Huf	11.00	75	3	11.00	75	3	0.00	0	0	0	0	0	12.17
AAFPG5855L	Bharati Jayesh Gandhi	8.58	110	6	8.58	110	6	0.00	0	0	0	0	0	9.49
AISPG4164H	Deval Jayesh Gandhi	6.33	60	4	6.33	60	4	0.00	0	0	0	0	0	7.00
AEJPK2394G	Maheshkumar Ghewarchand Vanigota	4.80	10	1	4.80	10	1	0.00	0	0	0	0	0	5.31
ABXPH7639E	Vishnu Daji Hode	4.15	30	1	4.15	30	1	0.00	0	0	0	0	0	4.59
AFDPG6008E	Kajal Sunil Gowadia	3.95	10	1	3.95	10	1	0.00	0	0	0	0	0	4.37
AEXPG4216P	Shivani Amit Gowada	3.60	10	1	3.60	10	1	0.00	0	0	0	0	0	3.98
Total		81.87	792	39	81.87	782	38	0.00	0	0	10	1	90.57	
Market		107.85	9947	137	107.85	1617	69	0.00	0	0	8330	68	100.00	

- From the above table, it can be observed that top 10 net sell LTP entities contributed to 90.57% of market positive LTP.
- In view of the low volume price increase and substantial positive LTP contribution (90.57% of market positive LTP) by top 10 net LTP contributors, as sellers, sell orders of the top 10 net sell LTP contributors contributing more

than 5% of the positive LTP in more than one trade were analyzed and the trades of the Noticee are as under:

Order date	Order time	Order No.	Sell Client name	Sell order rate	sell order qty	pending buy order at this price	LTP variation	Shareholding before sell order as per Demat Account	No. of trades in a day
19.10.2012	14:28:01.6451320	12000137306719	Shyam Rathi HUF	20.70	10	12400	0.98	2000	1
08.11.2012	12:59:51.9531050	14000166185657	Shyam Rathi HUF	23.90	10	10450	1.10	2000	1
21.11.2012	10:48:37.5987580	20000155097056	Shyam Rathi HUF	27.60	10	11400	1.30	1990	1
07.01.2013	14:11:32.5943260	21000115156755	Shyam Rathi HUF	42.50	10	7950	2.00	1980	1
17.01.2013	14:38:00.6779280	18000151141983	Shyam Rathi HUF	51.55	10	15170	0.00	1970	2
01.02.2013	15:05:19.4532060	13000101138449	Shyam Rathi HUF	68.90	10	11200	3.25	1970	1
22.02.2013	10:52:53.2637550	20000128100987	Shyam Rathi HUF	92.10	10	63160	4.35	1960	1

Period: 19.10.2012 to 22.02.2013; No. of Trades: 7; LTP contribution: 12.98 (14.36% of Pos. LTP Cont.)

- From the table above, it was observed that Noticee has sold minuscule quantity of shares (10 shares) in-spite of holding more shares and having more buy demand at the price that Noticee placed the sell orders. It can also be observed that Noticee has not executed more than one trade in a day as a seller. Further, aforesaid trades were the only trades executed during the day, except on one occasion. By these trades, Noticee has matched the prevailing buy orders which were placed at the prices higher than the LTP and contributed to increase in the price of the scrip with each of its trades. In view

of the repeated nature of such trades by Noticee, it is alleged that it has increased the price of the scrip.

- b) In view of the above it is alleged that Noticee as seller has indulged in trades that resulted in the manipulation of the price of the scrip and has created misleading appearance of trading in the scrip through the aforesaid trades which has resulted in the alleged violation of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a), (e) of PFUTP Regulations.
- c) Noticee was advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should not be initiated against it for the alleged violation of the provisions of PFUTP Regulations. Further, Noticee was advised to submit a reply to the SCN within 21 days from the date of receipt of the SCN.

