

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND
EXCHANGE BOARD OF INDIA (ADJUDICATION ORDER
NO: ORDER/GR/RR/2020-21/10151)**

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

In respect of:

SL. No.	Name of the Entity	PAN
1	Shri Kirti Ramji Kothari	AAEPK3216C

In the matter of IPO of Tijaria Polypipes Ltd.

FACTS OF THE CASE

1. Tijaria Polypipes Limited (hereinafter referred to as "Tijaria/TPL/the Company") came out with an Initial Public Offering (hereinafter referred to as "IPO") of 1,00,00,000 equity shares of a face value of Rs 10/- each, issued at a premium of Rs 50/- per equity share, wherein it raised Rs 60/- Crores to fund its proposed expansion and diversification plans. The aforesaid IPO opened on September 27, 2011 and closed on September 29, 2011. TPL allotted 71,64,406 shares in the retail individual investors category (constituting 71.64% of the total IPO shares) and 28,36,001 shares to the Qualified Institutional Buyers (hereinafter referred to as "QIBs") (constituting 28.36% of the total IPO shares). The shares of TPL were listed on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE") and the National Stock Exchange of India Limited (hereinafter referred to as "NSE").
2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in respect of trading in the scrip of TPL, upon observing a steep fall in the share price on the first day of listing i.e. October 14,

2011. The investigation revealed that on October 14, 2011, the share price of TPL in NSE, fell from the highest price of Rs 67.75/- per share to Rs 16.50/- per share while in BSE, it fell from the highest price of Rs 67.80/- per share to Rs 16.05/- per share.

APPOINTMENT OF ADJUDICATING OFFICER

3. Based on the findings of the investigation, SEBI initiated Adjudication proceedings in the matter and vide Order dated March 14, 2013, appointed Shri D Ravikumar, as the Adjudicating Officer (hereinafter referred as AO) under Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (Adjudicating Rules) to inquire into and adjudge under Section 15HA of the SEBI Act and Section 15HB of the SEBI Act for the alleged violations committed Kirti

Ramji Kothari (hereinafter referred to as "Notice/Kirti") under Section 12 A of SEBI Act read with Regulation 3 (a) (b) (c) (d) and 4 (1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").

Subsequently, vide Order dated December 14, 2015, Shri. Suresh B Menon was appointed as the Adjudicating Officer in the said matter in the place of Shri D Ravikumar. Thereafter, vide order dated April 9, 2019 the undersigned has been appointed as the Adjudicating Officer in the instant matter. The proceeding is therefore been carried forward where they had been left off by the previous AO and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated January 28, 2016 (hereinafter referred to as 'SCN') was issued by the erstwhile AO to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on Noticee under

the provisions of Sections 15HA of the SEBI Act and Sections 15HB of the SEBI Act for the alleged violations stated at para 3 above. The aforesaid SCN was served upon the Noticee.

5. The fact of the case and the allegations made in the SCN are summarised below:

a) The company raised Rs. 60/- crores to fund its proposed expansion and diversification plans through a public issue of 1,00,00,000 equity shares of face value of Rs. 10- each, issued at a premium of Rs. 50/- per share. The public issue (IPO) of the Company opened for subscription on September 27, 2011 and closed on September 29, 2011. The shares of the company were listed on BSE and NSE on October 14, 2011. It was observed that 3,100 applicants were allotted shares in the IPO of the company, out of which 3097 applicants were allotted shares in the retail category and three Qualified Institutional Buyers were allotted shares. Out of the 3097 applicants who were allotted shares in the retail category, 2,464 allottees were allotted the maximum 2757 shares in the retail category.

b) It is alleged that there was a steep fall in the scrip price of the Company on the first day of its listing on both BSE and NSE. Investigation was therefore conducted to examine the steep fall in the scrip price of the Company on the first day of its listing on the Stock Exchanges. The Investigation revealed that a total of 733 retail allottees, who were allotted the maximum 2,757 shares in the retail category, had sold their entire allotment on BSE. The sell orders by these allottees were primarily placed between 9:15 a.m. to 9:45 am. The following table shows the order entry in terms of time periods

