

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/15035]**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICERS) RULES, 1995

In respect of:
Mr. Sunil Kumar Purohit
[PAN - AHSP9704F]

In the matter of K. Sera Sera Production Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted investigation into the trading in the scrip of K. Sera Sera Production Ltd. (hereinafter referred to as "**K. Sera Sera / Scrip/Company**"), during the period from June 01, 2004 to October 31, 2004 (hereinafter referred to as "**Investigation Period/IP**"). Pursuant to the aforementioned investigation, SEBI observed certain violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') by certain entities including Mr. Sunil Kumar Purohit (hereinafter referred to as "**Noticee /By Name**").
2. Therefore, SEBI initiated adjudication proceedings against the aforesaid entities including Noticee and appointed Mr. Biju S. as Adjudicating Officer. In this regard, Show Cause Notice No. A&E/BS/ASG/125626/2008 dated May 14, 2008 (hereinafter referred to as "**SCN**") was issued to Noticee under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Order in respect of Sunil Kumar Purohit in the matter of K. Sera Sera Production Limited

Adjudicating Officer) **Rules, 1995** (hereinafter referred to as '**Adjudication Rules**') to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA of the SEBI Act for the alleged violations of Regulations 4(1), 4(2)(a), 4(2)(b) and 4(2)(g) of PFUTP Regulations by them.

3. I note that subsequent to transfer of Mr. Biju S. to another department of SEBI, Mr. **D. Ravi Kumar** was appointed as Adjudicating Officer (hereinafter referred to as "**erstwhile AO**") to inquire into and adjudge under Section 15HA of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), the alleged violations of provisions of PFUTP Regulations by the aforesaid entities including Noticee.
4. The erstwhile AO, vide Adjudication Order dated June 30, 2010, concluded that Noticee had violated the provisions of PFUTP Regulations and imposed a penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) under Section 15HA of the SEBI Act on Noticee.
5. Thereafter, an appeal, Appeal No. 145 of 2015, was filed before Hon'ble Securities Appellate Tribunal ("**SAT**") by Noticee. Vide order dated March 07, 2016, Hon'ble SAT set aside the aforesaid Adjudication Order dated June 30, 2010, passed by the erstwhile AO and restored the matter to the file of Adjudicating Officer for passing fresh order on merits and in accordance with law. In its order Hon'ble SAT held that:-

"In the light of judgment of the Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas. 186 (S.C.) Counsel for the parties state that the orders impugned in the respective appeals be quashed and set aside and the matters be restored to the file of the adjudicating officer for passing fresh order on merits and in accordance with the Law. Accordingly, orders impugned in the said respective appeals are quashed and set aside by restoring the matters to the file of the adjudicating officer so as to Adjudication Order in respect of Sunil Kumar Purohit in the matter of K.Sera Sera Production Limited

pass fresh order on merits and in accordance with the law. All contentions of both parties are kept open”

6. In accordance with the aforesaid order of Hon’ble SAT, SEBI, vide order dated March 04, 2021, appointed undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I (1) and Rule 3 of Adjudication Rules to inquire into and adjudge under the provisions of Section 15HA of SEBI Act, the alleged violation of provisions of Regulations 4 (1), 4 (2) (a), (b), (e) and (g) of PFUTP Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. The relevant extracts of the SCN containing the observations and allegations are reproduced hereunder:

- i. *“It is noted from the findings of the Investigation Report that a group of clients and a few members, including you, traded significantly in the scrip of KSERA during the period under investigation. On analysing the trading pattern among the major members on the gross purchases and sales, namely S P J Stock Brokers Pvt. Ltd.(dealing in own account). M/s. Vijay Bhagwandas & Company (dealing for Tejas Ghelani and Noticee), M/s. Harikishan Hiralal Financial Services Ltd.(dealing in own account), Adolf Pinto(dealing on behalf of Mr. Kenneth Pinto and Ms. Gillian Pinto) and Galaxy Broking(dealing for Shri Kapil Bhuptani), it was observed that the said brokers and clients accounted for a large percentage of the total traded volumes in the scrip during the investigation period and majority of the trades were among the said group through synchronized orders.*
- ii. *The Investigation Report suggests that the abovementioned group of members and clients aggregately purchases 9329344 shares and sold 9259474 shares, which constituted almost 51.73% of the gross volume on the exchange during the period under investigation. Majority of the*
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brokers appearing in the list of top ten brokers on gross purchases basis also appear as top brokers in gross sales basis. The details of the concentration among various entities are stated below:-