REPLY & HEARING

- 6. In response to the SCN, Noticee vide its letter dated February 12, 2018 requested for copy of certain documents. Vide letter dated February 22, 2018, the Noticee was provided with a copy of the IR, order log trade log, details of shareholders and a fresh CD containing documents as the Noticee was not able to access the earlier CD provided to it. Further, Noticee was granted time till March 12, 2018 to submit a reply to the SCN. Noticee vide its letter dated March 9, 2018 requested for complete order log for the period of investigation. Vide letter dated March 15, 2018, Noticee was informed that the complete order log was already provided to the Noticee vide letter dated February 22, 2018. However, the Noticee was once again provided the order log in the extant matter and was advised to submit a reply to the SCN on or before March 29, 2018.
- 7. No reply was received from the Noticee. However, considering the facts and circumstances of the case, noticee was granted an opportunity of hearing on November 22, 2018 at SEBI Bhavan, Mumbai, vide hearing notice dated November 14, 2018. In response to the hearing notice, Noticee vide its letter dated November 19, 2018 requested to adjourn the scheduled hearing by 3-4 weeks as the Noticee was

not able to contact its lawyer on account of Court holidays and the Noticee needed time to finalise the reply. Noticee's request was considered and the Noticee was granted a final opportunity of hearing on February 12, 2019 at SEBI Bhavan, Mumbai.

8. On the day of scheduled hearing, Mr. Shreyas Jain appeared as the authorized representative on behalf of the entity and made *inter alia*, the following submissions:

- i. The entity had bought 100 shares of the company (pre bonus and pre-split) for ₹ 10 each in physical form in 2012.
- ii. When the entity had bought shares, the suspension by the Exchange on its trading was revoked.
- iii. The entity went through the balance sheet of the company and saw that the company has reasonable reserves and considering the entity was getting the shares at a reasonable price, it bought the shares.
- iv. The entity does not know the counter party to its trades.
- v. There is no restriction in selling shares in small quantity.

The authorized representative was advised to submit the following information / documents on or before February 18, 2019:

- a) The details of its purchase in physical form the shares of the company.
 - b) The reason for selling the shares of the company in small quantity.
 - c) Trading statement of the entity for the financial year 2012-2013.
 - d) Details of any other shares bought in physical form.
9. Pursuant to the hearing, Noticee made written submissions vide its letter dated February 16, 2019 wherein the Noticee submitted as follows:
- We would like to bring to your kind attention that along with the said SCN, we have also been issued SCN dated December 13, 2017 under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 read with Section 151 of SEBI Act in the matter of SSTL. It is submitted that issuing 2 SCNs for the same offence amounts to double jeopardy, and is in gross violation of Article 20 (2) of the Constitution of India. Issue of 2

SCNs in the same matter not only causes the mental and physical trauma, but also increases our legal costs for no reason.

- We submit that we have sold around 9,870 shares during the period of investigation and our sale of only 70 shares have matched with buy order of some entity which has contributed to high LTP on the anonymous and screen based trading platform of the stock exchange. This matching of 70 shares is only 0.71 percentage of our total sale to warrant serious allegation of fraudulent and unfair trade practice.
- It is further submitted that the analysis of trade log reveals that we have entered the sale order after nearly four to five hours of the buy order being entered into the system.
- The trades which have contributed to positive LTP are not on daily basis and there is a lot of gap between the two trades.
- We submit that we sold shares on electronic, faceless and electronic platform approved by SEBI and by no stretch of imagination, we would be aware about the counter party.
- As per analysis of price volume, as taken out from the website of the Stock Exchange, it is observed that there was a gradual increase in price of the scrip and not a sudden spurt in price and volume to allege any kind of price manipulation to warrant any allegation of fraudulent and unfair trade practice.
- We submit that we traded in the ordinary course of our investment and no adverse inference should be drawn against us for the same.
- The said SCN gives a totally skewed picture by clubbing our trading with trading of other entities which we have done in normal course of business on the anonymous trading platform of the stock exchange without knowing name and details of other entities involved.
- We submit and reiterate that our volume in the scrip of SSTL is 0.01% of the total volume (i.e. nearly NIL), it cannot be alleged that we have indulged in fraudulent or unfair trade practice or have created false or misleading appearance of trading in securities market.