Sl. No.	Time Period	No. of sell orders placed by retail allottees (allotted 2757 shares)	Volume of Sell orders	Traded Qty. of retail allottees (allotted 2757 shares)
1.	9:15 to 9:20 a.m.	198	5,45,886	20,594
2.	9:21 to 9:25 a.m.	83	2,28,831	0
3.	9:26 to 9:30 a.m.	35	96,495	9,664

4.	9:31 to 9:35 a.m.	294	8,10,558	0
5.	9:36 to 9:40 a.m.	97	2,67,429	5514
6.	9:41 to 9:45 a.m.	18	49,626	28,934
7.	9:45 to 9:50 a.m.	1	2,757	2,757
8.	9:51 to 9:54 a.m.	0	0	0
9.	9:55 am	0	0	2,36,814
10.	9:56 to 10:00 a.m.	0	0	16,40,623
11.	10:01 to 11:00	3	8,271	38,598
12.	11:01 to 12:00	1	2,757	6,205
13.	12:01 to 01:00	3	8,271	33,084

c) From the above table, it is alleged that during the period till 9:50 a.m., though there were sell orders for 20,01,582 shares on BSE, trades for only 67,463 shares were executed and orders for the balance over 19,34,119 shares were pending. During the time period 9:51 a.m. to 9.54 a.m., no trades were executed. During the time period 9:55 a.m. to 10:00 a.m., trades for 18,77,437 shares were executed. Out of the trades executed, It is alleged that shares sold by the 7 retail allottees in BSE who were allotted the maximum 2757 shares, were bought primarily by Kirti along with certain other related entities. The details of which are provided as below:

Name of the buyer	Buy Order No.	Buy Order Qty	Buy Order Time	Qty Traded with retail allottees (2757 shares)
Kirti	23000080001312	50000	10:00:58	26,651

d) On NSE, a total of 1,455 retail allottees, who had been allotted the maximum 2,757 shares in the retail category, had sold their entire allotment. The sell orders by these original retail allottees were primarily placed between 9:15 a.m. to 9:45 am. The following table shows the order entry in terms of time periods:

Time Period	No. of sell orders placed by retail allottees (allotted 2757 shares)	Volume of Sell orders	Traded Qty. of retail allottees (allotted 2757 shares)
9:15-9:20 a.m.	126	3,47,382	8,271
9:21 to 9:25 a.m.	79	2,17,803	2,757
9:26 to 9:30 a.m.	60	1,65,420	5,514
9:31 to 9:35 a.m.	750	20,67,750	11,028

9:36 to 9:40 a.m.	280	7,71,960	1,585
9:41 to 9:45 a.m.	85	2,34,345	5,514
9:46 to 9:50 a.m.	3	8,271	3,994
9:51 to 9:55 a.m.	4	11,028	10,57,988
9:56 to 10:00 a.m.	0	0	26,98,403
10:01 to 11:00 a.m.	18	49,626	74,064
11:01 to 12:00 a.m.	3	8,271	4,487
12:01 to 13:00 a.m.	1	2,757	8,271
13:01 to 14:00 a.m.	2	5,514	5,514
14:01 to 15:00 a.m.	31	85,467	81,149
15:01 to 15:30 a.m.	13	35,841	34,649

e) From the above table, it is alleged that during the period till 9:50 a.m., though there were sell orders for 38,12,931 shares on NSE, trades for only 38,663 shares were executed and orders for the balance over 37.74 lacs shares were pending. During the time period 9:51 a.m. to 10:00 a.m., i.e., in less than 10 minutes trades for 37,56,391 shares were executed. Out of the trades executed, it is alleged that shares sold by the 34 retail allottees in NSE who were allotted the maximum 2757 shares, were bought primarily by Kirti along with certain other related entities. The details of which are provided as below:

Name of the buyer	Buy Order No.	Buy Order Qty	Buy Order Time	Qty Traded with retail allottees (2757 shares)
Kirti	2011101475524174	50,000	10:00:33	11,389
	2011101475525334	50,000	10:00:39	41,937
	2011101475526149	50,000	10:00:44	47,230
	Total			1,00,556

f) It is alleged that with respect to the aforesaid purchase of the shares from the 7 retail allottees in BSE and 34 retail allottees in NSE by Kirti, Kirti had sold these shares to Shri Chetan Dave in a synchronised manner. The details of the sell orders placed by Kirti on October 14,2011, which got matched with the purchase order of Chetan is as given below

Exchange	Sell Order Qty.	Buy Order Qty	Buyer Name	Traded Qty.	Sell Order Price	Buy Order Price	Sell Order Time	Buy Order Time
BSE	1,50,000	1,50,000	Chetan Dave	146269	39.5	39.5	13:44:20	13:44:27
NSE	1,50,000	1,50,000	Chetan Dave	147742	39.5	39.5	13:44:04	13:44:26

g) From the above table, it can be seen that on BSE, Kirti entered a sell order for 1,50,000 shares at 13:44:20 for Rs 39.5/- and within 7 seconds i.e. at 13:44:27, Chetan entered a buy order for 1,50,000 shares with the same limit price and it resulted in a trade of 1,46,269 shares. Thereafter, on NSE, Kirti entered a sell order for 1,50,000 shares at 13:44:20 for Rs 39.5/- and within 22 seconds i.e. at 13:44:26, Chetan entered a buy order for 1,50,000 shares with the same limit price and it resulted in a trade of 1,47,742 shares. Thus, it is alleged that Kirti had aided and abetted the 7 retail allottees in BSE and 34 retail allottees in NSE in giving them an exit option to sell their holdings at a premium to the issue price. It is further alleged that Kirti who had bought the shares at a high price from the 7 retail allottees in BSE and 34 retail allottees in NSE was also given an exit by Chetan on BSE & NSE who had bought shares from Kirti in structured trades.

h) It is alleged that in order to give an exit to the 7 retail allottees in BSE and 34 retail allottees in NSE at a premium to the issue price, Kirti bought and sold 1,50,000 shares of TPL each on BSE and NSE. The said purchase of 1,50,000 shares was at an average price of Rs 63/- per share and the sell was at an average price of Rs 39.5/- per share and thereby Kirti had incurred a loss of Rs 34,40,922/- on NSE and Rs 34,81,494/- on BSE due to his trading in the scrip of TPL.

i) It is alleged that Kirti incurred an overall loss of Rs 69,22,416/- and provided exit inter alia to the 7 retail allottees in BSE and 34 retail allottees in NSE at a premium to the issue price by trading in the scrip of TPL on the first day of listing i.e. October 14, 2011. It is further alleged

that Kirti, in turn, by entering into structured trades with Chetan managed to sell his entire holdings in TPL.

- j) Therefore, it is alleged that Kirti was acting as a front and was aiding and abetting those who had interest in ensuring that the retail allottees who were allotted shares in the IPO, are able to exit at a premium to the issue price. It is, therefore, alleged that Kirti has violated the provisions of Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

6. In response to the aforesaid SCN dated January 28, 2016, the Noticee filed its replies which, inter-alia, is summarised as under:

Reply submitted by the Noticee

Noticee, vide its reply dated October 6, 2016 and December 2, 2020 made its submissions to the SCN which is summarised as below:

- *The allegations against me in the SCN are based on purchase and sale of 300,000 shares by me on the stock exchanges (150,000 buy & sell on BSE & 150,000 buy & sell on NSE) on October 14, 2011 i.e. the day of listing of Tijaria Polypipes Limited.*
- *SCN was issued on January 28, 2016 and this inordinate delay has severely prejudiced me*
- *It is alleged in SCN that I had aided and abetted the 7 retail allottees in BSE and 34 retail allottees in NSE in giving them an exit option to sell their holdings at a premium to the issue price. Further, I had bought the shares at a high price from the 7 retail allottees in BSE and 34 retail allottees in NSE. I was given an exit by Chetan Dave on BSE & NSE, who had bought shares from me in structured trades. I was acting as a front and was aiding and abetting those who had interest in ensuring that the retail allottees who were allotted shares in the IPO, are able to exit at a premium to the*

issue price. All the aforesaid allegations are totally unfounded, unsubstantiated and misplaced

- *I am a regular investor in the markets since last around 20 years and during the period 2011-12 I had traded in almost 90 scrips wherein I had made both profit and loss.*
- *I had traded in the scrip of TPL on October 14, 2011 in the ordinary course of business independently. I had purchased the shares of TPL on October 14, 2011 in the market by placing orders at around 10 am on both the exchanges (viz. NSE & BSE), anticipating that the price would rise. Here it may be noted that on the first day of listing there are no circuit filters and the price can move either ways without any fetters. Since the price of the scrip kept fluctuating and kept sliding down I had, like any other normal investor, around 1.44 pm placed the orders for sale of shares on both the exchanges squaring off my buy positions. In SCN, I have been erroneously roped in based on the misplaced impression that I was trading along with others*
- *The issue price in the IPO was Rs 60/-. On 14.10.11, the day of listing, as per the data available on the Exchange website, the scrip touched a high of Rs 67.80/-, low of Rs 16.05/- and closed at a price of Rs 18.10/-. I had bought a total of 300,000 shares (150,000 shares on BSE & 150,000 shares on NSE) at an average price of Rs 63/- & sold the said 300,000 shares (150,000 shares on BSE & 150,000 shares on NSE) at average price of Rs 39/-. Further, I had suffered a loss of around Rs 69 lacs by trading in the scrip.*
- *Allegation of aiding and abetting retail allottees (7 retail allottees in BSE and 34 retail allottees in NSE) has been made against me but the allegation has not been substantiated. There is nothing to show as to :(a) who are the (unnamed/unidentified) retail allottees, (b) how I am connected/related to them (either directly or indirectly or derivatively) either by virtue of fund /share transfers, common address etc., (c) why would I provide them exit, (d) where and when was the meeting of minds, between the alleged retail allottees and me ,for the purpose of providing alleged exit, (e) how I had any role in the alleged retail allottees seeking subscription in the IPO etc.*

- *In the absence of any connection or allegation of any meeting of minds or collusion etc., the allegation of providing exit cannot survive and sustain. • Wherever SEBI found Retail allottees are counter party sellers to my buy trades, same have been cherry-picked and tainted with the allegation of providing the exit. Wherever, counter party to my trades are not Retail allottees, the said trades have been spared with the taint of providing the exit.*
- *It is not the case that only the retail allottees were the counter parties to my trades. Further, there is no material to show how my purchase trades were motivated to provide exit to the retail allottees.*
- *If I were providing the alleged exit, there was no way that out of total of 3,00,000 shares bought, I would have bought only 127,207 shares from retail allottees and balance 172,793 from others in the market*
- *SEBI has, admittedly, not taken any action against the said 41 retail allottees (7 retail allottees in BSE and 34 retail allottees in NSE) and the alleged “principal offenders”, whom I have allegedly ‘aided and abetted’, by giving them exit.*
- *The allegation that I had bought the shares at a high price from the retail allottees is also totally unjustified and unwarranted. The issue price itself was Rs 60/- SEBI had not raised any question with the Company (i.e. TPL) or its Merchant Banker with regard to fixation of the price at Rs 60/- in the IPO. Against the issue price of Rs 60/- if I have traded on listing day, by buying the shares at Rs 63/- (which was the ruling price at the relevant time), I cannot be alleged to have bought the shares at a “high price”. It has been ignored that the price of the scrip had shot up to around Rs 68/- on the day of listing.*
- *In so far as allegation of entering into structured trades with Chetan Dave, while selling shares of TPL and Chetan Dave providing me an exit is concerned, it is submitted that the same is completely contrary to factual position on record.*
- *I had squared off my position since the price was falling and in order to cut my losses. Chetan Dave was trading heavily in the scrip, he being counter*

party to part of my trades is just a coincidence and not by design as insinuated. Part of the shares sold by me have also been picked up by other persons trading in the market.

- The purported reasoning for alleged structuring the trades as stated in the SCN is for the purpose of providing me an exit. The entire reasoning is completely unfounded and without any basis. Fact is I do not know Chetan Dave, I have no relationship with him, no financial transactions or off market transfers with him etc. Nothing has been spelled out in the SCN in establishing any connection with Chetan Dave. In the absence of any connection/linkage, it is inexplicable as to why will Chetan Dave provide me an exit, who is he and what is his interest.*
- I had not provided any exit to retail allottees. Therefore, also the issue of I being provided exit by Chetan Dave cannot and does not arise.*
- The allegation that “I was acting as a front and was aiding and abetting those who had interest in ensuring that the retail allottees who were allotted shares in the IPO, are able to exit at a premium to the issue price”, is unusual allegation. In the SCN, there is no clarity, as to whom I was aiding and abetting.*
- There is nothing on record to indicate as to: (i)who is the person or entity, whom I was fronting or aiding and abetting, as alleged,(ii)who is the person or entity, who had interest in ensuring that the retail allottees, are able to exit at a premium to the issue price.*
- I had no connection whatsoever with the Company(TPL), its Promoters, directors, officials (whether directly or indirectly) or the retail allottees. I had no role to play in the alleged retail allottees seeking subscription in IPO in any manner (whether directly or indirectly).*
- In light of the submissions made, the allegations in the SCN be dropped and no penalty be imposed.*

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, hearing opportunity was provided to the Noticee. In this regard, Noticee was provided opportunity of personal hearing

on November 23, 2020 through video conferencing on the Webex platform. Authorised Representatives of the Noticee, on behalf of the Noticee, availed opportunity of personal hearing on November 23, 2020 and desired to submit additional reply to which the undersigned provided the Noticee 7 days' time i.e., till November 30, 2020. Thereafter, the Noticee submitted his post hearing reply vide email dated December 2, 2020. From the fact of the case, I also observe that on request, the Noticee was granted opportunity of inspection of documents on August 12, 2016 by the erstwhile AO.

8. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticee opportunities of being heard and submit its reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record including the replies of the Noticee.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that it has violated various provisions of SEBI Act and SEBI PFUTP Regulations, 2003.

After perusal of the material available on record, I have the following issues for consideration, viz.

- I. *Whether Noticee has violated Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003?*
- II. *Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 15HB of the SEBI Act for the Noticee?*
- III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

10. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

Relevant provisions of SEBI PFUTP Regulations, 2003:

3. No person shall directly or indirectly—

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

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.

Relevant provisions of SEBI Act 1992:

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 recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Issue I: Whether Noticee has violated Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003?

11. I have perused the facts of the case, gist of allegations made against the Noticee as per the SCN, summary of the submissions made by the Noticee, documents available on record and my findings thereof are specified below:

Findings:

a) From the fact of the case, I observe that the Noticee had traded in shares of Tijaria on the first day of trading i.e., on October 14, 2011.

b) The following allegations are made against the Noticee in the SCN:

- The Noticee had aided and abetted 7 retail allottees in BSE and 34 retail allottees in NSE in giving them an exit option to sell their holdings at a premium to the issue price. Noticee had bought the shares at a high price from the 7 retail allottees in BSE and 34 retail allottees in NSE.
- In turn, Noticee was given an exit by Chetan Dave on BSE & NSE, who had bought shares in structured trades.

- Noticee was acting as a front and was aiding and abetting those who had interest in ensuring that the retail allottees who were allotted shares in the IPO, are able to exit at a premium to the issue price.
- c) It is alleged that the Noticee gave exit to 7 retail allottees in BSE and 34 retail allottees in NSE, and in turn, Noticee was given an exit by Chetan Dave on BSE & NSE in structured trades. In this regard, my findings are as under:
- i. I find that it is not in dispute that the Noticee had executed trade both in NSE and BSE on the first day of listing i.e., on October 14, 2011 and had bought 26,651 shares from 7 retail allottees at BSE and 1, 00,556 shares from retail 34 allottees at NSE. It is also fact that there were a trades of retail allottees in the scrip of TPL on the day of listing. However, the relevant issue to decide herein is whether any unfair trade practice/manipulation is arising out of these trade of the Noticee as alleged in the SCN or any intention to enter into such transaction/trade is evident from the material available on record. The proof of fraudulent /manipulative transaction in the circumstances always depends on inference drawn from a mass of actual details, the nature of transaction, conduct of the parties etc., It is difficult to prove intent by direct evidence in these type of manipulation and therefore circumstantial evidence has to be taken into consideration. Further the circumstantial evidence should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved since it is exceedingly difficult to prove facts which are especially with in the knowledge of parties concerned. The legal proof in such circumstances partakes the character of a prudent man's estimate as the probabilities of the case.

I find that the Noticee carried out buy and sell trades both in BSE as well as in NSE. Out of these trades executed, it is alleged that the



shares sold by the 7 retail allottees in BSE and 34 in NSE who were allotted maximum of 2757 shares in the IPO were bought primarily by the Noticee along with certain entities and given exit option to them.

In addition, from reply of the Noticee, I find that apart from the abovementioned trades, the Noticee had also bought 1,72,793 shares from others in the market. However, no detailed analysis of overall trading pattern of the Noticee with market participants other than with retail allottees has been brought out.

It is also alleged that, on October 14, 2011, the Noticee had sold shares to Chetan Dave in a synchronized manner. In this regard, I find that the Noticee had placed only 2 sell orders which matched with purchased orders of Chetan Dave. With regard to these trades, what were the pending orders prior to these orders, trading pattern of Chetan Dave has not been brought out on record. From the fact of the case, I find that by buying and selling both at NSE and BSE, Chetan Dave incurred loss of Rs. 28,87,932/- on NSE and Rs.29,21,815/- on BSE and his gross total income as per assessment year 2011-2012 was Rs 46,350/-. However, why Chetan Dave would enter synchronized trades with Kirti Kothari and incur huge loss despite his miniscule gross total income has not been brought out on record. Further, direct connection, in terms of financial transaction/off market transfer/ any other linkages, between Kirti Kothari and Chetan Dave has not been established.

Therefore, I find that in the instant case the evidence and material available on record is insignificant to hold that the trades executed by the Noticee to give exit to the retail allottees and also exited by it in synchronized trade with Mr. Chetan Dave. Further establishing intent or fraudulent motive in commission of such trade is

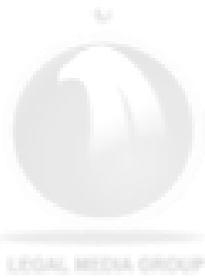


absolutely imperative to allege anyone with fraudulent and unfair trade practice. In the present case there is no such document/information/evidence provided which establish such fraudulent intention. Besides, I find that at BSE during 9.15 am to 10am, sell orders for 19,44,900 shares were executed out of which Kirti Kothari bought 26,651 shares from 7 retail allottees which is mere 1.37% of traded quantity during the aforesaid period. Similarly, at NSE during 9.15 am to 10am, sell orders for 37,95,054 shares were executed out of which Kirti Kothari bought 1,00,556 shares from 7 retail allottees which is mere 2.64% of traded quantity during the aforesaid period.

I also note that though it was alleged that the Noticee had given exit option to retail allottees, I find that there is no material on record/evidence to prove that the Noticee was connected to the counter parties to its trade nor is connected with directors/promoter of the company.

It is therefore, as far as the transaction of the Noticee concerned, I am of the view that there is hardly any evidence against the Noticee on involvement so as to proceed against it for the alleged violation merely because the Noticee trade involves /matched with the sell order of the retail allottees and buy order of Chetan Dave without any connection or evidence on the same to prove that it is an unfair trade practice/manipulative in nature.

- ii. In addition, there is nothing on record to substantiate the advantage/gain incurred by the Noticee by providing exit to the retail allottees and advantage/gain incurred by Chetan Dave by providing exit to the Noticee.



d) With regard to the allegation of Noticee acting as a front and was aiding and abetting those who had interest in ensuring that the retail allottees who were allotted shares in the IPO, are able to exit at a premium to the issue price, my findings are as under:

- From the fact of the case, I observe that there is no clarity to whom Noticee was acting as a front and to whom Noticee was aiding and abetting for giving exit to retail allottees.
- Further, there is nothing on record (a) to substantiate the allegation of manipulative intent behind aiding and abetting, (b) about who was the person to whom Noticee was fronting or aiding or abetting, (c) about who was the person who had interest in ensuring that the retail allottees are able to exit at a premium to issue price.

e) In view of the above, I am of the view that the allegations made against the Noticee for violation of Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003 have not been established.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 15HB of the SEBI Act for the Noticee?

The provisions of Section 15HA and Section 15HB of the SEBI Act, 1992 read as under:

SEBI Act 15HA - "Penalty for fraudulent and unfair trade practices-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

SEBI Act 15HB - Penalty for contravention where no separate penalty has been provided

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

12. In view of the foregoing, since the allegations made against the Noticee regarding violation of Section 12A of SEBI Act, 1992 and Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003 have not been established, therefore, the Noticee is not liable for monetary penalty under Section 15HA and Section 15HB of the SEBI Act, 1992.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

13. Since, the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

14. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby dispose of the Adjudication Proceedings initiated against Kirti Ramji Kothari vide Show Cause Notice dated January 28, 2016.

15. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: January 22, 2021

Place: Mumbai

G RAMAR

ADJUDICATING OFFICER