Broker Name	Client Name	Total Buy Quantity	Buy among these clients	Buy among group of clients % of market volume	Total Sell Quantity	Sell among these clients	Sell among group of clients % of market volume
Adlof Pinto	Kenneth Pinto	136515	103600	0.57	136515	89221	0.49
	Gillian Pinto	93800	78506	0.43	93777	93151	0.51
Vijay Bhagwandas & company	Sunil Purohit	613358	326050	1.81	613093	192966	1.07
	Tejesh Ghelani	1330975	1165557	6.48	1321952	1123038	6.24
Sanchay Fincom Ltd	Sunil Purohit	691512	589758	3.28	691512	628036	3.49
Harkishan Hiralal	Victor Trading Corporation	805720	741573	4.12	808197	769615	4.28
M Upadhyay	Amit Pandya	1335649	143175	0.79	1328066	345959	1.92
Galaxy Broking Ltd	Kapil Bhuptani	449317	303279	1.68	434940	274674	1.52
SPJ Stock Brokers Pvt. Ltd	OWN	2684209	1615507	8.98	2645592	1655882	9.21
Uttam Financial Services Ltd	Own	1188289	727902	4.04	1185830	995073	5.33

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Broker Name	Client Name	Total Buy Quantity	Buy among these clients	Buy among group of clients % of market volume	Total Sell Quantity	Sell among these clients	Sell among group of clients % of market volume
Grand Total		9329344	5794907	32.18	9259474	6167615	34.06

- iii. *According to the Investigation Report, Noticee dealing through stock broker Vijay Bhagwandas & Co had purchased 6,13,358 shares and sold 6,13,093 which accounted for 3.41% of the total market volume. Noticee, dealing through another stock broker Sanchay Fincom Ltd. had purchased 6,91,512 shares and sold 6,91,512 shares, constituting almost 3.84% of shares traded during the period under investigation. As a whole through both the stock brokers Noticee purchased 13,04,870 shares and sold 13,04,605 shares constituting around 7.25% and 6.90% of total volume traded during the period under investigation respectively. Within the group Noticee purchased 9,15,808 shares and sold 8,21,002 constituting 5.09% and 4.56% respectively of total volume traded during the period under investigation.*
- iv. *It is noted from the Investigation Report that the pattern of circular trading indicates that it was usually among a group of brokers and same numbers of shares were rotated in a circular manner among brokers in the group on daily basis so that the same number of shares go back to the original seller at the end of the day and net position of each brokers remains nil. The Investigation reports alleges that this manipulative trading operation was planned very carefully to avoid any easy detection. Instead of engaging in circular trading on daily basis, Noticee traded on a particular time and quantity basis which helped to create artificial volume in the market.*

v. *It is alleged that the above actions were for the purpose of manipulating the price of the scrip and distorting the market equilibrium and amounts to violation of Regulation 4(1) & 4(2(a), (b) and (g) of PFUTP Regulations.....*”

8. In accordance with the aforesaid order of Hon'ble SAT dated March 7, 2016 and the consequent appointment of the undersigned as AO, a copy of SCN dated May 14, 2008, along with the annexures, was forwarded to Noticee vide letter dated July 09, 2021, and it was duly served on Noticee.
9. Noticee vide his letter dated July 20, 2021, *inter-alia* sought original trade log and order log in the scrip of K. Sera Sera for the investigation period and appointed Mr. Vikas Bengani, Advocate as his authorized representative (herein after referred to as “**AR**”) to represent in the matter and sought inspection of documents relied upon in the said matter. The request of Noticee for inspection of documents was acceded to and Noticee carried out the inspection of documents on September 06, 2021. During the course of inspection of documents, Noticee requested for trade log and order log data relating to the trades of Noticee in the scrip of K. Sera Sera and also provided a copy of order of Hon'ble SAT dated March 23, 2010, in the matter of Mr. Adolf Pinto v/s. Adjudicating Officer of SEBI (Appeal No. 110 of 2009). AR, vide email dated September 24, 2021, submitted revised written submissions dated September 22, 2021, on behalf of Noticee.
10. In the interest of natural justice, vide hearing notice dated September 16, 2021, served on Noticee through digitally signed email dated September 16, 2021 as well as by SPAD, Noticee was granted an opportunity of personal hearing before the undersigned on September 28, 2021. However, AR vide email dated September 20, 2021, requested for rescheduling of the hearing. Accordingly, another opportunity of personal hearing was granted to Noticee on September 24, 2021. The hearing scheduled on September 24, 2021, was *Adjudication Order in respect of Sunil Kumar Purohit in the matter of K.Sera Sera Production Limited*

rescheduled on September 29, 2021 due to some operational issue. On the scheduled date of hearing i.e. September 29, 2021, AR attended the hearing and reiterated the earlier submissions made by Noticee. During the hearing AR also requested for additional time to submit further reply in the matter. The request of AR was acceded to and AR was advised to submit the reply on or before October 04, 2021. AR vide email dated October 04, 2021, submitted further reply to the SCN on behalf of Noticee.

11. The replies submitted by Noticee are summarized as under:-

- a. Noticee denied the allegation levelled against him.
- b. Noticee has not been provided original trade log and order log, which contains alleged trades of Noticee.
- c. He does not have any active bank as well as demat account. He is out of securities market from past 12 to 13 years.
- d. He had not executed any trade in the scrip of K. Sera Sera
- e. Hon'ble SAT vide order dated March 23, 2010, had discarded the charts i.e. G, H and I enclosed with SCN in the appeal filed by Mr. Adolf Pinto and other entities. The alleged trades belongs to the year 2004 and in absence of the trade data, he is unable to file legal and cogent submission on merit of the case. In this way principle of natural justice has not been followed in the present matter. To support its contention, Noticee has submitted judgement of Hon'ble SAT in the matter of Mr. Vikas Gourihar Narnavar (SAT Appeal no. 281 of 2009) v/s. SEBI dated June 15, 2010; Dhirajbhai V. Sanghvi HUF and Ors. v/s. SEBI(SAT Appeal No. 414 of 2018) dated February 19, 2020; Adolf Pinto vs. SEBI(SAT Appeal No. 110 of 2009) dated March 23, 2010;
- f. The communication dated July 09, 2021 has been issued after an inordinate delay of more than 5 years from the date of passing of the Order dated March 07, 2016 by the Hon'ble Tribunal. In the said Order, the Hon'ble Tribunal had not given any liberty to SEBI that

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SEBI may issue the Notice of hearing/ communication after a delay of 5 years. This highly prejudices the case of the Noticee as justice delayed is justice denied. Recently, the Hon'ble Supreme Court of India and the Hon'ble Tribunal took a tough stand against inordinate delay and latches in quasi-judicial proceedings. To support its contention, Noticee has submitted the judgements of Hon'ble Supreme Court in the matter of Adjudicating Officer SEBI v/s. Bhavesh Pabari(Civil Appeal no. 11311 of 2013); Hon'ble SAT order in the matter of Mr. Ashok Rupani Ors. V/s. SEBI (SAT appeal no. 417 and 440 of 2018) dated August 22, 2019; Devendra Suresh Gupta v/s. SEBI (SAT appeal no. 176 of 2020) dated August 14, 2020; Rajeev Bhanot & Ors. Vs. SEBI (Appeal no. 396/2018) dated July 09, 2021; Ashlesj Gunvanbhai Shah V/s. SEBI (SAT appeal no. 169 of 2019) dated January 31, 2020 etc.

- g. Noticee has denied that he had never opened trading accounts with Vijay Bhagwandas & Company and Sanchay Fincom Ltd. In the year 2015, he came to know about passing of several orders against him accordingly, he had lodged a Police complaint before Senior Inspector, MRA Marg, Police Station against the Brokers,
- h. Noticee has quoted the Adjudication Order passed by SEBI in the matter viz. Adjudication Order no. IVD-ID6 /KSera-I-VB/AO/DRK/ASG/EAD-3-318/16-2012 in the matter of M/s. Vijay Bhagwandas & Co. dated May 17, 2012 and Adjudicating Order dated June 30, 2021, passed against him etc.
- i. Noticee requested to dispose-of the SCN without passing any adverse order.

CONSIDERATION OF ISSUES AND FINDINGS:-

12.I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

- 1) Whether Noticee has violated Regulations 4(1), 4(2) (a), (b), and (g) of PFUTP Regulations?
- 2) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?
- 3) If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

13.Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which was in force at the time of impugned transactions, which are reproduced as under:

PFUTP Regulations

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 practice if it involves:-*
 - a. Indulging in an act which creates false or misleading appearance of trading in the securities market*
 - b. Dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss*

- g. Entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security*

ISSUE NO.1- Whether Noticee has violated Regulation 4(1), 4(2) (a), (b), and (g) of PFUTP Regulations?

14. It has been alleged in SCN that few members and their clients including Noticee, accounted for a large percentage of the total traded volumes in the scrip and majority of the trades were synchronized in nature. Further, it was alleged in SCN that the pattern of circular trading was observed, wherein a group of brokers and same number of shares were rotated in a circular manner among brokers in the group on daily basis so that the same number of shares go back to original seller at the end of the day and net position of each brokers remains nil. The manipulative trading operation was planned very carefully to avoid any easy detection. Instead of engaging in circular trading on daily basis, Noticee traded on a particular time and quantity basis which helped to create artificial volume in the market.
15. Noticee in his reply has contended that he has not been provided the original trade log and order log which contain the details of the alleged trades by Noticee in the scrip of K. Sera Sera.
16. From the documents available on record, I note that in his replies dated July 20, 2021 and September 06, 2021, Noticee had, *inter-alia*, sought copies of trade log and order log. I note that the impugned SCN contained annexures viz., Investigation Report, Board of directors of K. Sera Sera, shareholding pattern as on June 30, 2004 & September 30, 2004, corporate announcements, Price Volume data/chart, Annexures G, H & I which depict circular trading on various dates. However, there is no mention of trade log or order log w.r.t Noticee's trades in the list of Annexures.

17. In this context, Noticee has referred to the judgement of Hon'ble SAT dated March 23, 2010, stating that Hon'ble SAT had already discarded the charts i.e. G,H and I, enclosed with the SCN, in the appeal filed by Mr. Adolf Pinto and others entities. On perusal of the aforesaid order dated March 23, 2010 of Hon'ble SAT, I note that Hon'ble SAT had dismissed seven appeals i.e., Appeals no.110 to 112,148,217,226 of 2009 and 11 of 2010, in the matter. The aforesaid appeals filed by the entities are as under:-

Appeal No.	Name of entity
110 of 2009	Mr. Adolf Pinto
111 of 2009	Ms. Gillian Pinto
112 of 2009	Kenneth Pinto
148 of 2009	M/s. Galaxy Broking Ltd.
217 of 2009	Mr. Kapil Bhuptani
226 of 2009	M/s.Sanchay Fincom Ltd.
11of 2010	M/s. Vijay Bhagwandas &Co.

18. In this regard, I note that original trade log and order log pertaining to Noticee's transactions in the scrip of K. Sera Sera are not available on record. Therefore, efforts were made to obtain the relevant trade log and order log from BSE. BSE, vide its email dated October 26, 2021, informed that the data prior to year 2006 was not available in their system. I note that while the impugned synchronized trades and circular trades took place in 2004, a copy of the trade and order logs for the relevant period could not be obtained from BSE.

19. While I note that few members and their clients including Noticee have been alleged to have created artificial volume through circular and synchronized trades, from the material available on record, I find that no details of any connection amongst the entities have been established on record.

20. In his submissions, Noticee has further stated that in absence of the trade log and order log, he is unable to file legal and cogent submission on merit of the *Adjudication Order in respect of Sunil Kumar Purohit in the matter of K.Sera Sera Production Limited*

case. I find that in absence of trade log and order log, it is not possible to comment on the accuracy of the data which forms the basis of the charge of synchronized and circular trades amounting to violations of PFTUP Regulations by Noticee, as alleged in the SCN. I also find that in absence of trade log and order log with respect to Noticee's trades, the accuracy of the data as specified in Annexures G, H and I of the SCN, which depict the circular trading pattern of Noticee, cannot be established and therefore, the aforesaid Annexures G, H and I, would not be reliable proof of the charge that the trades executed by Noticee were circular/synchronised in nature.

21. In this context, it is pertinent to note that Hon'ble SAT while disposing off the aforesaid appeals vide its order dated March 23, 2010, held that, *"It appears to us that the basic data now placed before us is not the trade and order logs and the details given therein have been collected from different sources and collated in the form of charts. The error pointed out by the appellants could have crept in at the time of putting details in the form of charts. Another grievance of the appellants is that they had never been furnished with copies of the trade and order logs from which it could be established whether the trades executed by them were circular in nature."*

22. I note that the aforementioned appeals disposed of by the Hon'ble SAT vide its order dated March 23, 2010, pertain to the same investigation carried out by SEBI in the scrip of K. Sera Sera as that in the instant proceeding. I note that the Hon'ble SAT in its aforesaid order dated March 23, 2010, while remanding back the matter to the adjudicating officer, held that there was an error in the Annexures G, H and I of the SCN and the relevant trade log and order log in the matter should be provided to the appellants.

23. Considering the fact that impugned trade log and order log are not available on record, I find it difficult to ascertain basic trading details of Noticee like no. of shares traded, traded price, date of trades, order time, counterparty order time, counter party details etc. as well as the trading pattern of Noticee so as

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to come to a conclusion regarding the creation of artificial volume through circular/synchronized trades in the scrip of K. Sera Sera by Noticee, as alleged in the SCN. Further, I note that in the order of Learned Adjudicating Officer bearing reference number MC/ST/2021-22/12406 dated June 30, 2021, wherein learned AO has disposed of the matter on the grounds that allegation could not be established due to absence of trade log/trade data.

24. Therefore, in absence of relevant trade log and order log and considering the error in the data provided in the SCN and also placing reliance on aforesaid judgement dated March 23, 2010 of Hon'ble SAT as well the aforesaid Adjudication Order dated June 30, 2021, I find that the allegation against Noticee that he has violated Regulations 4(1), 4(2) (a), (b) and (g) of PFUTP Regulations cannot be established.

25. As the alleged violations by the Noticee are not established, Issues II and III do not merit consideration.

ORDER

26. In view of the findings noted in the preceding paragraphs, the adjudication proceedings initiated against Noticee, vide SCN bearing Ref. No. A&E/BS/ASG/125626/2008 dated May 14, 2008 are disposed of.

27. Copy of this Adjudication Order is being sent to Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Place: Mumbai

Date: February 18, 2022

**SOMA MAJUMDER
ADJUDICATING OFFICER**

Adjudication Order in respect of Sunil Kumar Purohit in the matter of K.Sera Sera Production Limited