- As regards the mode of acquisition of shares of SSTL, it is submitted that we have acquired the shares in physical form. We further submit that we have opted to buy the shares in physical form as we were getting a discount of around 30% for purchase of shares in physical mode. Hence we opted for the same. It is also submitted that before investing in the shares of SSTL, we analyzed, based on the balance sheet available on the website of Stock Exchange, that the book value of the company during the year 2011 and 2012 was ₹ 203 and ₹ 201 respectively. During the same period, the shares of the company were trading at a price of ₹ 50 - 70 per share. As we had the opportunity to buy the shares at a price of Rs. 10 per share, we decided to buy the shares of SSTL.
- As regards its trading pattern, Noticee submitted its Depository Participant transaction statement from the year April 01, 2011 to February 11, 2019.
- As regards the query as to why all our holdings were not sold through a single transaction, it is submitted that we traded in small quantities and in tranches since we observed a gradual price rise in the scrip of SSTL and we wanted to make further profits. Besides, the stock exchanges do not have any such embargo as to the minimum amount of shares that can be liquidated at a particular point of time. We had shares of SSTL from quite a long time and were eyeing on price rise and trends in the scrip so that we can liquidate a small portion of our holdings in the market and get good return on investment. We noted that there were many buyers for the scrip but comparatively less number of sellers. That was a great opportunity for us to liquidate the holdings and get best price for our shares since we had shares of SSTL. Thus, we decided to liquidate our holdings in tranches.

10. Noticee vide its letter dated February 19, 2019 made additional submissions as follows;

- Clarification sought at the time of the hearing is on the subject matter of the proceedings wherein the investigation has already been concluded by the investigation department of SEBI.

- Noticee requested to be provided with the inferences drawn on the information / documents submitted by it before passing of the order in the matter so as to furnish a response to the said inferences.

FINDINGS & CONSIDERATIONS

11. Before delving into the merits of the case, I will address the preliminary issues raised by the Noticee. The first is with respect to violation of Article 20 (2) of the Constitution of India. In this regard, I note that the principle of double jeopardy flows from the fundamental right enshrined in Article 20(2) of the Constitution of India. I note that it is a judicially settled position that in order to claim the protection of Article 20(2) it is necessary to show that - (a) there was a previous prosecution, (b) as a result of which the accused was punished and (c) the punishment was for the same offence. Unless all the three conditions are fulfilled, Article 20 (2) of the Constitution of India is not attracted.
12. The words 'offence', 'prosecution' and 'punishment' in the context of Article 20(2) of the Constitution of India, contemplate proceedings of criminal nature before a court of law. I note that directions under Sections 11 and 11B of the SEBI Act do not have element of punishment as contemplated under criminal proceedings. These are not criminal proceedings. This is a civil action for violation of the regulatory framework relating to the securities market. Further, the proceedings before the adjudicating officer are neither equivalent to the prosecution proceedings nor the resultant penalty can be equated to the punishment within the meaning of Article 20(2) of the Constitution of India. Therefore, the plea raised by the Noticee in this regard is misconceived and is liable to be rejected.
13. There is yet another reason why the submission of the Noticee is not acceptable since the provisions of the SEBI Act permit parallel proceedings for adjudication and directions under Section 11 of the SEBI Act.
14. Noticee has submitted that clarification sought at the time of the hearing is on the subject matter of the proceedings wherein the investigation has already been concluded by the investigation department of SEBI. The said submission of the

Noticee is not acceptable for the following reasons:

- a) As the Noticee has submitted itself that the queries are in the nature of clarifications on the same subject matter of investigation.
- b) Clarifications are an aid to have a holistic understanding of the Noticee's submission vis-à-vis SEBI's findings.
- c) Findings of the investigation are not final in nature and in order to have a final determination of the facts and to arrive at a decision, further queries can be raised at the time of hearing. Such power to raise queries are inherent in nature for proper exercise of quasi-judicial proceedings.

15. I, now proceed to examine the matter on merits. To that effect, I have perused the SCN, written and oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration:

- (i) Whether the Noticee has manipulated the price in the scrip of SSTL during the period March, 2012 to March, 2013?
- (ii) If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?
- (iii) If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?

Issue No. 1 - Whether the Noticee has manipulated the price in the scrip of SSTL during the period March, 2012 to March, 2013?

16. It is noted from the material made available on record that the Noticee has executed 6 sell trades out of 7 sell trades in the scrip during the patch-2 which were over the LTP, for 60 shares. Noticee's LTP contribution in the scrip is ₹ 12.98/- which is 14.36% of positive LTP contribution in the scrip. Noticee is the second highest individual LTP contributor during patch-2 of the investigation period as a seller. From the material made available on record, I note that though the Noticee was holding substantial number of shares in the range of 1,960 – 2,000 shares during patch-2, the Noticee was releasing minuscule quantity of shares (10 shares) even though there were large pending buy orders over the LTP. The days when the

Noticees had executed the said 6 trades, pending buy orders were in the range of 7,950 shares to 63,160 shares. It is observed that when the Noticee was trading, which is almost 4 months, the scrip was traded only on 32 days i.e., there were days when the scrip was not traded. Out of the said 32 trading days on 26 trading days only 1 trade was executed in the scrip and out of the remaining 6 trading days, on 2 trading days 2 trades were executed. This coupled with the fact that the average volume in the scrip during patch- 2 of the investigation period which spanned almost a year, was 142 shares, would make a prudent investor to sell its shares at the very first opportunity that he/she is coming across. In the given situation, there were considerable buy order quantity pending in the system and that too over the LTP. It is not the case of the Noticee that on multiple occasions it had placed sell orders for more than 10 shares and the order was not executed. Rather in the instant case, the Noticee's sell orders were placed after buy orders, so it could very well see that there were pending buy orders in the system for more than 10 shares on all the occasions but still the Noticee chose to execute its sell trades in minuscule quantity. The aforesaid facts and circumstances indicate that the Noticee's behavior was not that of a prudent / reasonable seller.

17. It is noted that just before the Noticee started trading in the scrip, the scrip had traded only on 36 days out of 244 trading days during the period November 1, 2011 to October 18, 2012 and the average volume in the scrip during that period was 31 shares. Further, out of 36 trading days, on 31 trading days only one trade was executed in the scrip. The aforesaid figures will not inspire confidence in a reasonable seller. Therefore, submission of the Noticee that there was a great opportunity to liquidate the holdings in tranches and to get the best price for its shares is a post facto justification and is not supported by the particulars of the trading in the scrip as on the date when the Noticee started trading.
18. Noticee has submitted that trades which have contributed to positive LTP are not on daily basis and there is a lot of gap between the two trades. As noted above, the scrip had traded only on 32 days out of 87 trading days between the period October 19, 2012 to February 22, 2013. Out of the said 32 trading days, Noticee has executed

trades over the LTP on 6 days, i.e., on every 5th day when the scrip was traded. The same indicates that the Noticee was executing trades in the scrip at frequent interval.

19. Noticee has contended that the price in the scrip has increased gradually and there was no sudden spurt in the price of the scrip. Therefore, the same does not warrant any allegation of price manipulation. I note that the inference drawn by the Noticee is misplaced as not in every case of price manipulation, there has to be a sudden spurt in the price. There have been recorded instances where the market manipulators have devised a scheme pursuant to which the price of the scrip is manipulated and it gradually increases over a period of time, in the hope to avoid regulatory detection.
20. Noticee has submitted that it has sold around 9,870 shares during the period of investigation and our sale of only 70 shares have matched with buy order of some entity which has contributed to high LTP. This matching of 70 shares is only 0.71 % of our total sale to warrant serious allegation of fraudulent and unfair trade practice. Further, our volume in the scrip of SSTL is 0.01% of the total volume (i.e. nearly NIL). In this regard, it is noted that the extant matter is about manipulation of the price of the scrip by trading in minuscule quantity over the LTP. Therefore, the trading pattern of the Noticee in patch-2 which had an impact on the LTP has been taken into consideration rather than its overall trading in the scrip. As stated in preceding paragraphs, Noticee is the second highest contributor to the net LTP as a seller and has contributed 14.36% of positive LTP to market positive LTP. Further, as it is a price manipulation matter, volume of the trade executed compared to overall volume in the scrip, is not the only criteria / consideration that has to be taken into account before arriving at the finding of price manipulation, particularly volume traded post the manipulation in patch-2.
21. Noticee requested to be provided with the inferences drawn on the information / documents submitted by it before passing of the order in the matter so as to furnish a response to the said inferences. The said submission of the Noticee is liable to be rejected as nothing new is being sought from the Noticee on the subject matter. Information / documents sought are to substantiate Noticee's submission that the trading executed by it are in the ordinary course of its investment / normal course

of its business. Moreover, the submissions / replies submitted by the Noticee are considered while passing of the order.

22. In view of the above and based on the trading pattern of the Noticee in the scrip, it is held that the same is not genuine but is manipulative in nature.
23. Noticee has submitted that it had acquired the shares of the SSTL in physical form at a discount of around 30%. In this regard, it is noted that the Noticee has not submitted any documentary evidence showing from whom and when the Noticee bought the shares, mode of payment etc. Further, Noticee has also not submitted any evidence to show that it has transacted in shares of other companies in physical form, in order to buttress its submission that its behavior was in ordinary course of its investment.
24. I note that trades at higher than LTP, undoubtedly have a potential of raising the price of the scrip and the same gives a wrong impression about the price of the scrip in the market based on minuscule quantities traded. It must not be forgotten that every trade establishes the price of the scrip and trades executed at higher than LTP results in the price of the scrip going up which may influence the innocent/gullible investors. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicate a fraud. In this regard, the observations of Hon'ble Supreme Court of India in *SEBI Vs. Kishore R Ajmera et.al.* decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of

the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion..."

25. At the time of the hearing the AR of the Noticee had submitted that the trading activity of the Noticee in SSTL was in the normal course of its investment. Therefore, the AR was advised to submit Noticee's trading statement for the financial year 2012-2013. Noticee has submitted its depository participant transaction statement for the year April 1, 2011 to February 11, 2019. It is noted that during the relevant period when the Noticee was executing trades in minuscule quantity over the LTP in the scrip of SSTL i.e., financial year 2012-2013, it had traded as a seller only in 1 other scrip. In the said scrip also, Noticee has traded only on 1 day wherein the Noticee had put sell order in bulk quantity (500 shares). As a buyer also, Noticee has traded in 1 scrip only on 1 day during the financial year 2012-2013 and it had put buy order in bulk quantity (500 shares).
26. Thus, from the above, it can be gathered that Noticee was not active in the securities market during the financial year 2012-2013 and whenever the Noticee was putting any order, sell or buy, it was not in minuscule quantity. Hence, the trading behavior of the Noticee in other scrips also does not justify its trading in SSTL which has already been held to be manipulative.
27. Noticee has submitted that Noticee is not aware about the counter parties to its trades. In this regard, I note that the extant matter is not based on the connection between the Noticee and the counter parties, rather on the manipulative transactions carried out in the scrip. As observed by Hon'ble Apex Court in the matter of *SEBI Vs. Kishore R Ajmera et.al*, in matters like the current one, totality of the attending facts and circumstances surrounding the allegations has to be seen to arrive at a conclusion. In the instant matter Noticees were repeatedly entering sell orders for minuscule quantity inspite of having substantial holding and large pending buy orders in the system. Further, Noticees trading behavior in SSTL was at variance from their trading pattern in other scrips. All the aforesaid, indicates that the

Noticees were not genuine traders in the scrip.

28. In view of the above, the findings that have been gathered from various circumstances for instance overall trades executed in the scrip (number of trading days and number of trades) including the average volume during patch-2, volume of the trade effected by the Noticee vis-à-vis its holding, the period of persistence in trading in the scrip, the particulars of the buy order in the market and Noticee's sell orders, trading behavior in other scrips, the totality of the picture that emerges leads to the conclusion that Noticee by executing the aforesaid sell trades have manipulated the price of the scrip and have created a misleading appearance of trading in the scrip.

Issue No. 2 - If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?

29. Before embarking upon the necessary discussions, I would like to reproduce the relevant provisions of PFUTP Regulations:

Regulation 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.

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

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

...

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

30. In view of the conclusion arrived at paragraph 26 wherein it has been held that the trades for minuscule quantity executed by the Noticee over the LTP in the scrip are manipulative and misleading in nature, it is also held that such trades are fraudulent in nature and would operate as deceit upon any person trading in the extant scrip. Further, as discussed in preceding paragraphs, Noticee by executing impugned trades in the scrip have also manipulated the price of the scrip. I therefore, find that Noticee has violated Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (a) and (e) of PFUTP Regulations.

Issue No. 3 - If answer to issue Nos. (ii) is in affirmative, what directions, if any should be issued against the Noticee?

31. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations have been framed. The said Regulations apart from other things aims to preserve and

protect the market integrity in order to boost investor confidence in the securities market. By executing manipulative trades, as has been executed by the Noticee in the instant matter, the price discovery system itself is affected. It also has an adverse impact on the fairness, integrity and transparency of the stock market. In view of the same and considering the violations committed by the Noticee, I find that it becomes necessary for SEBI to issue appropriate directions against the Noticee.

ORDER

32. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby restrain Shyam Rathi HUF (PAN: AAQHS7786D) from accessing the securities market for a period of two years from the date of this order and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years, from the date of this order. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticee shall remain frozen.
33. The order qua the Noticee shall come into force with immediate effect. It is clarified that separate order(s) will be passed in respect of other entities against whom show cause notice dated July 28, 2017 has been issued in the extant matter.
34. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

-Sd-

DATE: March 8 , 2019

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA