WTM/MPB/EFD-1-DRA-4/ 91 /2020

SECURITIES AND EXCHANGE BOARD OF INDIA

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

Sl. No.	Name	Permanent Account Number
1	DPK Stock and Securities Limited	AACHB9339M
2	Shivam Investments	ABMPK8540Q
3	Caps Finstock Services Private Limited	AAACC4192J
4	Peeyush Agarwal	AACPA6470C
5	AJC Securities & Finance Private Limited	AABCA1253B
6	Supreme Lease Finvest Private Limited	AABCS8098J
7	Shailja Investments Limited	AAACS3302E
8	Omkam Commodities Private Limited (Earlier Known as "Kanhai Commodity Intermediaries Private Limited")	AACCK3363K

In the matter of Polar Pharma India Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation into the scrip of Polar Pharma India Limited (hereinafter referred to as **"PPIL"** / **"the Company"**) for the period from July 04, 2005 to September 13, 2005 (hereinafter referred to as **"the investigation period" / "IP"**) to ascertain whether there was any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and possible violation of provision of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market)

Regulations, 2003 ("hereinafter referred to as **'PFUTP Regulations'**). The scrip of the Company was listed on the Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**), Calcutta Stock Exchange and Bhubaneswar Stock Exchange. However, the scrip was traded at BSE, during the period of investigation.

2. Upon analysis of trading activity in the scrip of PPIL, investigation revealed that DPK Stock & Securities Limited (hereinafter referred to as **'DPK' / 'Noticee No. 1'**), Shivam Investments (hereinafter referred to as **'Shivam' / 'Noticee No. 2'**), Caps Finstock Services Private Limited (hereinafter referred to as **'Caps'/ 'Noticee No. 3'**), Mr. Peeyush Agarwal (hereinafter referred to as **'Peeyush' / 'Noticee No. 4'**), AJC Securities & Fin. Pvt. Limited (hereinafter referred to as **'AJC' / 'Noticee No. 5'**), Supreme Lease Finvest Private Limited (hereinafter referred to as **'Supreme' / 'Noticee No. 6'**), Shailja Investments Limited (hereinafter referred to as **'Shailja' / 'Noticee No. 7'**) and Omkam Commodities Private Limited (Earlier Known as "Kanhai Commodity Intermediaries Private Limited") (hereinafter referred to as **'Omkam' / 'Noticee No. 8'**) (hereinafter collectively referred to as **"Noticees"**) had traded actively in the scrip of PPIL. During the investigation period, it is observed that the Noticees had traded substantially amongst themselves in a synchronized manner, created artificial volume in the market and also contributed to the positive LTP and manipulated the price and volume in the scrip of PPIL.

3. In view of the above, in order to protect the interests of investors and to preserve the safety and integrity of the market, SEBI vide *ad-interim ex-parte* impounding order dated February 02, 2016 (hereinafter referred to as **'Interim Order'**) issued following directions against Noticees for the alleged possible violation of the provisions of SEBI Act and PFUTP Regulations:

"…….

11. Accordingly, as an interim measure, an ad-interim ex-parte Order for impounding such alleged gains under Section 11(4)(d) of the Securities and Exchange Board of India Act, 1992 needs to be issued against the following:

Table H

Sl. No.	***Name***	***PAN***
1	*DPK Stock and Securities*	*AACHB9339M*

Sl. No.	*Name*	*PAN*
2	*Shivam Investments*	*ABMPK8540Q*
3	*Caps Finstock Services Pvt. Limited*	*AAACC4192J*
4	*Peeyush Agarwal*	*AACPA6470C*
5	*AJC Securities & Fin Pvt. Limited*	*AABCA1253B*
6	*Supreme Lease Finvest Pvt. Limited*	*AABCS8098J*
7	*Shailja Investments Limited*	*AAACS3302E*
8	*Kanhai Commodity Intermediaries Pvt. Limited (Now Known as "Omkam Commodities Private Limited ")*	*AACCK3363K*

12. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11(1), 11(4)(d) and 11(B) of the SEBI Act, 1992, hereby order to impound the alleged unlawful gains of a sum of ₹5,03,57,419 (alleged gain of ₹2,22,82,044 + interest of ₹2,80,75,375 from August 01, 2005 to January 31, 2015), jointly and severally from the persons tabulated in the paragraph above. If the funds are found to be insufficient to meet the figure of unlawful gains, as directed above, then the securities lying in the demat account of these persons shall be frozen to the extent of the remaining value.

13. The Banks and Depositories are directed that no debits shall be made, without permission of SEBI, in respect of the bank accounts and demat accounts, held jointly or severally, by all the entities/ persons tabulated in paragraph 12 above. The Banks and the Depositories are directed to ensure that all the above directions are strictly enforced. However, credits, if any, into the accounts maybe allowed.

14. The entities/ persons tabulated in paragraph 12 above are also directed not to dispose off or alienate any of their assets/properties/securities, till such time the amounts mentioned in paragraph 12 are credited to an escrow account ['Escrow Account in Compliance with SEBI Order dated February 02, 2016 - A/c (in the name of the respective persons/ entities)'] created specifically for the purpose in a Nationalized Bank. The escrow account/s shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI. On production of proof by any of the persons, mentioned in paragraph 11, that the said money is deposited in the escrow account, SEBI shall communicate to the Banks and Depositories to defreeze the accounts.

15. Further, the entities/ persons tabulated in paragraph 11 above are directed to provide, within 7 days of this order, a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/ securities, if held in physical form and details of companies in which they hold substantial or controlling interest.

16. The above directions shall come into force with immediate effect.

……"

4. Aggrieved by the aforesaid interim order dated February 02, 2016, Omkam filed an appeal No. 08 of 2016 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**). The Hon'ble SAT vide order dated February 12, 2016 disposed of the matter in terms of the "Minutes of the Order" duly signed by advocates for both parties. As per the Minutes of the Order, Omkam / appellant accounts are to be de-frozen with immediate effect subject to the compliance of the following:

"…….

(a) The appellant to furnish security as offered in its letter dated February 05, 2016 immediately.

(b) Within ten days, the appellant to provide a fixed deposit in the sum of Rs. 39,56,290/-.

(c) Against deposit of such cash deposit the shares provided under (a) above to be released.

(d) The restraints shall be re-enforced, if the cash deposit is not made as per (b) above.

……"

5. Pursuant to Hon'ble SAT order dated February 12, 2016, Omkam vide letter dated April 06, 2016 has informed SEBI that it had made fixed deposit of Rs. 39,56,290/- in favor of SEBI and requested to defreeze its demat account. Omkam submitted the copy of fixed deposit covering letter dated February 23, 2016 issued by HDFC along with the copy of fixed deposit confirmation advice. SEBI vide letter dated April 20, 2016 had adviced NSDL and CDSL to immediately defreeze the demat account of Omkam. CDSL vide email dated April 21, 2016 informed SEBI that as per SEBI instruction it had defreeze the demat account of Omkam.

ALLEGATION IN INTERIM ORDER:

6. During the investigation period, following was *inter alia* observed:

6.1. At BSE, the price of the scrip had increased from ₹17.50 as on July 04, 2005 to ₹65.55 as on September 13, 2005, registering thereby an increase of ₹48.05 (i.e. about 274.57%).

6.2. DPK Stock & Securities (prop. Mr. D.K. Kapur) was found to be the highest buyer in the scrip of PPIL who had purchased 2,38,849 shares (i.e. 8.33% to the total market volume). The highest seller in the scrip was Mr. Peeyush Agarwal who had sold 3,95,000 shares (i.e. 13.77% of total market volume).

6.3. ***Connection:*** The Noticees were connected to each other and also with PPIL. The details of their connection are as under:

Table - 1

Sl. No.	Name of Entity	Linkages
1.	DPK	Proprietorship firm of Mr. D.K. Kapur (HUF).
2.	Caps	The directors during investigation period were Mr. D.K. Kapur and his wife Ms. Sushma Kapur
3.	AJC	The directors during investigation period were Mr. D.K. Kapur and his wife Ms. Sushma Kapur
4.	Shivam	This is proprietorship firm of Ms. Sushma Kapur wife of Mr. D.K. Kapur
5.	Supreme	The directors during investigation period were Mr. D.K. Kapur and his wife Mrs.Sushma Kapur.
6.	Peeyush Agarwal	**a.** Mr. Peeyush Agarwal is former director of PPIL who resigned on October 28, 2004. **b.** Mr. Peeyush Agarwal had financial dealings with a company of Mr. D.K. Kapur (namely APM Financial Consultants P. Ltd.) in 2005. **c.** Off-market transfer of PPIL shares by Mr. Peeyush Agarwal and/or its group companies to promoters of PPIL during 2005.
7.	Omkam	
8.	Shailja	**a.** This is an entity of Mr. Ramesh Kumar Jain, who was the director in the group companies of PPIL during 1990-2002. **b.** There was financial dealings between promoters of PPIL and Shailja Investments Ltd. & its group entities during July 2005.

6.4. ***Volume Contribution:*** The trading activities of the Noticees in PPIL are as under:

Table - 2

Name of entity	Gross Buy Qty.	Gross buy qty. as % of mkt.	Gross Sell Qty.	Gross sell qty. as % of mkt.	Net buy (sell) qty.
AJC	1,92,729	6.72	1,22,839	4.28	69,890
Caps	2,86,978	10.01	2,04,447	7.13	82,531
Shivam	2,33,330	8.13	1,04,295	3.63	1,29,035
Supreme	1,77,873	6.21	91,848	3.2	86,025
DPK	2,38,849	8.33	1,75,425	6.12	63,424
Peeyush Agarwal	0	0	3,95,000	13.78	-3,95,000
Omkam	0	0	64,100	2.24	-64,100
Shailja	1,42,361	4.96	11,000	0.38	1,31,361
Total	**12,72,120**	**44.37**	**11,68,954**	**40.77**	**1,03,166**

6.4.1. It is observed that the Noticees had bought 44.37% i.e. 12,72,120 shares and sold 40.77% i.e. 11,68,954 shares, of the total traded volume at BSE.

6.4.2. Out of the total buy of 12,72,120 shares and sale of 11,68,954 shares by the Noticees, the trades for 8,45,844 shares were among the Noticees only. The total trading by the Noticees among themselves has been found to be 29.49% of the market volume during the period of investigation. Thus, it was alleged that such trading of the Noticees had contributed to the trading volume in the scrip of PPIL.

6.5. ***Creation of artificial volume through synchronized trading:*** It was alleged that the Noticees had traded in the scrip of PPIL in a synchronized manner (wherein the buy/ sell order quantity and rates were identical and the orders for the same were placed within a time gap of 60 seconds) for a total quantity of 2,44,540 shares (i.e. 8.52% of the market volume) during the period of investigation. A sample of such trading is reproduced below:

Table – 3

Buyer Name	Seller Name	Trade Time	Buy Order Time	Sell Order Time	Trade Price	Buy Order Price	Sell Order Price	Trade Qty.	Sell Order Qty.	Buy Order Qty.	Time Diff.	Price Diff.	Qty. Diff.
DPK Stocks and Securities	Peeyush Agarwal	11:45:36	11:45:36 AM	11:45:29 AM	47	47	47	5000	5000	5000	0:00:07	0	0
		11:45:47	11:45:46 AM	11:45:45 AM	47	47	47	5000	5000	5000	0:00:01	0	0
		11:46:04	11:45:58 AM	11:46:03 AM	47	47	47	5000	5000	5000	0:00:05	0	0
		11:46:27	11:46:20 AM	11:46:27 AM	47.05	47.05	47.05	5000	5000	5000	0:00:07	0	0
		13:15:33	1:15:31 PM	1:15:33 PM	47.05	47.05	47.05	5000	5000	5000	0:00:02	0	0

6.6. The synchronized trades by the Noticees represented 8.52% of the total market volume and 28.90% of the total quantity traded amongst the Noticees. A summary of such trades are as under:

Table – 4

Synchronized trades executed amongst the suspected entities

Seller→ / Buyer↓	AJC	Caps	DPK	Peeyush Agarwal	Supreme	Total as buyer
(No. of trades) (No. of days), (Synchronized Qty.), (% of Synchronized Volume to Market Volume)						
AJC	(0), (0), 0, (0)	(0), (0), 0, (0)	(2), (1), (10000), (0.35%)	(1), (1), (5000) (0.17%)	(1), (1), (400) (0.01%)	(4), (3), (15400) (0.54%)
Caps	(1), (1), (350), (0.01%)	(1), (1), (890), (0.03%)	(6), (4), (20500), (0.71%),	(8), (3), (40000), (1.40%)	(0), (0), 0, (0),	(16), (8), (61740), (2.15%)
DPK	(0), (0), 0, (0)	(4), (1), (17500), (0.61%)	(0), (0), 0, (0)	(16), (5), (94900), (3.31%)	(0), (0), 0, (0)	(20), (6), (112400), (3.92%)
Shivam	(0), (0), 0, (0)	(6), (2), (15000), (0.52%)	(0), (0), 0, (0)	(8), (3), (40000), (1.40%)	(0), (0), 0, (0)	(19), (5), (55000), (2.12%)
Total as Seller	**(1), (1), (350), (0.01%)**	**(11), (4), (33390), (1.16%)**	**(8), (5), (30500), (1.06%)**	**(33), (8), (179900), (6.27%)**	**(1), (1), (400), (0.01%)**	**(59), (22), (244540), (8.52%)**

6.7. Thus, it was alleged that the Noticees were involved in the creation of artificial volume by indulging in synchronized trading for more than one day.

6.8. ***LTP Contribution:*** It was observed that the Noticees had contributed to the price rise in the scrip of PPIL during the investigation period. The following table shows the contribution of the Noticees (on buy side) in positive LTP:

Table - 5

Contribution to Positive LTP by suspected entities

Name	All Trades			LTP > 0			LTP < 0			LTP = 0		% of positive LTP to total mkt. positive LTP
	Net LTP	Qty. traded	No. of trades	LTP impact	Qty. traded	No. of trades	LTP impact	Qty. traded	No. of trades	Qty traded	No. of trades	
Shailja	28.2	1,42,361	277	36.65	42,054	93	-8.45	8,934	18	91,373	165	7.71
Caps	3.95	2,86,978	368	35.15	64,275	84	-31.2	61,804	121	1,60,899	163	7.40
AJC	11.7	1,92,729	232	25.15	64,187	73	-13.45	29,156	66	99,386	94	5.29
Supreme	10.25	1,77,873	255	24.2	65,715	70	-13.95	11,937	58	1,00,221	127	5.09
DPK	11.15	2,38,849	122	13.05	55,502	32	-1.9	55,200	8	1,28,147	82	2.75
Shivam	-2.95	2,33,330	128	7.05	56,041	24	-10	43,556	25	1,33,733	79	1.48

Total of group	**62.3**	**12,72,120**	**1,382**	**141.25**	**3,47,774**	**376**	**-78.95**	**2,10,587**	**296**	**7,13,759**	**710**	**29.73**
Total Market	**44.05**	**28,67,344**	**5,156**	**475.05**	**6,91,833**	**1,301**	**-431**	**4,74,092**	**1,112**	**1,701,419**	**2,743**	

Thus, it was alleged that the Noticees had contributed ₹141.25 in positive LTP (i.e. 29.73% of the total positive LTP) in the market and their net LTP contribution was ₹62.30.

6.9. ***Alleged Gains:*** Based on the analysis as given above, it was alleged that the Noticees had traded substantially amongst themselves, created artificial volume in the market and also contributed to the positive LTP and manipulated the price and volume in the scrip of PIL. In the process, the Noticees also made unlawful gains which has been calculated and given hereunder:

Table - 6

Statement showing the profits made by the suspected persons/entities while trading in the shares of PPL:

Name of Entity	Buy Qty.	Weighted Average buy price	Sell Qty.	Weighted Average sell price	Remaining or excess shares	Calculations	Gain (Amount in ₹)
A	**B**	**C**	**D**	**E**	**F**	**G**	**H**
DPK Stocks and Securities	2,38,849	53.12	1,75,425	57.19	63,424	[(D*E)+(F*61.55)]-B*C	**12,48,644**
Caps Finstock Services P.Ltd.	2,86,978	57.51	2,04,447	58.79	82,531	[(D*E)+(F*61.55)]-B*C	**5,95,117**
AJC Securities & Fin. P.Ltd.	1,92,729	57.85	1,22,839	59.23	69,890	[(D*E)+(F*61.55)]-B*C	**4,28,111**
Shivam Investments	2,33,330	51.54	1,04,295	55.82	1,29,035	[(D*E)+(F*61.55)]-B*C	**17,38,023**
Supreme Lease Finvest P. Ltd.	1,77,873	59.22	91,848	58.7	86,025	[(D*E)+(F*61.55)]-B*C	**1,52,677**
Peeyush Agarwal	0	0	3,95,000	50.9	3,95,000	(D*E)-[(B*C)+F*17.5)]	**1,31,93,000**
Kanhai Commodity Intermediaries P.Ltd.	0	0	64,100	44.81	64,100	(D*E)-[(B*C)+F*17.5)]	**17,50,571**
Shailja Investments Ltd.	1,42,361	38.03	11,175	46.12	1,31,186	(D*E)+(F*61.55)-B*C	**31,75,900**
Total							**2,22,82,044**

The opening price of the scrip of PPIL on the first day of the investigation period was ₹17.50 and the closing price on the last day of the investigation period was ₹61.55. For the calculation of the alleged unlawful gains, these figures have been reckoned.

6.9.1. From the above calculation, it is observed that the combined unlawful gains made by the Noticees from such trading was about ₹2,22,82,044.

6.9.2. The alleged gains were made during the year 2005, hence an interest at the rate of 12% simple interest per annum was also levied. A summary of the gains along with the interest is as under:

Table - 7

Name of Entity	PAN	Gain (in ₹)	Interest 12% p.a.**	Total (₹)
DPK Stocks and Securities	AACHB9339M	12,48,644	15,73,292	28,21,936
Caps Finstock Services Pvt. Limited	AAACC4192J	5,95,117	7,49,848	13.44,965
AJC Securities & Fin. Pvt. Ltd.	AABCA1253B	4,28,111	5,39,420	9,67,530
Shivam Investments	ABMPK8540Q	17,38,023	21,89,909	39,27,932
Supreme Lease Finvest Pvt. Limited	AABCS8098J	1,52,677	1,92,373	3,45,051
Peeyush Agarwal	AACPA6470C	1,31,93,000	1,66,23,180	2,98,16,180
Kanhai Commodity Intermediaries Pvt. Limited (now Omkam Commodities P. Ltd.)	AACCK3363K	17,50,571	22,05,719	39,56,290
Shailja Investments Ltd.	AAACS3302E	31,75,900	40,01,635	71,77,535
Total		**2,22,82,044**	**2,80,75,375**	**5,03,57,419**

*** Interest calculated on illegal gains from 01/08/2005 till 31/01/2016*

6.9.3. From the above table, the alleged illegal profits made by the Noticees stands at ₹5.03 crore (i.e. gains + interest) through trading in the scrip of PPIL.

REPLY TO THE INTERIM ORDER:

7. Supreme, AJC, Caps, Shivam and DPK vide separate but identical letters all dated February 15, 2016 submitted their reply. Their submissions in brief are as under:

7.1. That the said order has been passed in gross violation of principles of natural justice since no plausible reason has been given in the said order to indicate the urgency of impounding the proceeds nearly eleven years after the so called alleged price manipulation has taken place.

7.2. That the said order has the effect of a final order since SEBI has already concluded that they are guilty and all the banks and depositories have been directed not to make any debits from our accounts. Further, they have been directed not to dispose off or alienate any of our assets/ properties / securities.

7.3. That Article 21 of the Constitution of India confers 'Right to Life' to every citizen of India. It provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law". With the directions to Banks not to make any debits, they have been denied the basic right of 'Right to Life' and that too without following due procedure established by law.

7.4. That the direction of SEBI to Banks and Depositories to not to debit, without instructions is akin to attaching the same and denying lawful access to them. The procedure as laid down in Section 11(4)(e) of SEBI Act has not been followed while issuing instructions to Banks and SEBI has transgressed its powers. This act of SEBI is also ultra vires the SEBI Act and the Constitution of India and is bad in law.

7.5. That they deny all the allegations and findings made against them in the said order except to the extent specifically admitted by them.

7.6. That in the said order, there is no allegation of a single violation of any provision of SEBI Act and/ or regulations made there under or violation of any provision of any law for the time being in force against them. The order does not allege that they have violated any provision of any law for the time being in force which proves that it is SEBI's own case that they have not violated any provision of SEBI Act and / or regulations made there under. Hence, they should be discharged at the earliest and no restrain order is sustainable on facts and in law in my case.

7.7. That their case is similar to the case of *'Aditi Dalal'* and '*H B Stockholdings'* wherein the Hon'ble SAT has already decided the issue of delay in initiation of proceedings. In the present matter, the alleged manipulation in the case of PPIL is said to have taken place in the year 2005 and the said order fearing that with the initiation of investigation and quasi -judicial proceedings, the entities/ persons may divert the unlawful gains have been passed in the year 2016 i.e. nearly eleven years after the alleged manipulation. There has been inordinate delay in the initiation of the proceedings and for which no explanation has been given in the said order. Therefore, this order is bad in law and is in gross violation of principles of natural justice.

7.8. That Hon'ble SAT, in an order passed in the case of H B Stockholdings (SAT Appeal no. 114 of 2012) observed that:-

7.8.1. Human memory has a short shelf life and allowing matters to go on for years together serves no purpose rather it risks loss of evidence such as important documents may get destroyed while the issue gathers dust.

7.8.2. In some situations the reputation of the innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going.

7.8.3. Inordinate delay in conducting inquiries hangs like Damocles' sword on market players and has a rather demoralising effect on them when they are ultimately exonerated of all the charges.

7.8.4. In the case of Khandwala Securities Ltd. (referred to in the order of H B Stockholding), the Hon'ble Tribunal took cognizance of the delay of 12 years on the

part of SEBI as a mitigating factor and held that punishment was not in consonance with the violation. It further observed that proceedings before SEBI require finalization within a reasonable period of time.

7.9. That all the above observations made by Hon'ble SAT are relevant in the present proceedings initiated against Supreme, AJC, Caps, Shivam and DPK, since already nearly eleven years have passed for the trading carried out in the scrip of PPIL, Damocles' sword has been hanging over them for the last eleven years and it has really effected us both mentally and physically, there is always risk of loss of evidence or the data getting corrupt since the reliance has been placed both on electronic record and the physical records etc.

7.10. That no plausible reason or the basis has been given in the said order regarding reasonability of the interest and no basis has been explained in the order to charge interest at the rate of 12%.

7.11. That SEBI does not have any powers under Section 11(1), 11(4) and 11B of SEBI Act to charge interest on any amount that is being impounded. The interest charged by SEBI vide the said order is ultra vires the SEBI Act, Article 21 of the Constitution of India and is bad in law.

7.12. That Hon'ble Securities Appellant Tribunal (SAT) in the case of Shailesh S Jhaveri (Appeal no. 79 of 2012) has already decided the period on which SEBI can charge interest. It was held by Hon'ble SAT that "when the disgorgement proceedings itself were initiated by the issue of a show-cause notice on February 29, 2008, the interest could not be charged from January, 2000. The amount of disgorgement got crystallized only on passing of the order on January 25, 2012. By the said order the Board has permitted the appellants to pay the total amount within 45 days from the date of the order. It was not an amount which was due or payable to the Government or to the Board. It is only after the Board concluded that the appellants have illegally enriched themselves and the amount of illegal gains got crystalized and disgorgement order is passed, it can be said that the amount has become payable. The Board granted 45 days time to the appellants to pay this amount. If any interest is to be charged, it can be charged only from the date of expiry of 45 days of the passing of the impugned order".

7.13. That similarly, in the present case, the interest can be charged from the date when these proceedings attain finality and they are pronounced guilty of alleged market manipulation. Charging of interest by SEBI which is ultra vires the SEBI Act is contempt of court, without finalizing the proceedings amounts to 'unjust enrichment'.

7.14. That request to provide them / authorized representative with an opportunity of Inspection of documents referred to and relied upon by SEBI while issuing the said order and the copies thereof be provided.

8. Shailja vide letter dated July 27, 2016 submitted its reply in the matter. The submissions of Shailja in brief are as under:

Preliminary Submission:

8.1. That observations under interim order are based upon an investigation report. The copies of such documents/ evidences / records / investigation report on which the order is based has not been provided. Therefore, it is requested to provide the necessary records / documents/ evidences / investigation report based on which the order has been passed.

8.2. That since 2001, Shailja has been a regular trader in the scrip of PPIL along with other scrips. Shailja has not traded in the PPIL scrip only during the said Investigation Period (July 04, 2005 to September 13, 2005) but also much prior to the investigation period and continued to trade in the scrip even after the Investigation Period. All trades of Shailja were done in ordinary course of business as per the existing market conditions.

8.3. That no connection of Shailja with any of the alleged person or party has been observed under interim order. In the interim order, a relation of promoter of Shailja i.e. Ramesh Kumar Jain is made with PPIL and its other group companies, but it is noted that PPIL or any of its group company is neither a party to the order nor any allegation is made against PPIL or its promoter and group companies. Further, none of the companies in which Mr. Ramesh Kumar Jain had directorship has been alleged for any market manipulation in the impugned order nor these companies have been alleged to have any relationship with any other entities against whom the order is passed.

8.4. In the interim order, connection is also drawn on the basis of financial dealings between promoters of PPIL and Shailja. In this regard it is submitted that Since Shailja is an investment company and it is its business activity to involve in financial dealings. Further, it may also be noted the financial dealing of Shailja with the promoters of PPIL and group entities have no relevance in the present matter as no observations has been made against PPIL per se or any of its Promoter. Therefore, it is submitted that the order fails to establish any relation between Shailja and other parties of the impugned order.

8.5. That Shailja is not imputed for synchronized trades or concerted action or role in the alleged manipulation, if any.

8.6. That the order suffers from an inordinate delay. The matter is very old and relates back to year 2005; transactions under questions are settled more than 10 years ago. Investigation was also started by SEBI in year 2010. Therefore, passing of an ex-parte order at this juncture when considerable time has been consumed by SEBI

itself clearly indicates that there was no urgency for passing an ex-parte order; and passing of ex-parte Order is highly unjustified.

8.7. That the order is punitive in nature, i.e. the observations in the order are made against Shailja only in respect of the scrip of PPIL. However, the order has restricted dealings of Shailja in entire securities market *en masse*; further the order also restricts debits into its bank accounts. The order is restricting business dealings of Shailja which is an investment company. The Order impose severe civil consequences to Shailja and direct impact on worsening financial position of Shailja. Interim order also restricts Shailja fundamental right to do trade business and commerce which is guaranteed by the Constitution of India, without following the due process of law. Therefore the Order is in violation of the Constitution of India.

8.8. That Ipso facto the order is ex-parte ad- interim. However, the findings recorded under the impugned are firm findings i.e. being concluding findings in nature, and are not prima facie findings. The impugned leads to bias; contravention of the principles of natural justice.

8.9. That impounding measure by nature is a temporary one and designed to maintain the status quo or protect the subject matter until final order is passed. In the present situation the subject matter under consideration is over 10 years old, the transactions already stand settled in 2005, beneficial interest in shares transferred, consideration realized all l0 years back. Therefore, impounding of so called alleged gains under section 11(4)(d) has been incorrectly carried out.

8.10. That an Interest @ 12% per annum had been levied which is again bad in law. More than 10 years have lapsed since the date of transactions and for the inordinate delay caused by SEBI in initiating and culminating the Investigation, the parties cannot be made to suffer or pay. Further the order is only an interim in nature and unless and until the allegations against Shailja established, how can Shailja be compelled to pay the principal or interest amount at all.

8.11. That the formula adopted towards calculation of the alleged gain is also erroneous and invalid. The value of shares which Shailja have not sold during the so called Investigation period is also added in computing the gain derived by Shailja. It is submitted that SEBI has missed out a significant fact that how the value of shares which were not sold during the 'investigation period' can be alleged to be 'unlawful'. Further, how the shares which were never sold in the market during the period can cause any loss at all to the public. Also certain shares which have not been sold at all, how same can be clubbed as 'Gain' to Shailja whether lawful or unlawful; its profit or loss has to be calculated only when the same are sold; this simple accounting principle which has been ignored in totality. Further without actual sale, profit or loss can only be notional and one cannot be charged on basis of notional figures. Further, when these shares were actually sold; Shailja have incurred loss on sale and not any profit.

Submissions on merits:

8.12. That the information of buy and sale by Shailja as given under Table B under para 5 of order is incorrect. During the so called investigation period Shailja bought 1,69,531 shares in normal course and sold only 10,900 shares.

8.13. That with respect to the observations that trades for 8,45,844 shares were done among the suspected entities, it is submitted that Shailja had no association or connection with the suspected entities, neither such connection could be established in the impugned order. Further, all the trades by Shailja were done on the automated electronic system of the Stock Exchange and the identity of counter-party was unknown.

8.14. Order states that 29.49% of the market volume has been created by the trading of suspected entities among themselves although there is no connection shown of Shailja with other entities. It is Shailja case that they are not related to any of the other entity in the impugned order. Further, without prejudicing that Shailja had no role in the alleged manipulation, it draw attention towards the fact that Order by stating that only 29.49% of the total market volume consisted of the trades amongst the so called suspected entities, it in itself accepts that as much as 70.51% of the market trading was normal. Therefore, how there can be any manipulation in the first place especially when the strong majority of the market volume was normal. Further, Shailja draw attention towards mutually contradictory observations of the Order. At one instance the Order states that trades representing only 29.49% of market volume were done among 'suspected entities'. However, at another instance Order stipulates that major trading was done by the suspected entities. The two statements are mutually contradictory one of which is surely incorrect, and also shows the haste pursued in the Order for holding guilty at one pretext or another.

8.15. With respect to observations of synchronized trades in Para 6 of the order, it is submitted that there is no allegation of synchronized trades at all on Shailja i.e. there is no mentioning of Shailja; neither any observation as such against Shailja are made in the order.

8.16. With respect to observations of impact on LTP, it is submitted that the Order itself upholds the fact that Shailja executed total 277 trades out of which 165 trades had no impact upon the Last Traded Price (LTP) that is to say that almost 60% of Shailja's trades had no LTP impact. Further, relied documents i.e. Order and trade logs have not been furnished to Shailja; replying in absence of such documents is an onerous obligation which have been unnecessarily casted. Further, it may be noted that positive impact on LTP could have been for numerous reasons as against the one noted in Order. Further, it is submitted that all the trades were genuine at the time of their execution and it is only with a hind sighted view that such observations have been marked on the trades. However, a pragmatic approach to the facts and

circumstances will make it abundantly clear that the trades were utterly authentic. Therefore, considering the cryptic nature of the allegations and regular and bonafide of trading by Shailja in scrip of PPIL, Shailja deny it at the outset.

8.17. With respect to para 8 of the order, it is submitted that Shailja was a regular investor in the scrip of PPIL; all trade during the investigation period was done on-market and was not aware of the identity of the counter parties. Therefore the observation of creating artificial volume and trading among suspected entities is baseless.

8.18. With respect to the observations of illegitimate gains, it is submitted that para 8 of the order which provides for unlawful gains is overtly wrong and biased. Without prejudice to the contention that Shailja was nowhere involved in any manipulative trading, the Table has taken sell quantity as 11,175 which is erroneous, it is clarified at the onset that only 10,900 shares were quantity sold by Shailja during the investigation period i.e. 6,000 shares and 4,900 shares were sold on July 23, 2005 and September 13, 2005 respectively. Therefore, sale of 10,900 shares even if calculated at the average price of Rs.46.12 (as mentioned in Order) the total value of such trade was only Rs. 5,02,708/-. Further, the purchase amount for 10,900 shares calculated at the average price taken in the order comes at Rs.4,14,527. Therefore, gain if any on sale of 10,900 shares was only of Rs. 88,181/- which nonetheless was absolutely legitimate. It is also submitted that except sale of 10,900 shares no other sale was done by the Shailja during the investigation period. Therefore, price of Rs. 61.55/- i.e. closing price of 13.09.2005 which is the last day of investigation period used for calculating gains on remaining shares is patently erroneous as those shares were not sold during the investigation period or at this price. Moreover, it is placed on record that the rest of shares were sold by Shailja at much lower prices between October 2005 to June 2009 and losses were incurred on such sale. These significant facts has been miserably ignored by the Order, this is a blatant error which has vitiated the whole formula. Therefore, without accepting the allegation of unlawful gains, it is submitted that the formulae applied in Table F is unjustified and erroneous.

8.19. With respect to the levy of exorbitant interest under para 9 of the Order, it is submitted that the interest so levied is patently illegal on two folds. Firstly, that there is no case of manipulation against Shailja in the scrip of PPIL; Order on its face records that Shailja has not been alleged for synchronized trading or in creating fictitious volumes. Secondly, even assuming but without accepting that there is a prima facie case of manipulation, even then this ex-parte order is unsustainable as far as it relates to Shailja, for the reason that SEBI has itself taken more than 5 years in coming with an order despite the fact that investigation started in year 2010. Facts and circumstances of case makes it apparent that delay if any in passing of the Order has been on account of the SEBI, this fact of delay in passing the Order has also not been disputed by SEBI. Therefore, levying of an exorbitant interest of Rs.40,01,635

@ 12% per annum under the Table G which is even more than the alleged unlawful gain of Rs. 31,75,900 shows the arbitrary exercise of the powers by the market regulator (SEBI) without even considering the facts and circumstances of the case and principles of equity.

8.20. With respect to para 10 and 11 of the order, it is pertinent to note that the Investigation which is mentioned in para 10 of the Order was started by SEBI way back in year 2010 and that considerable time of more than 5 years elapsed since the SEBI took cognizance of this matter. However, the concern of diversion of so-called unlawful gains never arose and as a matter of fact Shailja was allowed to deal freely into the securities market before passing of this Order. However, lately this unusual concern of SEBI regarding diversion of so called unlawful gains by Shailja has arisen. Here at this juncture Shailja put forth following facts which proves that this concern of SEBI apart from suffering from an inordinate delay is also unusual and untenable in law. Firstly, the matter under consideration is very old and relates back to year 2005; transactions under questions are settled more than 10 years ago. Gains, if any had already been utilized. Secondly, had it been Shailja intention to divert the gains or to hinder the proceedings of SEBI, it would have done it at the time of initiation of the proceedings and would not have extended utmost cooperation and have furnishing the documents and information to the SEBI.

8.21. That in the present case there was no urgency on the date of passing of Order which called for interference by SEBI that too with these drastic measures. However, on the contrary the fact is that in the instant case the Order has been passed after a period of more than 10 years from the dates of settled transaction. That assuming but without admitting that there was an urgency it existed long back i.e. at the time when the investigation was initiated by SEBI.

8.22. That the impounding of so called alleged gains under section 11(4)(d) has been wrongly done under the order; the power of impounding vested with the SEBI is a temporary measure used for maintaining status quo or protect the subject matter until final order is passed. However, in the instant case the subject matter under consideration is almost more than a decade old, transactions are settled and the amount has been already utilized; there cannot be status quo now after this inordinate delay. Impounding measure, if any would have been taken by SEBI when the investigation was initially started. The impounding measure has been used arbitrarily as no urgency or necessity is present in the instant case demanding such an action.

8.23. With respect to observations made under para 12 of the Order we submit that even assuming but without accepting that there is a case of manipulation in the scrip, despite of the presence of all the aforesaid facts and circumstances not only the severe charge of manipulation has been imputed to Shailja, but also this order has been passed jointly and severally for a sum of Rs. 5,03,57,419. Whereas the alleged

amount of so called unlawful gains made by Shailja is only Rs. 88,181/-. On what grounds and under which power this joint and several order has been passed has not been elaborated. This Joint and several Order casts an excessive burden upon Shailja in addition to the burden of exorbitant amount of interest. Therefore, owing to these patent illegalities the Order is unreasonable and liable to be set aside in lemine.

8.24. That Shailja have not violated any provision of law as alleged or otherwise.

9. Peeyush vide letter dated May 06, 2016 and Omkam vide letter dated May 10, 2016 submitted their reply in the matter. Their common submissions in brief are as under:

Preliminary Submission:

9.1. That the order suffers from inordinate delay and has been issued after over ten years from the dates of settled transactions i.e. in year 2005; no urgency subsisted to pass ex-parte order, neither any justifiable reason has been set out in the order for passing it ex-parte.

9.2. The order is penal in nature assuming but without admitting that there was a prima facie case of manipulation, even then the observations are erroneous against Peeyush and Omkam; they only pertain to scrip of PPIL. The order has restricted their dealings into entire securities market and in general, by restricting debits into his bank account and demats account. Therefore, the order is restricting Peeyush dealings from all market places i.e. cash, derivative and currency segment as well as Commodities derivatives and etc; Order is severely infringing his constitutional rights to freely carry out trade, business and commerce. The order also restricting Omkam dealings as a trading member, which has not only cause extreme prejudice and losses to the business of Omkam but has also resulted in loss to the investors and has shattered their confidence.

9.3. That impounding of so called alleged gains under section 11(4)(d) has been wrongly done; the impounding measure by nature is a temporary one and designed to maintain the *status quo* or protect the subject matter until final order is passed. That in the present situation the subject matter under consideration is over 10 years old, the transactions already stand settled 10 years back, beneficial interest in shares transferred, consideration realized all 10 years back. Further the investigation too initiated long back and had been pending for more than 5 years now. That at this juncture wherein 10 years have already lapsed since concerned cause of action occurred and more than 5 years has lapsed since the investigation was initiated, using impounding measure now is not only inappropriate, bad in law and prejudicial to Peeyush and Omkam but shall also not serve any purpose. Therefore, without prejudice to the contention that Peeyush and Omkam have done nothing wrong it is submitted that the impounding measure being taken with this inordinate delay that to in such an unwarranting case is manifestly an arbitrary and gross misuse of power; the impounding has lost its substratum and is highly punitive.

9.4. That contrary to the principles of natural justice, Peeyush and Omkamhave not been provided with the documents/evidences/records/investigation report based on which the order has been passed. Further, the opportunity of post decisional hearing is not effective, and has become infructuous on absence of such documents / evidences/records/ investigation report which has been relied upon for passing the order. Thus, Peeyush and Omkam hereby also request SEBI to provide the necessary records/documents /evidences/investigation report based on which the ex-parte ad interim order has been passed.

9.5. *Price was high before his trading into the scrip* - That the investigation period starts from 04.07.2005 and ends on 13.09.2005. As on 04.07.2005 the closing price in the scrip was Rs. 19.30/-. For the first time peeyush sold his shares on 09.08.2005 and on the said day the price had already risen to Rs. 39 i.e. Appx Rs. 20 more than the price of 04.07.2005. Peeyush last trade during investigation period was as on 09.09.2005 and on said date the closing price was Rs.61.40. For the first time Omkam sold its shares on 15.07.2005 and on the said day the price had already risen to Rs. 32.25 i.e. Appx Rs. 13 more than the price of 04.07.2005. Omkam last trade during investigation period was 12.09.2005 and on said date the closing price was Rs.61.25.Therefore, this is to be considered that when Peeyush and Omkam sold their shares, the price of scrip had already risen.

9.6. *Nature of trades executed by Peeyush and Omkam:* With respect to the observation of trading amongst suspected entities peeyush submit that except Omkam Commodities Pvt Limited he is not related to any of the entities alleged into the order. Further, Omkam submitted that except Mr. Peeyush Aggarwal who is a shareholder and director in Omkam, Omkam is not related or connected to any of the entities alleged into the order Also, there is nothing on record which depicts any relation of Peeyush and Omkam between them and the alleged parties. They further submit that during the period they gave instructions to their broker to sell their shares in the market; broker carried out instructions and executed trades as directed. The said sale transactions were done on market system and during the Investigation Period liquidity was also high in the scrip. The trades took place as per market procedure; they did not create any hindrance into the market procedure neither any such allegation has been observed against them.

9.7. *Total trades in the market* - It submitted that order itself states that the trading done by suspected entities during the Investigation Period constitutes almost 44.37% of the total shares bought and 40.77% of the total shares sold. Now this shows that the remaining majority fraction i.e. approx 55% and 59% were genuine trades in the market. Further as per SEBIorder itself out of the total trades being executed in the market, only 29.49% of the total market volume consisted of the trades amongst the so called suspected entities. Now it is beyond comprehension, that when as much as 70.51 % trades are being executed in the market had been normal market trading and

more than 50% of the trades being executed by non- suspected entities, how anyone can manipulate the market in the first place. Further, as a practice of the contemporary securities market this 29.49:70.51 ratio strongly implies that it were the 70.51% of trades which drove the market of scrip and not the minorities who represented only 29.49% of the market volume. However, the order does not question this 70.51 % of the trading in the scrip and takes a strong assumption that it is this 29.49% of the trading which allegedly matched among so called suspect entities and has resulted into the alleged manipulation. Further, he have been only alleged for synchronization of 1,79,900 shares which only becomes 3.13% of the total market volume for the Investigation Period. Therefore, how this minuscule matching which even if true was purely unintentional can affect such a strong market with as much as 70.51% trades being done through normal market mechanism and there are no observations of SEBI against such trades.

9.8. *No observations of contribution towards positive LTP* - The order also alleges that so called suspected entities has contributed to the price rise in the scrip of PPL during the investigation period. However, the order itself admits that Peeyush an Omkam did not have any contribution towards such LTP. That it palpably shows that their trading did not have any effect upon the price of the scrip.

9.9. *Made lawful gains; duly reported to Income Tax Authorities* - The gains made them were utterly genuine, coming out of legitimate transactions which were duly recorded. Further, the gain of Rs. 1,61,51,580 made by Peeyush as occurred on sale of 3,95,000 shares of PPIL (after holding the same for more than 4 years) was also reported to the Income Tax Authority in the Income Tax Return for Assessment Year 2006-07. Further, the gain of Rs. 22,30,956/- as made by Omkam occurred on sale of 64,l00 shares of PPIL (after holding the same for more than 2 years) was also reported to the Income Tax Authority in the Income Tax Return for Assessment Year 2006-2007.

9.10. *Exorbitant interest is result of lackadaisical approach of SEBI* - The interest which has been levied on the so called unlawful gains is bad:

9.10.1. That there is no record to suggest manipulation has been done by them in the scrip of PPIL; no allegation of synchronized trading against Omkam, no allegation of price manipulation by them, no question of legitimacy of their trades; their trades were settled through normal procedure. Therefore, allegations in order are based on impermissible hypothesis which is alien to the settled legal framework;

9.10.2. That even assuming but without accepting that there is a prima facie case of manipulation against them then even the order doesn't sustain in law for the reason that SEBI started investigation way back in year 2011; they submitted their reply furnishing requisite documents. However, they were never communicated about the status of proceedings, several years lapsed and they

thought that the matter stands settled. However, suddenly after almost over 10 years from the date of cause of action in consideration SEBI issued this ex-parte interim order which is utterly shocking as interim orders are urgent measures and there is no urgency in this case.

9.10.3. SEBI has taken more than 5 years in coming with an order despite the fact that investigation started during year 2011. Further, SEBI is driving mileage out of its own lackadaisical approach and has levied an exorbitant interest @ 12% per annum on Peeyush on the so called unlawful gain which is coming upto Rs. 1,66,23,180 i.e. even more than the original amount of alleged unlawful gains which is Rs. 1,31,93,000 (which in fact is genuine and not illegal as alleged) and on Omkam on the so called unlawful gain which is coming upto Rs. 22,05,719 i.e. even more than the original amount of alleged unlawful gains which is Rs. 17,50,571 (which in fact is genuine and not illegal as alleged). It is also not disputed by SEBI that the delay in passing the order has not occurred on SEBI's part;

9.10.4. SEBI has levied such an inflated amount of interest on so called unlawful gain which is patently illegal, unwarranted, and for which no justification has been given in the order, the whole exercise has been carried arbitrarily, unreasonably and unnecessarily without even considering the principles of equity and just justice. Therefore the order deserves to be set aside. Emphasis supplied on Decision of Hon 'ble Securities Appellate Tribunal in Zenith Infotech Limited and Ors. Vs SEBI (Appeal No.59 of 2013) decided on July 23, 2013.

9.11. *Ex-Parte Interim measure not required at this stage* - That the Investigation which is talked of in para 10 of the order was started by SEBI way back in year 2011. That more than 5 years have been elapsed since initiation of investigation, still Peeyush and Omkam were continued to deal into securities market. Further, there have not been any negative observations against them apart from this order w.r.t their dealings in the securities market. That had it been their intention to divert the gains or to hinder the proceedings of SEBI, they would have done it at the time of initiation of the proceedings and would not have extended their utmost cooperation to SEBI by replying to its summons and furnishing the documents and information. That these stated factors show their bonafide and honest behaviour which they always keep on high regard.

9.12. In the instant case the order has been passed after a period of more than l0 years from the dates of settled transaction. Hence, had there been any urgency it was at the time when the investigation was initiated. Therefore, the passing of this ex-parte interim order is bad in law, facts and circumstances of present case does not warrants passing of such an order.

9.13. *Facts and circumstances of the case does not call for Impounding; power used arbitrarily* - The impounding measure by nature is a temporary one and

designed to maintain the status quo or protect the subject matter until final order is passed. That in the present situation the subject matter under consideration is over 10 years old, transactions are settled and the amount has been already utilized; that there cannot be status quo after this inordinate delay from dates of settled transactions as Peeyush sold all the shares of PPIL during 2005 itself. Therefore, the impounding measure if any could have been passed by SEBI when the investigation was initially started. Further, the ground of interference of regulator and irreparable loss to securities market is unsubstantiated in the order and devoid of merits. The power vested in SEBI for impounding has to be exercised carefully, considering the facts and circumstances of each case and shall be within the four corners of the SEBI Act, 1992. However, the power has been used arbitrarily as no urgency or necessity is present in the instant case demanding such a harsh action. The impounding measure is taken infirmly and has lost its substratum. The order poses a harsh punitive action in the garb of remedial or punitive direction. Moreover, the order has failed and has failed badly in justifying the need of such punitive impounding measure.

9.14. *Order though interim gives firm findings*: Ipso facto the order is ex-parte ad-interim. However, the findings recorded under the impugned are firm findings i.e. being concluding findings in nature, and are not prima facie findings. These findings lead to a conclusion that nothing more needs to be done in the final order. Thus the impugned leads to bias; contravention of the principles of natural justice.

9.15. *Joint and several penalty flagrantly illegal* - Even assuming but without accepting that there is a case of manipulation against him. It is manifested by the order itself that Peeyush only sold 3,95,000 and Omkam only sold 64,100 shares as against the enormous market volume of 57,34,688 shares during the Investigation Period and the total profit earned by Peeyush was 1,61,51,580 (as per income tax return of assessment year 2006-07) by Omkam was only Rs. 22,30,956/- (as per income tax return of assessment year 2006-2007). That the order does not even establish any connection of Peeyush and Omkam between them and other alleged parties, they have adequately refuted the assumptions on which inferences of their connection with alleged parties were drawn and have placed on record that their dealing into the scrip of PPIL was independent and their reply clearly distinguishes their conduct in the market from that of the alleged parties such conduct on their part does not warrants any allegation of manipulation. However, despite of the presence of all these facts and circumstances not only the severe charge of manipulation has been imputed to him, but also this order has been passed and that too jointly and severally for a sum of Rs. 5,03,57,419. This joint and several order is also illegal as it nowhere observes their dealing into scrip in concert with the other alleged parties or so called suspected entities; that order itself admits that they had no role to play on the LTP of PPIL's scrip. But despite of all these material facts such an order has been passed

jointly and severally, without even justifying any concerted action or collusion between them and the other alleged parties. Thus, the order is bad, biased, unreasonable, arbitrary, in acute defiance of just justice and liable to be set aside in lemine.

9.16. *Infirm Methodology used for calculating gains* - That even assuming but without accepting that there was manipulation in the scrip, they submit that the methodology used in Table F of para 8 for calculating so called un lawful gains is overtly wrong and biased. Without prejudice to the contention that Peeyush and Omkam was nowhere involved in any manipulative trading, regarding the calculation of gains as provided in the table, they firstly put forth that table F of para 8 has taken buy quantity (B) and weighted average by price (C) both zero calculating such unlawful gains. However, as a matter of fact peeyush purchased 4,00,000 shares of the PPIL on 24.10.2001 @ Rs. l0 per share and Omkam purchased 3,30,000 shares of the PPIL on 15.07.2003 @ Rs. 10/- per share; the order must have considered this factual information which it has miserably ignored, moreover these shares were held for more than 4 years and 2 years respectively and thus indexation cost needs to be further added to the same, thus this blatant error has made the whole formula bad which is used in calculating so called unlawful gains. In addition to this, and more importantly in light of the fact that the observations w.r.t. the increase in LTP is not been made against them, it is further submitted that the Table F of para 8 for the purpose of calculating so called unlawful gains takes 100% incremental difference between the Acquisition price (which in my case wrongly taken as '0') and Rs. 50.90 (weighted average. sell price). That it is of utmost importance to note that my cost of acquisition is Rs. 10/- + indexation cost. Further in their case it is further worth noting that when Peeyush started selling i.e. on 08.08.2005, the price had already risen to Rs. 39/- and this ought to be taken as base price and Omkam sold shares from 15.07.2005, the price had already risen to Rs. 32.25/- and this ought to be taken as base price. Therefore, without accepting the allegation put forth in the impugned order, the formulae applied in the order for calculating so called unlawful gains is not at all justified, erroneous and is bad on facts as well as in the law.

9.17. That Peeyush and Omkam has not violated any provision of law as alleged or otherwise. Hence he should be discharged from the present proceedings at the earliest.

10. Apart from the submission made at paragraph 9 above Peeyush vide said letter dated May 06, 2016 made additional submissions which in brief are as under:

10.1. Peeyush is a strategic investor and have several strategic investments in listed as well as unlisted entities; there was no urgency for restricting his dealings into the securities through an ex-parte order, SEBI could have taken the final decision on merits after granting Peeyush an opportunity of hearing.

10.2. That Hon'ble SAT in KSL Industries Ltd v. SEBI (appeal no 9 of 2003 decided on Sept 30, 2003 held *"A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained that allegation of fraud cannot survive on mere conjectures and surmises."*

10.3. That Hon'ble Securities Law Tribunal in Pancard Clubs Limited Vs. SEBI (Appeal No. 254 of 2014) decided on September 17, 2014 held *"An analysis of the precise legal nature of the discretion conferred by these provisions would reveal that it is not boundaryless. It cannot be resorted to indiscriminately without clearly spelling out the urgency in a given case which is to be determined in each case on its own facts and circumstances. The Appellant who is directly and adversely affected by the ex-parte interim impugned order has atleast a legitimate expectation of being treated reasonably by getting an opportunity of being heard before such findings and directions are issued against him in the peculiar facts and circumstances of the case. Such an unjust action of the Respondent is liable to be struck down simply on the ground of unfairness and not due to any innuendo of malice or bad faith ... .Exercise of discretion in an unruly manner is not envisaged in the scheme of SEBI Act, particularly sections 11(1), 11(4) and 11B thereof. Invocation of discretion under these provisions therefore, has to be rational and be guided by sound principles of natural justice and fair play in action. The Impugned Order is based more on speculative inferences rather than legal conclusions drawn after analysing questions of law and disputed facts after affording an opportunity of being heard to the Appellant".*

10.4. That the ratio laid down by the Hon'ble Tribunal in the cited case is equally applicable to the present case on the grounds that (1) the order has been passed in gross misuse of discretion; (2) passed in absence of any urgency; (3) facts and circumstances did not warrant such an order to be passed, matter is more than 10 years old; (4) order passed in defiance of principles of natural justice; (5) Order is based on inferences and conjectures, SEBI could have decide the case on merits after hearing.

10.5. That Hon'ble Securities Appellate Tribunal in Zenith lnfotech Limited and Ors vs. SEBI (Appeal No. 59 of 2013) decided on July 23, 2013 held *"We hasten to add that Respondent No. 1 is empowered to pass ex-parte ad- interim orders in urgent cases but this power is to be exercised sparingly in most deserving cases of extreme urgency. In the case in hand, on its own showing, we note that Respondent No. 1 had knowledge of the matter from the very beginning. Paragraph 8 of the impugned*

order itself makes it abundantly clear that the share price of ZIL fell from Rs. 190/- on September 23, 2011 to Rs. 45/- on November 30, 2011 just in 45 days. In our considered opinion September - October 2011 would have been the right time for SEBI to act, to protect interests of investors, provided it had jurisdiction to do the same in respect of the FCCBs in question. This, however, was not done for almost 15 month for reasons not made known to this Tribunal and any sort of urgency having already disappeared. Respondent No. 1 should have given an opportunity to the Appellants by supplying a copy of the complaint and calling upon them to present their defence. This has admittedly not been done and no cogent and convincing reason has been put forth for depriving the Appellants of such a valuable right of being heard before passing the impugned order in question. "

10.6. That while deciding the above cited case Hon'ble Tribunal also gave its on the post decisional hearing and held *"'Lastly, we turn to the contention of the learned senior counsel for Respondent No. 1. Mr. Shyam Mehta that an opportunity of hearing was given to the Appellants by granting them three weeks' time to reply in the impugned order itself. It is difficult for us to agree with Mr. Mehta on this issue. It is settled that if the essentials of justice in the sense of granting opportunity of hearing are ignored in passing an order to the prejudice of a person, the order is a nullity for want of natural justice and no amount of post-decisional hearing can cure the same. We, therefore, hold that such a post decisional hearing in the fact and circumstances of the present case is no more than eyewash".*

10.7. That the substantive facts of the case on which the decision in the matter of Zenith was given is present in my case the facts are (1) matter relates back to cause of action which is over 10 years old; (2) opportunity of hearing not granted ex-parte order passed. Facts does not warrant such an urgency, more so SEBI initiated investigation in 2011 and Peeyush furnished information to it. Therefore, SEBI was aware of this matter atleast 5 years ago when investigation was first started (3) firm findings are made in the order on basis of conjectures and inferences; (4) order passed joint and several freezes debit into Peeyush bank and demat accounts and directs Peeyush to deposit a sum of Rs. 5,03,57,419 for defreeze of such accounts. Further apart from these significant facts the ratio is equally applicable to the present case. I request your good office to consider the case in light of the pronouncements of the Hon'ble Tribunal and settled legal position.

Submissions on merits:

10.8. *Connection with PPIL –*

10.8.1. That except Kanhai Commodities Pvt Limited (now Omkam Commodities Pvt Limited) in which he is a director and shareholder, Peeyush do not share connection with any of the alleged entities. That Peeyush is a strategic investor and ordinarily make investments in promising ventures (both listed and

unlisted), similarly he invested through direct allotment of 4,00,000 shares of PPIL on 24.10.2001. The investment was planned as a long term strategic investment and against such investment he was offered with a non-executive position (Investor Director) on the board of PPIL. As an Investor Director (Non-executive) he served on board of PPIL from 27.09.2001 to 28.10.2004.

10.8.2. That relation between Peeyush and PPIL were not very comfortable and he decided to resign from its Board and resigned as on 28.10.2004. The Investigation Period starts almost l0 months after he resign from the company. That there has been no off-market transfers by Peeyush to the promoters of PPIL but few shares of PPIL were sold by his group entities through off market transaction to the promoter of PPIL much before investigation period. The said transactions were duly disclosed to the stock exchange.

10.8.3. That Peeyush being director in PPIL as well as off-market sales by to promoter of PPIL by group entities are matters of facts and well disclosed. Further, these facts or past relation with PPIL has no bearing upon present matter at all. Hence, becomes infructuous for the purpose of present case. There is nothing in the entire impugned order to show that due to the said relation/association of PPIL, his role in the alleged price manipulation of the scrip of PPIL can be inferred or established.

10.9. *Connections drawn with other alleged parties are vague:-*

10.9.1. That Peeyush connections with other parties, who have been alleged of manipulation in the scrip of PPIL, are drawn on vague presumptions which are impermissible in law. He is a strategic investor/businessman, based in Delhi, and being an active participant into diversified businesses he know many people in business fraternity, but that doesn't means that he is connected to all of them.

10.9.2. That a very bleak correlation of his has been tried to be drawn with Mr. D.K. Kapur on basis of one of transaction of Rs. 5,00,000 with one company APM Financial. In this regard it is submitted that the said transaction is not carried by him but by Omkam Commodities as loan. Omkam Commodities is a company in financial sector and is involved in dealing with several clients on regular basis. Establishing a relation to the extent of conniving and carrying out concerted act with other entity, merely because of one off transaction of a very meager amount of Rs. 5,00,000 /- is not only too illusory but also against the well laid principal of legal jurisprudence which mandates the presentation of cogent proofs and evidences.

10.9.3. That Peeyush never had any personal dealing with APM Financial Consultants Pvt Limited in 2005. That on 01.12.2005 Kanhai Commodities Pvt Limited (now Omkam Commodities Pvt Limited) gave loan of Rs. 5,00,000/- to APM Financial Consultants Pvt Limited and such transaction does not pertains to the

investigation period. Such an isolate transaction which does not have any relation to the Investigation is an extraneous consideration and could not be used for purpose of deriving connection.

10.10. That investment in PPIL was his own decision and he have not acted in association with any of the alleged parties. Peeyush sold the shares invested by him after holding them for 4 years and the decision was taken as per my business prudence. Following are the points which distinguishes his case and conduct from others:

10.10.1. Invested in PPIL shares as strategic investor; made investment during year 200l;

10.10.2. Did not buy any single shares of PPIL during Investigation Period; Only sold 3,95,000 shares after holding them for more than 4 year at prevailing market prices;

10.10.3. No personal dealings with any alleged party/ies;

10.10.4. No observation against for contributing towards positive LTP.

10.10.5. No structured trades undertaken by him; all his trades are result of market forces:

10.10.6. Peeyush did not hinder the ordinary and orderly operations of market; all his dealings confirm to the standard acceptable parameters which are well established and recognized in the securities market.

10.11. That Para no. 6 of the order allegedly observes instances of synchronize trading against Peeyush. Such observation is erroneous as the matching which has been mentioned in the table was not done on his instructions but occurred due to market procedure. That it is trite in the market that order becomes trade only when they match with counter orders. Further the order logs and trade logs have not been provided for me to counter the allegation made in this regard and with all supporting facts and evidences. He requested to provide the detailed order logs and trade logs for the investigation period. He deny the charges of executing any synchronized trades. That larger part of his total orders matched with parties other than alleged parties. This shows that when he was selling his shares, normal market forces were in place and there were no structured trades on his part. Further, he did not share any connection or relation with such alleged parties and more so had no intention or motive of entering into such kind of trades. Moreover, even if it assumed but without accepting that such trades seems like synchronized when seen in retrospect, it is significant to be noted that Synchronize trades are not per se illegal, and this has been settled by the Hon'ble Securities Appellate Tribunal in various decisions.

10.12. *Miniscule sale of shares* - During the Investigation period the total volume traded in the scrip of PPIL was 57,34,688 and total trades done during said period were 10,312. However, Peeyush only sold his 4 years old shares i.e. total 3,95,000 shares between 09.08.2005 to 09.09.2005, this sale happened to fall under the Investigation Period. That his sale is as meagre as 6.8% of the total market volume at BSE.

10.13. *Observations of Synchronized trading are half baked* – He reiterate that order logs and trade logs must be provided to him to make his submissions with corroborating data. Further the observation of synchronized trades is half baked as far as it relates to him; he place on record that the sale of 3,95,000 shares were made in tranches through trades executed between 09.08.2005 to 09.09.2005. That out of such trades done by him over a period of time some 5 trades has been picked up wherein only 25,000 shares are sold. That it is his case that the sample relied upon by the order suffers from patent infirmity on following grounds

10.13.1. All the transactions were done through electronic trading system; he was unaware about the identity of the counter party. He traded independently in the shares and was not aware whether the other alleged parties are also trading into the scrip. It is highly unacceptable on the part of order to mark his trades as illegal and bad just because they matched with the alleged parties with whom he do not share any connection with respect to the trading in the scrip. No such evidence is placed on record for establishing my connection in the alleged synchronization.

10.13.2. He sold 3,95,000 shares into the market which happened to fall under the investigation Period. Table C depicts only 5 instances involving a miniscule quantity of 25,000 shares being apprx 0.4% of the total market volume in the scrip. That assuming but without accepting, had it been his intention to synchronize the trades why he would have done it for such minor fraction of shares.

10.14. *No artificial volume could have been created by Peeyush* - The allegation of creating artificial volume although made very firmly in the order is vague on facts as nothing material has placed in the order suggesting how he created artificial volume. He submit that he did not buy any share of PPIL after 2001: he sold only 3,95,000 shares i.e. merely 6.8% of the total market volume; all trades were done in open market; he do not share any connection with any of the alleged parties. Therefore, even assuming but without accepting that such trades were synchronized how miniscule % of his trades (as alleged under Table D of the order) of the total market volume can create artificial market volume or even have an impact upon the market volume.

10.15. *Order is Punitive not remedial or preventive* - The order on the contrary did not refrain Peeyush from dealing into securities market and Peeyush can buy securities, only debits are restricted into his demat and bank account, emphasis supplied on para 13 of the order. The order has frozen his bank accounts, he cannot utilize such bank accounts to pay off/discharge his monetary obligations. Therefore, this order apart from being non remedial on the ground that it does not intend to correct, remove, lessen a wrong, fault or defect is also not preventive as he is still allowed to deal into securities market. This clearly shows that he do not pose any potential injury to the securities market. Therefore, passing the ex-parte order and impounding

gains of 10 years old transaction is manifestly wrong, and merely an outcome of non-application of mind and arbitrariness which is prima facie contrary to the real essence of powers vested into it. This unashamed illness of order clearly states its intention of penalizing him on one pretext or other. The order is highly unreasonable and unwarranted considering the facts and circumstances of present case.

11. Apart from the submission made at paragraph 9 above Omkam vide said letter dated May 10, 2016 made additional submissions which in brief are as under:

11.1. The matter is very old and relates back to year 2005; during 2011, Omkam provided the requisite information and documents to SEBI; extended utmost cooperation during the investigation. SEBI itself took this much time in this matter. Hence, SEBI could not have passed the ex-parte order under the garb of urgency as the facts and circumstances of case do not suggest any urgency and there is no justifiable ground for passing ex-parte ad interim order.

11.2. Omkam often invests in Securities market and have investments in several companies (listed as well as unlisted); there was no grave urgency or emergency for restricting its dealings into the securities through an ex-parte order. That this order is punitive and has done severe damage to financial position as well as reputation of Omkam. SEBI could have atleast decided the matter on merits after granting me an opportunity of hearing.

11.3. Contrary to settled position of law the whole exercise of passing order has been carried out arbitrarily, without application of mind; Omkam sold few equity shares of PPIL during 2005 as an investor; Omkam is also a trading member in commodities market. However, order has ignored these essential facts and the deserted Omkam from dealing as trading member for its clients; order had frozen clients' account of Omkam which has caused enormous prejudice to the business of the trading member as well as the interest of the clients. That for alleged anomalies in the trading in scrip of PPIL, without even establishing the role of Omkam (miniscule trades, no synchronized trades, no contribution to LTP) restricting entire operations of a trading member is highly punitive and unjust and against the principals of natural justice.

11.4. That the order is counter to the scheme of section 11 of the SEBI Act, 1992 (Act) under which order has been passed; stopping the operation of the Omkam as trading member has caused losses to the business and investors, the order has gone against the essence of the provisions of SEBI Act, 1992; along with other serious infirmities the order also does not protect the interests of investors; hence, liable to be set aside at doorsill.

11.5. Approx. value of losses occurred by Omkam and its clients on account of this order is Rs. 75,00,000/-; the order is stigmatic and Omkam has lost 6 clients since passing of the order; Severe civil consequences has been borne by Omkam due to the

whimsical order which does not meet the ends of justice. Order endangers its investment to the immense volatility of securities market. That within a short while of 3 months it has suffered a loss of investments; this monetary loss, mental agony and loss of reputation as a result of the order cannot be made good by your good office.

Submission on merits

11.6. *Connection with PPIL* - That except Mr. Peeyush Agarwal who is a director and shareholder in Omkam, Omkam do not share connection with any of the alleged entities. Omkam is a trading member of commodities derivative market and ordinarily make investments in promising ventures (both listed and unlisted), similarly it invested through direct allotment of 3,30,000 shares of PPIL on 15.07.2003. The investment so made was a part of strategic investment during year 2001. The shares were sold, after holding the same for more than 2 years. There is nothing in the entire impugned order which shows Omkam role in the alleged price manipulation of the scrip of PPIL.

11.7. *Connections drawn with other alleged parties are vague* –

11.7.1. Omkam's connections with other parties, who have been alleged of manipulation in the scrip of PPIL, are drawn on vague presumptions which are impermissible in law. That being a trading member of commodities market and having good clientele, Omkam interact with many people in business fraternity, but that doesn't means that it is connected to all of them. Further it is all the more important to note that vis-a-vis other alleged entities namely DPK, Caps, AJC, Shivam, Supreme and Shailja, Omkam have no relation, association or knowledge.

11.7.2. That a very bleak correlation has been tried to be drawn with Mr. D.K. Kapur on basis of one of transaction of Rs. 5,00,000 with one company APM Financial. That in this regard, it is submitted that the said transaction was carried on 01.12.2005 as loan; such amount was given through cheque, and the loan was repaid to Omkam on 05.07.2007 through a demand draft. It is important to note that Omkam Commodities is a company in financial sector and carries out varied transactions. Establishing a relation to the extent of conniving and carrying out concerted act with other entity, merely because of one off transaction out of l00s and 1000s of transactions is not only too illusory but also against the well laid principal of legal jurisprudence which mandates the presentation of cogent proofs and evidences.

11.7.3. Further, it is also significant to note that the above transaction does not falls under the investigation period i.e. 04/07/2005 to 13/09/2005. Such an isolate transaction which does not have any relation to the Investigation and even fall

beyond Investigation Period is an extraneous consideration and could not be used for purpose of deriving connection.

11.8. *Omkam case and conduct distinguished from others* - That Investment in PPIL was a strategic decision and Omkam have not acted in association with any of the alleged parties. Omkam had sold only few i.e.64,100 shares of PPIL after holding them for almost 2 years, this sale happen to fall under the so called Investigation Period. The decision to sell shares of PPIL was a commercial decision taken on the basis of our business prudence. following are the points which distinguishes its case and conduct from others:

11.8.1. Invested in PPIL shares as part of strategic investment; invested through direct allotment of 3,30, 00 shares of Rs. 10 each on 15.07.2003;

11.8.2. Sold only 64, l 00 during the investigation period shares after holding them for more than 2 years at prevailing market prices;

11.8.3. No personal dealings with any alleged party/ies;

11.8.4. No observation for contributing towards positive LTP.

11.8.5. No allegation of synchronized trades undertaken by us;

11.8.6. Omkam did not hinder the ordinary and orderly operations of market; all our dealings confirms to the acceptable parameters and standards of the market.

11.9. *No shares bought during the period of Investigation* -That Omkam subscribed for 3,30,000 shares of PPIL on 15.07.2003 as an strategic Investor; during investigation period Omkam have not bought a single share.

11.10. *Miniscule sale of shares* - During the Investigation period the total volume traded in the scrip of PPIL was 57,34,688 and total trades done during said period were 10,312. However, Omkam only sold miniscule fraction of its 2 years old shares i.e. total 64,100 shares between 15.07.2005 to 12.09.2005, this sale happened to fall under the Investigation Period. That its sale is as meagre as 1.11% of the total market volume at BSE during such period.

11.11. *No observations of Synchronized trade* - That there is no observation of synchronized trades; all the trades were done as per the market procedure. The order even after admitting that there was no synchronization on Omkam part has still imputed upon Omkam the severe charges of manipulation. The order has been passed in gross misutilisation of vested power, which should have been used by SEBI carefully. However, it seems that order has ignored all these facts and has tried all tricks to hold us guilty on one pretext or other, without any justifiable reason thus, liable to be set aside.

11.12. *No artificial volume could have been created by Omkam* -The allegation of creating artificial volume although made very firmly in the order is vague on facts as nothing material has placed in the order suggesting how Omkam created artificial volume. That considering the implicit difficulty created by this order and in absence of factual information (as the matter is more than 10 years old), it is submitted that

Omkam sold only 64,100 shares i.e. merely 1.1% of the total market volume and Omkam did not share any connection with any of the alleged parties. Therefore, how miniscule % of its trades of the total market volume can create artificial market volume or even have an impact upon the market volume.

11.13. *Order is Punitive not remedial or preventive:* The order on the contrary did not refrain Omkam from dealing into securities market and Omkam can buy securities, only debits are restricted in their demat and bank accounts, emphasis supplied on para 13 of the order. That as a result of such freeze Omkam client accounts were also frozen due to which its business as well as clients has suffered huge losses. Omkam was unable to utilize such bank accounts to pay off/discharge its monetary obligations. Therefore, Omkam approached SEBI and representation dated 03.02.2016 and dated 05.02.2016, moreover under signed Mr. Ajay Jain personally met SEBI officials for elaborating the difficulty and losses caused to the broking business and clients on account of the order and further requested to defreeze such clients and settlement accounts. That during the representation SEBI suggested to offer securities of Mr. Peeyush Aggarwal worth Rs. 3,37,72,470/- for getting the client accounts active, as the situation was urgent and the business was suffering a lot Omkam had no other option but to agree with the conditions proposed by SEBI, that pursuant to this Omkam submitted letter dated 05.02.2016 to SEBI offering a lien upon the shares of Mr. Peeyush Aggarwal. However, SEBI did not pass the promised relief and Omkam have to move before Hon'ble SAT in appeal. That the appeal number 8 of 2016 was heard by SAT on 12.02.2016 wherein the order was passed by SAT that SEBI shall defreeze the accounts of Omkam on deposit of a sum of Rs. 39,56,290/-.

11.14. That the above said submissions palpably shows the prejudice cause by the order and it is Omkam case that this order apart from being non remedial on the ground that it does not intend to correct, remove, lessen a wrong, fault or defect is also not preventive as Omkam still allowed to deal into securities market only debits are restrained. This clearly shows that Omkam did not pose any potential injury to the securities market. Therefore, passing the ex-parte order and impounding the gains of l0 years old transaction is manifestly wrong, and merely an outcome of non-application of mind and arbitrariness which is prima facie contrary to the real essence of powers vested into it. This unashamed illness of order clearly states its intention of penalizing it on one pretext or other. The order is highly unreasonable and unwarranted considering the facts and circumstances of present case.

INSPECTION TO THE INTERIM ORDER:

12. From the replies of all the Noticees, it is noted that all the Noticees had requested for the inspection of documents as well as the copies of relied upon documents. Pursuant to the said request of inspection of documents, SEBI vide letter dated October 04, 2016 had granted the inspection of documents on October 20, 2016 to all the Noticees. Omkam, Shailja and Peeyush had conducted inspection of documents on October 20, 2016 and relied upon documents were provided to them. SEBI had once again granted the inspection of documents on November 04, 2016 to DPK, CAPS, AJC, Supreme and Shivam. All of them had conducted inspection of documents on November 04, 2016 and relied upon documents were provided to them.

SUBMISSION POST INSPECTION:

13. Pursuant to the completion of inspection of documents, Shailja vide letter dated December 23, 2016 and June 28, 2017 submitted additional reply in the matter. Some of Shailja's submission in its additional reply is similar to the earlier reply dated July 27, 2016 and the same is not reproduced here to avoid repetition. Apart from the earlier reply, Shailja made following additional submission, which are in brief as under:
    13.1. That the BSE investigation report though examined Shailja transactions in the scrip of PPIL, it did not make any negative observation, comment or remark on Shailja.
    13.2. The criteria of investigation applied by SEBI was misguided as it targeted on the top 10 clients by their gross buy/sell quantities independently. Whereas trading in large volumes is not per se manipulation or fraud and an investor is permitted to trade in large quantities until he is doing so within four comers of law. Hon'ble Securities Appellate Tribunal has also settled the position that large volumes or % of trades are not indicators of manipulation.
    13.3. The abrupt change in criteria of investigation is evident from the face of BSE investigation report and SEBI investigation report; the change in direction of investigations from 'analyzing manipulative trade practices by the common/connected entitles' to 'analyzing top 10 clients independently by their gross buy/sell quantities' vitiated the investigations and a holistic and pragmatic view could not be taken into account; Investigation went ahead on analysing manipulation on a perfunctory formula which is not even a yardstick permissible by law.

13.4. Infirmities in investigation is manifest from the fact that Para 10 of BSE investigation Report contained name of Ms. Sushma Kapur who was alleged to be the part of Kapur Group (observed by BSE Report to be involved in causing anomalies in the scrip of PPIL). BSE Investigation Report identified that Ms. Sushma Kapur is the wife of Mr. DK Kapur and was closely connected with the Group, she was even observed to be controlling other entities of the Kapur Group. It is also evident from the BSE report that she traded in 1,43,675 shares of PPIL - bought 1,05,600shares @ Rs. 42.89 and sold 38,075 shares @ Rs. 47.12 during the period. However it is peculiar to note that the name of Ms. Sushma Kapur was dropped out of the SEBI investigation Report, owing to independently analyzing only top 10 clients by their gross buy quantity and gross sell quantity and not the total trades executed by the clients in the scrip during the period. That owing to the above-said the investigation got vitiated on following pretexts:

13.4.1. Ms. Sushma Kapur who traded 1,43,675 shares of PPIL i.e. 5.5% of the total market volume during the period and was also closely connected with the Kapur Group got excluded from the perspective of investigation.

13.4.2. Merely by virtue of purchase of 1,42,361 shares of PPIL which was made in ordinary course, Shailja name got ascribed to the alleged manipulation, in complete ignorance of fact of its past transactions in the scrip of PPIL and despite the fact that there was no negative observations against its trading.

13.5. That the quantity bought by Shailja was merely 5.4% of the total market volume, in this regard it is to be noted that the large volumes, nonetheless only meagre quantity was traded and the same cannot be the yardstick to impute the charges of manipulation. Hon'ble Securities Appellate Tribunal while deciding the appeal no. 117 of 2003 between Harinarayan G Bajaj vs SEBI, decided on 10.10.2007, has settled that large volume does not depicts manipulation.

13.6. That no negative remark has been made in respect of Shailja trading activities in the order for example there are no allegations of synchronized trading, self-trades, circular or reversal trades against Shailja in the SEBI Report.

13.7. The trading data i.e. order log and trade logs, furnished to Shailja pursuant to inspection are not complete; they are made available only for a partial period not for whole investigation period. Further, the provided trade logs does not contain the Order time, Order Quantity. That owing to the incomplete trading data we are unable to rebut the only allegation on us i.e. LTP contribution, though Shailja have made its submissions which depicts that the LTP contribution had no relation with the alleged manipulation and was rather general market phenomenon. Shailja requested SEBI to refer to the trading data provided to them pursuant to the inspection, and provide them the complete data w.r.t trading.

13.8. W.r.t the allegation of LTP contribution, Shailja places on record that it had executed total 277 trades out of which 165 trades constituting 60% of our total trades

had no impact upon the Last Traded Price (LTP), this facts is admitted in the SEBI Investigated Report as well as in the order. Further, it is to be noted that the orders were placed within the range permissible by the BSE, trades were as per the ordinary market practice and cannot be found faulty. More so, on considering these facts in light of, Shailja having no connection with the suspected entities and there being no charges of synchronization or structured trades or any other anomaly in our dealings, it become abundantly clear that the LTP variation was not manipulative, was not done with connected/associated parties or to manipulate price of the scrip. It is Shailja's case that merely Shailja trades had a net positive impact upon the price of PPIL, they should not be termed as manipulative.

13.9. In order to summarize Shailja draw attention towards the following points which distinguish Shailja case and conduct from other suspected parties:

13.9.1. Shailja were regularly dealing into the scrip of PPIL since 2001; transactions were done under normal course; Shailja persistently dealt into the scrip of PPIL even after the Investigation Period;

13.9.2. Shailja had no connection or dealings with any of the suspected party/ies;

13.9.3. As a part of the regular investments Shailja purchased 2,49,910 shares during the year 2005, out of this 1,42,361shares representing only 4.9% of the total market volume happened to fall under the Investigation Period.

13.9.4. Shailja sold 1,65,784 shares during the year 2005, out of this sale of 10,900 shares happened to fall under the Investigation Period;

13.9.5. Shailja transactions confirms to the acceptable parameters and standards of the market, they did not hinder the ordinary and orderly operations of market;

13.9.6. There is no allegation of synchronized trade, self-trades, circular or reversal trades on Shailja; no allegation or charge of creating artificial volume.

13.10. Apart from wrongly calculating the gain the order is also bad on count that it levies an extortionate interest @ 12% per annum upon such erroneously calculated gains for the unwarranted delay caused by SEBI itself. That the interest amount is coming @ Rs. 40,01,635 i.e. even more than the amount of alleged unlawful gains calculated by SEBI viz. Rs. 31,75,900 (which in fact is genuine and not unlawful as alleged). Without prejudice to Shailja submissions Shailja place on record that due to levy of interest the total amount comes at Rs.71,77,535.The levying of interest upon Shailja is manifestly illegal; an unreasonable delay have been incurred by SEBI itself.

13.11. The order is misdirected, passed without being weighed on the scales of law; order as per its own admission the order alleges that Rs. 71,77,535 (including the amount of exorbitant interest) is the unlawful gains made by Shailja. However, it has been passed jointly and severally and has claimed Rs. 5,03,57,419.

13.12. Without prejudice to Shailja submissions that Shailja are not involved in any manipulation, it is noteworthy that the impounding order was passed under section 11(4)(d). However, by the order not only proceeds in respect of transaction

concerned were impounded, but also Shailja bank accounts were attached. That as a matter of fact SEBI is undoubtedly empowered to attach bank accounts by following a procedure which is precisely covered under provisions of section 11(4)(e) and requires prior approval of a Judicial Magistrate of the first class having jurisdiction. However, on the contrary the required process of law has not been followed and Shailja bank accounts were attached without securing order from a Judicial Magistrate of the first class having jurisdiction. The legal position of securing approval of Judicial Magistrate of first class has been very recently accepted and established by SEBI in the order dated August 25, 2016 passed in the matter of dealings in the shares of Eco Friendly Food Processing Park Limited, Esteem Bio Organic Food Processing Limited, Channel Nine Entertainment limited and HPC Biosciences Limited, the relevant extract runs as follows:

> *"To address this contention, it is pertinent to note that section 11(4)(e) of the SEBI Act requires an approval of the Judicial Magistrate of the First Class only for the purpose of attachment of "bank account(s)".It is important to mention that section 11(4)(e} does not apply to demat accounts."*

13.13. That due to the interim order, the banking transactions of Shailja are suspended for over a 16 months now thereby causing grave prejudice to Shailja. Shailja cannot undertake any business activity and the operations of the company has come to a standstill. Shailja is losing business opportunity on a regular basis and is pushed into a situation where the survival of the company has become very tough as the company cannot even use funds for meeting out its day to day necessities. With the order being pending for so long, the position of the company is further deteriorating severely.

13.14. Company has only sold the shares during the investigation period and on such sales have incurred loss.

13.15. Although, the order is interim, concluding remarks have been made by SEBI which shows that nothing more is to be discovered or decided. The interim order is punitive in nature and observations have been made in a conclusive manner thereby making the whole order against the provisions of well laid principals of law re: Interim Orders.

14. Pursuant to the completion of inspection of documents, Peeyush vide letter dated December 16, 2016 and Omkam vide letter dated December 17, 2016 submitted additional reply in the matter. Some of Peeyush submission in his additional reply is similar to the earlier reply dated May 06, 2016 and Omkam submission in its additional reply is similar to the earlier reply dated May 10, 2016 and the same are not reproduced here to avoid

repetition. Apart from their earlier replies, Peeyush and Omkam's common additional submission in brief are as under:

14.1. That no negative observation, remark or comment was made against Peeyush and Omkam in the BSE report dated 29 June 2007.

14.2. BSE Report made observations under para 10 against those entities which were found connected to each other in respect of the anomalies observed in the scrip of PPIL. That though Peeyush and Omkam had also been examined by the BSE, no observation or comment was made against him, by virtue of the fact that he had no connection with the entities observed under para 10.

14.3. That while BSE Report took connection between the entities as a threshold for investigations, SEBI strangely furthered the investigations based on the Quantum of trades. However, it is well established that large volume is not synonymous to manipulation or fraud and all securities markets across the world allow participants to trade in large quantities until they are doing so within permissible boundaries of law, this position have been firmly upheld by the Hon'ble Securities Appellate Tribunal.

14.4. On abrupt change of criteria investigation from 'analyzing manipulative trade practices by the common/connected entities' to 'analyzing top 10 clients in the scrip by their gross buy/sell quantities', a holistic and pragmatic view of the matter could not be taken and the investigations went too far on a mechanical formula of analyzing manipulation by scanning top 10 clients by their gross buy/sell quantity. It is also appalling that while collating data for top clients, the gross buys and gross sales have been taken independently and total gross trades (gross buy + gross sale) have been erroneously overlooked.

14.5. That investigation was carried out against top 10 clients based on their independent gross buy quantity and gross sell quantity on other side; which was infirm methodology, as a person who had bought and also sold in large quantities and their buy and sale together may be higher than those with gross buy and/or gross sale, have been left out of purview of investigation. An instance of this mistake is observed in the present case, i.e. Ms. Sushma Kapur who as per BSE report was observed to be closely connected with the Kapur Group (being wife of Mr. DK Kapur) and enlisted/ alleged for manipulation by BSE Report, has been dropped in SEBI Report and also in SEBI Order dated 02.02.2016. The verity of her trading as available in BSE reports shows that she had bought 1,05,600 shares @ Rs. 42.89 and sold 38,075 @ Rs. 47.12 i.e. total 1,43,675 shares constituting 5% of the total traded volume which is higher than the other entities in the SEBI list of top 10 buyer and top 10 sellers. Thus, owing to the shift of investigation criteria, the entity with closest nexus has been left out and entity like Peeyush and Omkam who actually have no nexus with other parties is alleged in the matter and the interim order has

also been passed merely because Peeyush sold 3,95,000 shares of PPIL and Omkam had traded merely in 64,100 shares which only constituted 2.4 % of the market and there being no negative observation against their trading. However, the total trading done by Ms. Sushma Kapur constituted 5.5% of the market i.e. more than twice of Omkam trading.

14.6. With respect to the allegation of him having any connection with Mr. D.K. Kapur on basis of one of transaction of Rs. 5,00,000/- with one company APM Financials, he clarified that the amount was given through cheque and the amount was repaid on 05.07.2007 through a demand draft. The entire transaction was prior to investigation period. Therefore, such an isolated legitimate transaction which nonetheless have been explained cannot be made basis for drawing any analogy alleging any role of his in the alleged manipulation, especially when there is no irregularity in his transactions and no allegation as to the irregular or manipulative trades.

14.7. That without prejudice to their submissions that they are not involved in any manipulation, it is noteworthy that the impounding order was passed under section 11(4)(d). However, as an effect of the order not only proceeds in respect of transaction concerned were impounded, but also their bank accounts were frozen. Further, bank account of Omkam which contained money of its clients and were operated by it to discharge market obligations in capacity of a commodity broker i.e. market intermediary was also frozen. That it is important to note that such said impounding was infact attachment of their bank accounts which is precisely covered under the purview of the provisions of section 11(4)(e) and requires prior approval of a Judicial Magistrate of the first class. However, in present case the required process of law was not followed and their bank accounts were attached without securing an order from a Judicial Magistrate of the first class having jurisdiction. The position of securing approval of Judicial Magistrate of first class has been accepted and established by SEBI in the order dated August 25, 2016 passed in the matter of dealings in the shares of Eco Friendly Food Processing Park Limited, Esteem Bio Organic Food Processing Limited, Channel Nine Entertainment Limited and HPC Biosciences Limited, as follows:

> *"To address this contention, it is pertinent to note that section 11(4)(e) of the SEBI Act requires an approval of the Judicial Magistrate of the First Class only for the purpose of attachment of "bank account(s)". It is important to mention that section 11(4)(e) does not apply to demat accounts."*

15. Apart from the submission made at paragraph 14 above Peeyush vide said letter dated December 16, 2016 made additional submissions which in brief are as under:

15.1. That Peeyush has been alleged for synchronized trades. During the concerned period total 4,311 trades were done in the market representing a volume of 26,10,636 (as per trade logs), that Peeyush has only executed 121 trades which were 2.8% of the over-all trades in the market. Further, out of these 121 trades only 33 trades are alleged to be synchronized. In this regard firstly Peeyush state that when he did not share any connection with the alleged entities how can his trades be said to be synchronized, as for any synchronization connection or relation directly attributing to the synchronization should be present. Secondly, had it been Peeyush intention to synchronize why he would have done it for only 33 trades when in total he executed 121 trades. His trades were done within the acceptable parameters of market, they are not malicious, SEBI report also testifies this verity. Then how by matching of few of his trades with the alleged party it is concluded that he synchronized the trades. He submit that the alleged matching could have occurred on account of multiple reasons other than the one given in SEBI Report and the order dated 02.02.2016.

15.2. Further, BSE and SEBI Report has found that Kapur Group was actively trading in the scrip, he had placed orders in the trading system which was open for market at large, it may be highly possible that coincidently few of his trades matched with the alleged entities who as per own admission of the Investigation report and the order were predominantly trading in the scrip.

15.3. That the alleged instances of synchronize trading are erroneous. The alleged matching of was not done on his instructions but occurred due to market phenomenon, which was absolutely beyond his control. He deny the charges of executing any synchronized trades and put forth that he was selling the securities in ordinary course. He put on record that the synchronization has been alleged on his trades which happened to constitute merely 3.13% of the total market volume for the Investigation Period. However, it has been ignored that a substantial part of his trading got executed with persons other than the alleged ones. Further, the fact that 88 of his total 121 trades were executed with parties other than alleged parties shows that when he was selling his shares, normal market forces were in place and the trades look synchronized on account of hind- sighted view.

15.4. The order is infringing his constitutional rights to freely carry out trade, business and commerce as vested under Article 19(l)(g) of the Indian Constitution.

15.5. That the relied evidences i.e. Trade logs and order logs for alleging charges of synchronized trading are provided incomplete and lack the necessary details which are relevant in the present case.

16. Apart from the additional submission made at paragraph 14 above Omkam vide said letter dated December 17, 2016 made additional submissions which in brief are as under:

16.1. Omkam submitted that no observation vis-a-vis Omkam trades have been made and that there is no allegation of its trades being in nature of synchronized, self-trades, circular or reversal trades, there is no allegation of Omkam trades causing any impact on the price etc.

16.2. That trading data more specifically order logs furnished to Omkam pursuant to inspection dated 20.10.2016 are not complete, provided only for a partial period, not for whole investigation period. Further, trade logs so provided does not even contain the Order time, Order Quantity. Therefore, Omkam is unable to comprehend the trading data in absence of the complete information. In this regard Omkam request SEBI to please refer to the Compact disc in which incomplete trading data has been provided to them pursuant to the inspection of documents.

16.3. That levying of interest is also unjust in the present case; interest has been levied owing to inordinate delay incurred by SEBI, there is nothing on record which shows that delay was reasonable or has been occurred due to us. The levying of interest is flagrantly illegal.

16.4. That Omkam had no role to play in LTP contribution, synchronized trades, self-trades, circular or reversal trades. Thus, the order is bad, biased, unreasonable, arbitrary, in acute defiance of just justice and liable to be set aside *in lemine*.

16.5. That the ex-parte order is all pervasive, although the observations nonetheless erroneous and unjustified, are only made in respect of the scrip of PPIL, the order has banished Omkam from entire market; interim order had not only illegally choked Omkam demat accounts but also embargoes its business dealings by restricting debits in its bank accounts which were operated by them for discharging their market obligations as commodity market broker.

17. Pursuant to the completion of inspection of documents, Supreme vide letter dated September 21, 2018, Shivam vide letter dated September 22, 2018, Caps vide letter dated September 22, 2018, AJC vide letter dated September 22, 2018 and DPK vide letter dated September 18, 2018 submitted identical / similar additional reply in the matter. Some of Supreme, Shivam, Caps, AJC, and DPK submission in their additional replies are similar to the earlier reply dated February 15, 2016 and the same are not reproduced here to avoid repetition. Apart from the earlier reply, Supreme, Shivam, Caps, AJC, and DPK made following additional submission, which are in brief as under:

17.1. That the Interim order is issued after almost 11 years post the alleged transactions were executed on the floor of stock exchange. To expect an entity to give clarification on impugned transactions after a long inordinate delay of around 11 years is unfair and arbitrary. Therefore, Interim Order dated 02.02.2016 suffers from laches and on this ground alone the captioned Interim Order qua them be withdrawn *in limine.*

17.2. That during the year 2005 - 2006 Supreme had traded in only 1scrip; Shivam had traded in around 195 scrips; Caps had traded in around 7 scrips; AJC had traded in around 6 scrips; DPK had traded in around 90 scrips.

17.3. Unlike informed institutional investors; retail investors like them have limited skill/ experience of fundamental & technical research before making an investment / trading decision. Thus, the trading decisions are mostly made on the basis of news and rumors in print media, electronic media, grapevines, investment decision of other investors, intuition and psychology of other investors. During the relevant time they believed that Pharma sector was witnessing a boom and thus they were thinking of investing in a pharma company within a reasonable price range and growth potential.

17.4. At the relevant time i.e. August 2005, from the public domain they understood that the Board of Directors of PPIL had decided to issue 3,00,000 equity shares on preferential and private placement basis to 'Stressed Assets Stabilization Fund', connection with negotiated settlement approved by SASF vide letter dated 28.07.2005 in respect of debt obligation of Company. The said news appraised to issue 30,00,000 Zero Coupon Convertible Warrant on preferential and private placement basis to strategic investors. A copy of PPIL announcement dated 04.08.2005 made on BSE is enclosed.

17.5. On 06.09.2005 PPIL company made announcement on BSE that in its Annual General Meeting the Board of Directors were authorized to issue and allot 30,00,000 Zero Coupon Convertible Warrants to strategic investors at price of Rs. 35.05 each which was fixed in accordance with SEBI Guidelines. A copy of PPIL's announcement dated 06.09.2005 made on BSE is enclosed.

17.6. After perusing such facts on public domain and being influenced by rise in price from January 2005 to July 2005; they decided to invest in scrip of PPIL.

17.7. In respect of alleged Synchronized Trades, it is submitted that:

17.7.1. There is a difference in order placed and trade executed on relevant day and thus no adverse inference of synchronization be drawn qua us in this regard.

17.7.2. Supreme had sold shares of PPIL on 4 days out of which alleged impugned trades is on 1 day; Shivam had bought shares of PPIL on 15 days out of which alleged impugned trades is on 5 days; Caps had bought shares of PPIL on 13 days out of which alleged impugned trades is on 8 days and had sold shares of PPIL on 12 days out of which alleged impugned trades is on 4 days; AJC had

bought shares of PPIL on 13 days out of which alleged impugned trades is on 3 days and had sold shares of PPIL on 9 days out of which alleged impugned trades is on 1 days; DPK had bought shares of PPIL on 13 days out of which alleged impugned trades is on 6 days and had sold shares of PPIL on 12 days out of which alleged impugned trades is on 5 days. Thus no adverse inference be drawn qua them in this regard.

17.8. While dealing in the shares of PPIL, they have not traded with any specific entity as alleged in Interim Order since all their transactions in the scrip of PPIL were executed through the normal screen based trading system of stock exchange.

17.9. Inadvertent/Accidental synchronized trade not ipso facto illegal. They placed reliance on case laws of HB Stockholdings Limited vs. SEBI (Appeal 114 of 2012) decided on 27.08.2013 and Kapil Bhuptani vs SEBI (Appeal 95 of 2013) of Hon'ble Securities Appellate Tribunal.

17.10. With respect to allegation of LTP trades, it is submitted that

17.10.1. During relevant time, Supreme total buy trade in 127 counts (constituting 49.80% of its buy during relevant period); Shivam total buy trade in 79 counts (constituting 61.72% of its buy during relevant period); Caps total buy trade in 163 counts (constituting 44.29% of its buy during relevant period); AJC total buy trade in 94 counts (constituting 40.34% of its buy during relevant period); DPK total buy trade in 82 counts (constituting 66.21% of its buy during relevant period) had no impact on LTP. This proves beyond reasonable doubt that they had no intent to manipulate price of PPIL scrip (either upward or downward).

17.10.2. Even in the past in case of miniscule/meagre quantity of inadvertent LTP trades; SEBI has taken a lenient stand and exonerated the entities. They have placed reliance on case of SEBI in respect of (1) Shyam Vyas, Bharat Bagri and Sumitra Devi Agrawal in matter of First Financial Services Ltd, (2) JMS Financial Services Ltd and Sanjay Shah in the matter if Pine Animantion Limited (3) Taran Rungta, Prem Lata Nahar, etc in the matter of Radford Global, (4) Bharat Bagri HUF and anr in the matter of Kailash Auto Finacne Limited (5) Shyam Vyas in the matter of Mishka Finance and Trading Limited.

17.11. That the alleged profit that is calculated in the interim order is erroneous and inaccurate. In fact while dealing in shares of PPIL they had incurred as over loss at the relevant point in time.

17.12. That the basis of connection that is sought to be established in Interim Order is that one Mr. Peeyush Agarwal had financial dealing with APM Financial Consultants Pvt. Ltd in 2005. However, in this regard it is submitted that the said financial transaction had nothing to do with their dealing in shares of PPIL. Further, APM Financial Consultants Pvt. Ltd is not party to present proceedings and thus no adverse inference be drawn qua them in this regard.

17.13. That their dealing in scrip of PPIL was independent and autonomous to Mr. Peeyush Agarwal.

17.14. That if they were aware of or if they were a party to any "scheme" of manipulation as alleged in SCN; they would have sold all their shares in the scrip in PPIL in the market and exited from the scrip. In fact, as on 31.03.2006, Supreme held 13,200 shares of PPIL; Shivam held 5,456 shares of PPIL; Caps held 702 shares of PPIL; AJC held 12,092 shares of PPIL; DPK held 11,000 shares of PPIL. This clearly shows that they had no malafide intentions or knowledge of any alleged price manipulation in the shares of PPIL. A copy of their demat statement as on 31.03.2006 is enclosed.

17.15. That they have no relationship with PPIL, its promoters, directors or any of its allegedly connected entities.

17.16. That they have dealt in scrip of PPIL in absolutely fair and transparent manner. They believe that there has been no grievance by any investor or broker in respect of their dealings in shares of PPIL. Therefore, allegation of SEBI that their transactions in the shares of PPIL created artificial volume in the market and also manipulated the price and volume is unfair and unwarranted.

17.17. That they deny that they have violated any section of SEBI ACT, 1992 and provision of regulations of PFUTP Regulations.

17.18. That there is no allegation of a single violation of any provision of SEBI Act and/ or regulations made there under or violation of any provision of any law for the time being in force against them. The order does not allege that they have Violated any provision of any law for the time being in force which proves that it is SEBI's own case that they have not violated any provision of SEBI Act and/ or regulations made there under.

17.19. That Principle of Natural Justice - 'Audi Alteram Partem' violated. They placed reliance on the case laws of (1) Canara Bank and Ors vs. Shri Debasis Das and Ors [Appeal (Civil) 7539 of 1999)] decided by Hon'ble Supreme Court of India on 12.03.2003, (2) Painter v. Liverpool Oil Gas Light Co. [(1836) 3 A & E 433) (3) A.R. Antulay vs. R.S. Nayak, [(1988) 2SCC 602].

17.20. Ex-parte Order passed on conjectures, surmises and probabilities - Bad in law. They placed reliance in the matter of Sterlite Industries (India) Ltd. V. SEBI (2001) 34 SCL 485 (SAT).

17.21. Strict Proof required for a serious charge of 'Fraud'. They placed reliance on the cases laws of Hon'ble SAT [1] R. K. Global v/s SEBI (Appeal no.158/2008 decided on 16.09.2010) [2] Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011).

17.22. Compelling evidence required to charge someone of "fraud". They placed reliance on the case of Ram Sharan Yadav v/s Thakur Muneshwar Nath Singh ((1984) 4 SCC 649 (AIR 1985 SC 24)]..

17.23. That proceedings after long efflux of time is meaningless. The alleged transactions in the scrip of PIPL pertains to the period of 2005 i.e. way back before 11 years of passing of Interim Order. The inordinate delay in conducting the present proceeding renders the proceedings as nugatory and meaningless. In fact, no justification or reasons for passing of Interim Order after such a long gap from the date of transactions has been mentioned in the Interim Order. Therefore, passing of Interim Order after such a long delay is bad in law & illegal and deserves to be withdrawn at the threshold itself. They placed reliance in the matter of [1] H B Stockholdings vs. SEBI (Appeal No. 114 of 2012){SAT} [2] Union of India & Anr vs. Hari Singh [W.P.(C)No.4245/2013 & CM No.9885/2013] {Hon'ble High Court of Delhi} [3] M. D. Parmar vs Y B Zala & Anr [(1979) GLR 497] {Hon'ble Gujarat High Court}

ADDITIONAL REPLY TO THE INTERIM ORDER:

18. Peeyush vide letters dated November 14, 2018, November 19, 2018, November 30, 2018 and December 04, 2018 submitted additional reply in the matter. Omkam vide letter dated December 05, 2018 submitted additional reply in the matter. Some of Peeyush and Omkam reply is similar to their earlier reply and the same are not reproduced here to avoid repetition. Apart from the earlier reply, Peeyush and Omkam made following additional reply, which are in brief as under:

18.1. The trades for which the investigation was carried out pertains to the year 2005 and the impugned order was passed in the year 2016. SEBI has taken 11 years but has yet not completed the investigation in this matter.

18.2. According to the SEBI Investigation Report, Peeyush was nowhere alleged for self-trades, circular or reversal trades, LTP contribution, new high price and impact on the price in any manner.

18.3. According to the SEBI Investigation Report, Omkam was nowhere alleged for self-trades, synchronized trades, circular or reversal trades, LTP contribution, new high price and impact on the price in any manner.

18.4. At the time SEBI initiated the investigation, SEBI approached Peeyush and Omkam several times and they have always made sure to provide full cooperation.

18.5. That Synchronized trades are not illegal per se.

18.6. That during the pendency of the interim proceeding before SEBI - WTM, SEBI's Adjudicating Officer issued a Show Cause Notice dated 8th November 2017, alleging them for the same violations as covered in SEBI Interim order. As per Peeyush and Omkam understanding, the SCN is only issued after the conclusion of investigation and preparation of final investigation report. It is also understood that

interim proceedings i.e. passing of interim order and confirmatory order is concluded while investigation is pending. It is established that investigation is already completed. Then what is the logic of continuing interim proceedings under the defense that the investigation is pending.

18.7. Issue of SCN by SEBI – AO during the pendency of Interim order is a case of duplication of proceedings which is against natural justice and they should not be prosecuted for the same matter more than once. The above can be well explained with the help of the latin maxim *'nemo debet bis vexari pro una et eadem causa'* meaning no man should be tried twice over for the same cause. No person can be alleged more than once for the same cause.

18.8. The duplication of proceedings is the result of non-application of mind and gross blunder on the part of SEBI. In this event Peeyush and Omkam request SEBI to either withdraw the interim order with immediate effect or withdraw charges against him or immediately issue fresh SCN after considering the facts of final report. It is very important as at the interim stage burden of proof was on Peeyush and Omkam while in light of completion of investigation and issue of fresh SCN, burden of proof is on SEBI.

18.9. Till date, SEBI-WTM has not issued any SCN and issue of SCN by SEBI-AO shows that the investigation has already been concluded.

18.10. The trade/order log provided to them is incomplete and covers data only for a partial period, not the whole investigation period. The incomplete information only suggests that the inquiry/investigation conducted by SEBI was also based upon incomplete data.

HEARING PURSUANT TO THE INTERIM ORDER:

19. In the interest of natural justice, vide notice of hearing dated August 28, 2018 an opportunity of personal hearing was granted to all 8 Noticees before SEBI on September 26, 2018 at SEBI, Head Office, Mumbai.

20. On September 26, 2018, Mr. Ketan Rupani Authorized Representative (hereinafter referred to as **"AR"**)on behalf of DPK, Shivam, AJC, CAPS and Supreme had appeared for hearing and made oral submissions in line of replies available on record, which are as under:

"……..

i) The provisions of law that are alleged to have been violated by the entities are not mentioned in the interim order / SCN.

ii) The entities were regular investors in the market and the transactions mentioned in the interim order were routine transactions.

iii) The trades were carried out by the entities considering certain positive corporate announcements by the company.

iv) While it is accepted that the trades were synchronized, it is submitted that the said trades were not manipulative in nature and were without any mala fide.

v) The trades amongst the entities matched on very few days.

vi) Some of the entities have also made loses.

vii) The entities did not sell everything in their accounts. If they had any wrong intention they would have sold everything.

viii) The entities did not have any connection with the directors / promoters of the company.

ix) Without prejudice to other arguments, if interest has to be applied on the profits made, it should be applied from the date of the order.

x) There are mitigating factors in their favour such as no gains were made by them, no complaints were received against them, no loss was caused to the investors, etc.

The AR was asked to submit the following on behalf of the entities:

i) Trading history of the entities including the particulars of the shares bought / sold, price, etc.

ii) Particulars of the dates on which the trades amongst the entities matched and the dates on which they didn't out of the total number of days mentioned in the interim order.

iii) Analysis of the order logs of the entities and a detailed reply on the basis of the same.

……..”

21. Peeyush and Omkam vide email dated September 20, 2018 and Shailja vide letter dated September 19, 2018 had requested for adjournment of hearing. Acceding to the request, in the interest of natural justice, vide notice of hearing dated October 10, 2018 an opportunity of personal hearing was granted to Peeyush, Omkam and Shailja before SEBI on November 06, 2018 at SEBI, Head Office, Mumbai.

22. Ms. Deepika Vijay Sawhney, Advocate, Authorized Representative (AR) had appeared on behalf of Shailja for hearing scheduled on November 06, 2018 through video/tele conference from Northern Regional Office of SEBI, New Delhi (NRO) and made oral submissions, which are as under:

"……

i) *AR reiterate the submissions dated June 13, 2016 and July 27, 2016 made by Shailja.*
ii) *The provisions of law that are alleged to have been violated by Shailja are not mentioned in the interim order.*
iii) *Shailja did not have any connection with the directors / promoters of the company. Shailja is not connected to suspected entities mentioned in the interim order. Shailja connection among other entities are erroneous. Ramesh Kumar Jain is neither director nor promoter / shareholder of Shailja. No proceedings was initiated against Ramesh Kumar Jain and PPIL.*
iv) *With respect to the connection of Shailja with promoters of PPIL, it is mentioned in the interim order that Shailja has financial dealing with promoter of PPIL, however there is no mentioning about what are the financial dealings and who are the promoters of PPIL that are involved in such financial dealings.*
v) *There is no allegation of synchronized trading, circular trading and reversal trading against Shailja.*
vi) *With respect to Shailja's LTP contribution, out of 277 trades, in 165 trades (60%) of Shailja, LTP contribution was nil.*
vii) *Shailja was regular investors in the market and the transactions mentioned in the interim order were routine transactions. Shailja was trading in the scrips of PPIL not only during investigation period but also before and after investigation period i.e. trading in the scrip of PPIL from year 2001 till 2009.*
viii) *During the investigation period, the price of the scrips was increase due to positive corporate announcements by the company and Government of India initiatives to popularize contraceptives.*
ix) *Without prejudice to other arguments, profits is to be calculated on exact buy and sell price and if interest has to be applied on the profits made, it should be applied from the date of the order and should not be charged for the period 2005 to 2016.*

AR/Shailja is directed to submit the following documents/information:

i) *An affidavit stating about Shailja relationship with Ramesh Kumar Jain;*
ii) *Full trading history of Shailja in PPIL from year 2001 to 2009;*
iii) *Shailja trading behavior/history in other scrips during the investigation period;*
iv) *Details of actual price at which Shailja had bought and sold the shares of PPIL along with back-up document;*
v) *Details of computation of profit and interest along with back-up document.*

AR of Shailja further submitted that, the documents sought belong to the period of 2005 and it is difficult to locate the said documents, however, we will make best efforts to submit those documents, in case the full documents were not located, Hon'ble Whole Time Member is requested to take a considerate view on this point……."

23. Peeyush and Omkam vide email dated November 06, 2018 had requested for adjournment of hearing due to non-availability of their AR. Vide email dated November 12, 2018, SEBI had rejected the request of the adjournment of Peeyush and Omkam and they were adviced to submit the written submission with 10 days. However, vide email as well as letter dated November 14, 2018 Peeyush and Omkam once again requested for grant of hearing. Acceding to the request, in the interest of natural justice, vide notice of hearing dated January 08, 2019 last opportunity of personal hearing was granted to Peeyush and Omkam before SEBI on February 13, 2019 at SEBI, Head Office, Mumbai. Further, vide said notice dated January 08, 2019 the copy of trade and order log was also provided to Peeyush and Omkam.

24. On February 13, 2019, Mr. Amit Shah and Ms. Parineeti Jain, Authorized Representatives (ARs) on behalf of Omkam and Peeyush Aggarwal had appeared for hearing and made following submissions:

"……

i) Mr. Peeyush Aggarwal had purchased the shares of the company in 2001 and he sold the same after 4 years.

ii) During the investigation period, the price of scrip of PPIL rose form Rs. 17.50 to Rs. 65.50. He sold the shares when the price had already risen and had reached Rs. 39. He sold the shares more than 6 months after he had resigned from the directorship of PPIL.

iii) Omkam had purchased the shares in 2003 and sold them after 2 years.

iv) The shares were bought by Mr. Aggarwal and Omkam as investment only. Both Omkam and Mr. Aggarwal have only sold the shares of PPIL encasing their investments. They did not buy a single share during the investigation period.

v) In respect of Omkam, there is no charge of synchronized trades, circular trade, etc. in the interim order.

vi) The basis of connection with other entities, which has been brought out in the interim order, is a financial transaction, which was actually a loan which Omkam had given in 2005 to APM and the same was duly repaid by APM. This transaction alone does not show any connection of Omkam with other entities.

vii) There is no other connection between Omkam and other entities.

viii) *Without prejudice to other arguments, the calculation of alleged profit done in the order is incorrect since it does not take into consideration the acquisition price of the shares of PFIL.*

ix) *Unlike the conventional SEBI practice wherein an interim order is followed by a confirmatory order and then an investigation is conducted, followed by a show cause notice, in the present case, no show cause notice has been issued to the entities. The interim order also does not call upon the entities to show cause. The consequential action envisaged by SEBI is also not contained in the show cause notice.*

……"

WRITTEN SUBMISSIONS TO THE INTERIM ORDER:

25. Shailja vide letter dated November 27, 2018 submitted additional written submission in the matter. Some of Shailja's submission is similar to its earlier reply and the same is not reproduced here to avoid repetition. Apart from the earlier reply, Shailja made following additional submission, which are in brief as under:

25.1. That Mr. Ramesh Kumar Jain was / is neither the director nor the shareholder of Shailja at any point of time from its inception i.e. 1995 till the passing of order i.e. 2015. In this regard, the Annual Returns filed with Registrar of Companies and MCA from 1995 to 2016 submitted. Based upon this very fact, the entire basis of connection and passing of the Interim Order dissipates and warrants for the recall of the order in totality.

25.2. That there are no allegations against the Promoters of PPIL. Without prejudice to the contention that Shailja have no association of Promoters of PPIL, it is submitted that when Promoters of PPIL have not been alleged for any trading/ manipulation and no proceedings are initiated against them, then why any proceedings can be brought against Shailja, even assuming it had some remote association.

25.3. That BSE report dated 29.06.2007 did not named Shailja as connected entity.

25.4. *Rationale for investing in the scrip of PPIL:* That during the period 2001-2006, Government of India was coming up with various schemes to increase the awareness about the use of contraceptive device to curb the spreading of HIV/AIDs in India, boosting the business of companies manufacturing contraceptive device. Hence, being an active investor in the securities market Shailja saw a good opportunity to invest in the scrip of PPIL expecting good returns considering the various initiatives and growing interest of Government in the industry of Male contraceptives.

25.5. That if at all, there is any gain in the transactions of PPIL to Shailja, (which is purely legal; authorized and bona-fide and also without any association with any of the other Connected Parties) the same is limited to the following:

The Value of shares sold during the Investigation period taking weighted average sell price {11,175 *46.12/-)	Rs.5,15,391/-
The Value of these shares bought during the Investigation period taking weighted average sell price (11,175 • 38.03/-)	Rs.4,24,985/-
Gain/Profit if any	Rs.90,405/-

25.6. That levying extortionate interest @ 12% per annum not only on the actual receipts but also on the alleged "Notional Profits" for the unwarranted delay caused by SEBI itself is highly unjustified, unwarranted and against the principle of law.

25.7. *Interim order is vague and bad in law:* That it is a well settled principle that the charges levied must be specific and must show how the charge levied has been committed in view of the statutory provisions. An authority must state about the act of the Shailja and how the act of the Shailja has resulted in the violations of law stated in the Notice as per the principle of natural justice. The same is required so Shailja can give his proper and efficient defense. Although, the Interim Order does not specify the statutory provisions on the basis of which charges are levied against Shailja. In this regard, Shailja placed reliance on Gorkha Security Services v.Govt.(NCT of Delhi), [(2014) 9 SCC 105] and S.L. Kapoor vs. Jagmohan & Ors., [(1980) 4 SCC 379]. Thus the interim order is vague and bad in law.

26. Shivam, Supreme, AJC, Caps and DPK, all vide identical but separate letters dated October 09, 2018 submitted additional written submission in the matter which in brief are as under:

26.1. Details of shares of PPIL bought and sold by them during the investigation period ranging from 04.07.2005 to 13.09.2005 is submitted.

26.2. Details of trades in PPIL wherein no allegation of synchronization is alleged is submitted.

26.3. Details of trades wherein no allegation of LTP is alleged is submitted.

26.4. That they have incurred loss while dealing in the sahres of PPIL.

26.5. That the transaction alleged in the interim order between Peeyusn Agarwal and APM Financial Consultant Pvt. Ltd. is a loan transaction between APM Financial Consultants Pvt. Ltd (wherein D K Kapur was a Ditrectors) and Kanhai Commodity Intermediaries Pvt. Ltd. The said loan was taken via cheque on 01.12.2005 i.e. after the investigation period and same was repaid via cheque on 05.07.2007. Copy of ledged account of Kanhai Commodity Intermediaries Pvt. Ltd in the books of APM Financial Consultants Pvt. Ltd is submitted.

26.6. Details of amount in bank account and securities held in demat account as on date is submitted.

26.7. That for the first time they have subject to any proceedings from SEBI. Till date there is no complaint against them either from broker or any investor with respect to their trading in any scrip.

27. Peeyush vide letter dated March 06, 2019 and Omkam vide letter dated March 06, 2019 submitted additional written submission in the matter. Peeyush and Omkam submissions are similar to their earlier reply and the same are not reproduced here to avoid repetition. Apart from their earlier reply, Peeyush and Omkam made following additional submission, which are in brief as under

27.1. They deny the contention of SEBI and their connection with the entity / party is a conclusive evidence of their wrong doing. Mere connection does not establish that they have done any manipulation with prior meeting of minds with suspected entities. There is no evidence of any pre-arrangement or meeting of minds with anyone in their trades.

27.2. SEBI considered that their gains generated on sale trades during the investigation period as unlawful, but failed in justifying how their total sale trades can become unlawful.

27.3. They should not be made victim for delay on the part of SEBI to issue interim order / completion of Investigation.

27.4. In the present case, SEBI has passed interim order after completion of investigation. During the inspection they were provided with the investigation report. They felt that it was interim investigation report but during the hearing SEBI informed them that it was final investigation report. This means that SEBI did not bother to issue SCN for a period of 3-4 years and continued the interim directions during the period.

SHOW CAUSE NOTICE:

28. In the present matter it is noted that pursuant to the completion of investigation report ex-parte impounding interim order dated February 02, 2016 was issued by SEBI. As the said impounding order dated February 02, 2016 was interim in nature, the said order does not contain the following:

28.1. Interim order does not call upon all the Noticees to show cause why direction of disgorgement should not be issued against the Noticees.

28.2. Consequential action envisaged by SEBI.

29. Therefore, a Common Show Cause Notice (hereinafter referred to as **'SCN'**) dated June 06, 2019 was issued to all 8 Noticees in the matter of PPIL to show cause as to why appropriate directions in terms of Section 11B read with Section 11(4)(d) of the SEBI Act, should not be initiated against them for disgorging the amount impounded vide SEBI order dated February 02, 2016 with applicable interest for the alleged violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations by Noticee No. 1 to 6 and Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of SEBI(PFUTP) Regulations by Noticee No. 7 and 8. The said SCN was sent to all the Noticees through Speed post with acknowledgment due and the same was delivered to them.

30. Further, it is to be noted SCN dated June 06, 2019 is in continuation of Interim Order dated February 02, 2016 and the allegation mentioned in the SCN dated June 06, 2019 is same as interim order dated February 02, 2016 which is mentioned at paragraph 6 above and same is not reproduced here to avoid repetition.

REPLY TO THE SCN:

31. Supreme, Shivam, Caps, AJC and DPK vide separate but identical letters dated June 30, 2019 submitted identical / similar reply to the SCN dated June 06, 2019. Replies of Supreme, Shivam, Caps, AJC, and DPK are similar to the earlier reply made by Supreme vide letters dated October 09, 2018, September 21, 2018 and February 15, 2016, Shivam vide letters dated October 09, 2018, September 22, 2018 and February 15, 2016, Caps vide letters dated October 09, 2018, September 22, 2018 and February 15, 2016, AJC vide letters dated October 09, 2018, September 22, 2018 and February 15, 2016 and DPK vide letters dated October 09, 2018, September 18, 2018 and February 15, 2016 and the same are not reproduced here to avoid repetition. Apart from the earlier reply, Supreme, Shivam, Caps, AJC, and DPK made following additional submission, which are in brief as under:

    31.1. The earlier replies and written submissions made vide their aforesaid letters in the matter were not disposed of by any order or by any other way. No order against them be passed by issuing any direction under section 11B read with sections 11(4)(d) of SEBI Act without considering their replies and written submissions.

32. Shailja vide letter July 22, 2019 submitted reply to the SCN dated June 06, 2019. Shailja vide said letter reiterated the submissions made vide letter dated July 27, 2016, December 23, 2016 and November 27, 2018 and the same are not reproduced here to avoid repetition. Shailja made following additional submission, which are in brief as under:

32.1. That the adjudication was initiated against Shailja vide adjudication SCN dated November 08, 2018 without conclusion of the earlier initiated proceedings.

32.2. The present SCN dated June 06, 2019 which is issued with same observations and allegation as interim order dated February 02, 2016 does not mentioned any of the earlier submissions made by Shailja in the matter in past 3 years.

32.3. That the temporary measures under interim order are continuing indefinitely for more than 3 years without there being any development in the matter. There is an unjustified inordinate delay in disposing the extant matter in respect of Shailja which is causing grave injustice to it. It has time and again decided in various cases that when there is no period of limitation prescribed in the Act or the Regulations for issuance of a show cause notice or completing the investigation; the authority is required to exercise its powers in reasonable time. In this regard, judgments of the Hon'ble Suprme court in Government of India vs. Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] and Adjudicating Officer, SEBI vs. Bhavesh Pabari [(2019) SCC Online SC 294] and judgment of Hon'ble SAT dated 27.05.2019 in the matter of Mr.Rakesh Kotharia and Others Vs. SEBI (Appeal No.7 of 2016) were cited.

33. Peeyush vide 2 separate letters both dated July 02, 2019 submitted reply to the SCN dated June 06, 2019. Peeyush vide said letters reiterated the submissions made vide letters dated May 06, 2016, December 16, 2016, November 30, 2018 and December 04, 2018 and the same are not reproduced here to avoid repetition. Peeyush made following additional submission, which are in brief as under:

33.1. That besides concluding the interim order either by way of confirmatory order or revoking interim order directions, SEBI issued SCN on 6th June, 2019, after 4 months of providing hearing for interim order on the same lines.

33.2. That the action recommended by Investigation Report dated 1st December, 2015 was only for Ad-interim order and Adjudication proceedings, then how SCN under section 11B is issued for the same. SEBI is requested to provide certified true copy of minutes of a meeting where this report dated 1st December, 2015 is adopted.

33.3. The SCN dated June 06, 2019 mentioned same charges as specified in the previous Ex-parte Interim Order dated February 02, 2016 for trading with suspected entities in a synchronized manner and earning unlawful gains.

33.4. That Peeyush placed reliance on Hon'ble SAT order dated 4th June, 2019 in the matter of Sanjay Gupta where it is rightly said that *".....Ex-parte interim order may be made when there is urgency. As held in Liberty Oil Mills & Ors. vs. Union of India & Ors. {AIR (1984) SC 1271} decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolise or comer the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital market. .....We are further of the opinion that whenever an ex-parte order is granted, an endevour should also be made to dispose of the matter as expeditiously as possible no sooner when the party appears…."*

34. Omkam did not submit any reply to the SCN dated June 06, 2019.

HEARING PURSUANT TO THE SCN:

35. In the interest of natural justice, vide notice of hearing dated August 21, 2019 an opportunity of personal hearing was granted to all 8 Noticees before SEBI on September 12, 2019 at SEBI, Head Office, Mumbai.

36. On September 12, 2019 Ms. Deepika Vijay Sawhney, Advocate, Authorized Representative (AR) had appeared on behalf of Shailja for hearing through video/tele conference from Northern Regional Office of SEBI, New Delhi (NRO) and made oral submissions, which are as under:

"……

(a) AR reiterate the earlier submissions made by Shailja.

(b) The Show Cause Notice dated June 06, 2019 (SCN) issued to Shailja is exact replica of Interim order dated February 02, 2016. The said SCN was issued subsequent to the hearing held in respect of interim order and submissions made by Shailja, however none of Shailja earlier submissions were considered before the issuance of SCN. Further, there is not even a reference of Shailja submissions in SCN.

(c) The fact mentioned in respect of Shailja in the Interim Order is erroneous.

(d) The transaction period was of 2005. SEBI initiated investigation in the year 2011. Interim order was passed in year 2016. Thus, there is a delay on the part of SEBI. Therefore, the interest accrued due to the delay on the part of SEBI should not be penalized to the entities.

(e) The bank account of Shailja is frozen. Since 2016, Shailja is unable to do the business. Further, there is no employee in the company.

(f) *Shailja is not related / connected at all with Mr. Ramesh Kumar Jain. He is neither the director nor the promoter of Shailja at any point of time. In this regard, Annual Returns of Shailja was submitted.*

(g) *Interim order and SCN alleges that Shailja had a financial dealings with promoter of PPIL. It is submitted that investigation is not happening against PPIL; neither interim order nor SCN was issued to PPIL; there is no allegation against PPIL or promoters of PPIL, therefore whatever connection / financial dealing of Shailja with PPIL is not relevant and cannot be accepted as evidence to establish the connection. AR did not accept the facts of this financial transaction because the said transaction has happened in 2005 and there is no record available now to prove or dis prove that there was a financial transaction of Shailja with the promoter of PPIL.*

(h) *BSE report in the matter does not include Shailja as a connected entities.*

(i) *There is no allegation of synchronized trading, circular trading and reversal trading against Shailja.*

(j) *With respect to Shailja's LTP contribution, out of 277 trades, in 165 trades (60%) of Shailja, LTP contribution was nil.*

(k) *Shailja was regular investors in the market and the transactions mentioned in the interim order were routine transactions. Shailja was trading in the scrips of PPIL not only during investigation period but also before and after investigation period i.e. trading in the scrip of PPIL from year 2001 till 2009.*

(l) *Without prejudice of the earlier submission, disgorgement amount cannot be jointly and severally. Disgorgement has to be individually.*

(m) *Detail computation of profit calculation was submitted. The said computation was on the basis of interim order / SCN.*

AR/Shailja is once again directed to submit the following documents/information:

(a) *An affidavit stating about Shailja relationship with Ramesh Kumar Jain;*

(b) *Shailja trading behavior/history in other scrips before six months of investigation period, during the investigation period and after six month of investigation period;*

(c) *Details of actual price at which Shailja had bought and sold the shares of PPIL along with back-up document;*

ARs of Shailja further submitted that, the documents sought belong to the period of 2005 and it is difficult to locate the said documents, however, we will make best efforts to submit those documents, in case the full documents were not located, Hon'ble Whole Time Member is requested to take a considerate view on this point.

AR/Shailja granted time till September 27, 2019 to submit aforesaid information/documents alongwith written submission. If AR/Shailja fails to submit the

same within the said time limit, then the matter would be proceeded further on the basis of documents available on record…"

37. On September 12, 2019, Mr. Amit Shah and Ms. Parineeti Jain, Authorized Representatives (ARs) on behalf of Omkam and Peeyush Aggarwal had appeared for hearing and made following submissions:

"…….

a. ARs reiterate earlier submissions made by Peeyush and Omkam.
b. ARs had denied the charges levelled against Peeyush and Omkam in the Show Cause Notice dated June 06, 2019 (SCN) i.e. Peeyush and Omkam had not traded substantially among themselves; had not created artificial volume in the market; had not contributed to the LTP and had not manipulated the price and volume in the scrip of PPIL.
c. Mr. Peeyush Aggarwal had got the shares of PPIL in 2001 and he sold the same after 4 years. Omkam had got the shares in 2003 and sold them after 2 years. i.e. Both Peeyush and Omkam had only sold shares.
d. There was no LTP contribution by them.
e. Peeyush had never acquired the shares from the market, he got the shares of PPIL through preferential basis. After resigning from PPIL, he had off loaded the said shares in the market.
f. The basis of connection with other entities, as mentioned in the SCN was a financial transaction, which was actually a loan which Omkam had given in 2005 to APM and the same was duly repaid by APM. APM was not charged in the SCN. The said financial transaction is subsequent to the investigation period. Therefore the same cannot be taken as the basis of connection.
g. ARs accepted that Peeyush knows Mr. D.K. Kapur.
h. Omkam is not alleged for synchronized trading.
i. Only Peeyush is alleged for synchronized trading, however he is not the part of any manipulation. He want to exit from the company so whenever there is volume in the market he had sold the shares, which got matched with other entities.
j. General practice is that interim order is passed, pending investigation, and after issuance of interim order, confirmatory order is to be passed. However, in the present matter after interim order, no confirmatory order was passed against Peeyush and Omkam, whereas show cause notice was issued to them. None of Peeyush and Omkam reply was consider before issuance of SCN and directly show cause notice was issued to them.
k. The transaction period was of 2005. SEBI completed investigation in the year 2015. There is a delay on the part of SEBI in completion of investigation. Therefore, if at all there is an order on impounding / disgorgement alongwith interest, the interest accrued due to the delay on the part of SEBI should not be penalized to the entities.

l. ARs stated / claimed that investigation report given to him during the course of inspection was interim investigation report and requested for the final investigation report or a confirmation from SEBI that interim investigation report is a final investigation report.

m. ARs requested the copy of approval note by the competent authority of action of disgorgement for which the SCN was issued.

It is clarified to the ARs that:

a. There was no proposed direction of disgorgement in the interim order, therefore, subsequently supplementary show cause notice was issued to that effect.

b. There was no further investigation by SEBI in the matter and interim investigation report as claimed by the ARs is a final investigation report.

ARs requested 7 days' time from the date of receipt of document mentioned at point (m) above for the submission of additional written submission in the matter. The request of ARs is acceded and SEBI is advised to provide the aforesaid requested document to Peeyush and Omkam / ARs at the earliest. If ARs fails to submit the submission within the said time limit, then the matter would be proceeded further on the basis of documents available on record…"

38. SEBI vide email dated September 27, 2019 to Peeyush at his email id at peeyush60@gmail.com and his authorized representative Mr. Amit Shah at his email id amit.shah1994@yahoo.com and to Omkam at its email id info@omkam.com had forward the copy of approval note by the competent authority of action of disgorgement for which the SCN dated June 06, 2019 was issued. It is noted the email was undelivered to email id peeyush60@gmail.com and info@omkam.com, however no delivery confirmation was received from email id amit.shah1994@yahoo.com. Further, it is to be noted that Peeyush was communicating with SEBI through email id peeyush60@gmail.com. No reply was received from Peeyush authorized representative Mr. Amit Shah in respect of SEBI email dated September 27, 2019.

39. Mr. D. K. Kapur vide email dated September 11, 2019 on behalf of Supreme, Shivam, AJC, Caps and DPK had requested for adjournment of hearing. Acceding to the request, in the interest of natural justice, vide notice of hearing dated September 20, 2019 an opportunity of personal hearing was granted to Supreme, Shivam, AJC, Caps and DPK before SEBI on October 10, 2019 at SEBI, Head Office, Mumbai. Further, due to

administrative exigency, vide email dated October 01, 2019hearing in respect of Supreme, Shivam, AJC, Caps and DPK was adjourned to October 17, 2019 at SEBI, Head Office, Mumbai or through video/tele conference from Northern Regional Office, New Delhi (NRO) of SEBI,. On October 17, 2019, Mr. Amit Shah and Ms. Parineeti Jain, Authorized Representatives (ARs) on behalf of Omkam and Peeyush Aggarwal had appeared for hearing through video/tele conference from NRO, SEBI and made following submissions

"…….

a. *AR reiterate earlier submissions made by Supreme, Shivam, Caps, AJC and DPK.*
b. *AR i.e. Mr. D.K. Kapur is proprietor of DPK and Shivam and director of Supreme, AJC and Caps.*
c. *Interim order dated February 02, 2016 was passed by SEBI. Subsequently SCN dated June 06, 2019 was issued by SEBI for disgorgement of amount. SCN is in similar lines of Interim Order. While issuing the SCN dated June 06, 2019, their earlier replies and written submission submitted in the matter were not considered by SEBI.*
d. *The earlier replies and written submission submitted in the matter were not disposed of by any order or by any other way.*
e. *In November 2017, Adjudication proceedings were also started. Reply were submitted, hearing was conducted, but still the matter is pending before Adjudicating officer from year 2017 till date. Thus, before starting the proceeding of disgorgement of amount, their earlier replies submitted in matter along with adjudication proceedings be disposed of first. Further, the disgorgement proceeding initiated vide SCN dated June 06, 2019 be kept in abeyance till the disposal of replies submitted in respect of interim order and adjudication proceedings.*
f. *AR confirmed that the entities mentioned at Sr. No.1 to 5 at Table A of Interim order is Mr. D.K Kapur entities. AR confirmed that APM Financial Consultants Private Limited (APM) is D. K. Kapur entity. AR confirmed that in 2005 there was only one financial dealing of Rs. 5 lakh with Mr. Peeyush Agarwal (Peeyush) / Omkam Commodities Private Limited (Earlier known as 'Kanhai Commodity Intermediaries Private Limited') (hereinafter referred to as 'Omkam') and the money was retuned in 2007. Peeyush / Omkam had transferred Rs. 5 lakh amount to APM for providing financial consultant services / professional services to Peeyush / Omkam. Later on APM was not able to give the professional services to Peeyush / Omkam, the said amount was converted into loan and was subsequently returned in 2007. The same was confirmed by Peeyush during the investigation. AR confirmed that Mr. D.K.*

Kapur know Mr. Peeyush Agarwal only in 2005. Mr. Peeyush Agarwal met Mr. D.K. Kapur through common client of Mr. D.K. Kapur.

g. *The nature of professional consultancy services are like how to deal with PPF investment, Mutual funds investment, saving accounts etc. but nothing related to stock market. The services could not be delivered because Mr. Peeyush Agarwal was not satisfied with the service which we are given and we are not able to give service which he intended to. We are not in a position to give the services which he intended because at that point of time we were dealing with 400-500 clients. The services which he wants is market survey i.e. technical analysis, which we are not allowed to do. After lot of argument, since we were not able to give him such kind of services, therefore we have refunded the money in 2007. This is the only transaction we had with Peeyush.*

h. *Further, during the investigation APM was also investigated but however APM was not treated as suspected company but my other companies were treated as suspected entities.*

i. *Peeyush was the director of PPIL till 2004. I met him 2005. When my company APM had done the transaction with Peeyush, he was not the director of PPIL, therefore AR companies should not be considered as suspected companies.*

j. *SEBI had calculated the profit which is approx. Rs. 2.22 Crore which mentioned at Table F of interim order. Out which approx. Rs. 1.81 crore does not belong to him, which belongs to Peeyush, Omkam and Shailja Investment. Only approx. Rs. 41 lakhs belong to DPK, Shivam, Supreme, Caps and AJC. The formula adopted by SEBI in calculated profit is erroneous. We did not earned a single profit in fact we had suffered loss. Further, still the stocks / shares of PPIL are lying in their demat account although BSE had delisted PPIL. They have submitted their demat statement. If we were be the party of this whole scheme or had malafide intention, then we would have been the first person to sell all the shares of PPIL but this was not the case, we are still holding the shares of PPIL.*

k. *Interim order has been passed after a delay of approx. 11 years from date of transactions.*

l. *During the investigation Supreme had traded in only 1 scrip; Shivam had traded in around 195 scrips; Caps had traded in around 7 scrips; AJC had traded in around 6 scrips; DPK had traded in around 90 scrips. A list of scrips traded is submit.*

m. *Whatever trading in the scrip of PPIL they have done, it is done on the basis information available in public domain.*

n. *With respect to synchronized trade, the quantity of order placed was much higher than the traded quantity. For eg. Order placed was of 30000, traded quantity was 20000. It is not a synchronized trading, it is screen based trading.*

o. *With respect to LTP, for DPK on 82 trades, Supreme on 127 trades, Shivam on 79 trades, Caps on 163 trades and AJC on 94 trades there was no impact on LTP.*
p. *The balance in Mr. D.K. Kapur bank account is approx. 20 lakh to 30 lakhs*

Shivam, Supreme, DPK, AJC and Caps are once again advised to submit their trading history of other scrips for 6 month before investigation period, during investigation period and 6 months after investigation period.

……."

WRITTEN SUBMISSION PURSUANT TO HEARING:

40. Pursuant to the hearing dated September 12, 2019, Shailja submitted the affidavit dated September 27, 2019, in which Shri E Mohandas director of Shailja on behalf of Shailja had stated that Shailja is not an entity of Mr. Ramesh Kumar Jain as neither he was/is the director nor the shareholder of Shailja at any point of time from its inception i.e. 1995 till the passing of order i.e. 2016. Vide said affidavit Shailja also submit the list of Companies other than PPIL on which Shailja traded during the financial year 2005-06. Shailja also stated that the basis taken for calculation of alleged gain of Rs. 90,405 as submitted in its earlier reply based upon the weighted average price.
41. Pursuant to the hearing dated October 17, 2019, Supreme, Shivam, DPK, AJC and Caps vide separate but identical letters dated November 04, 2019 had submitted additional written submission in the matter. Supreme, Shivam, DPK, AJC and Caps submissions are similar to their earlier reply and the same are not reproduced here to avoid repetition. Apart from their earlier reply, Supreme, Shivam, DPK, AJC and Caps made following additional submission, which are in brief as under:
    41.1. That M/s APM Financial Consultants (P) Ltd. (in which Mr. D. K. Kapur was a Director) received a sum of Rs. 5 Lakhs from M/s Kanhai Commodity Intermediaries (P) on 1st December, 2005. This amount was initially for rendering professional services (for Project Report, feasibility Report) but since M/s APM Financial Consultants (P) Ltd. was not able to render such services upto the expectation, therefore the said amount remained with M/s APM Consultants (P) Ltd. as loans & advances and was finally repaid on 5th July 2007. Further, M/s APM Financial Consultant (P) Ltd. also carried out trading of shares of PPIL and the same was duly investigated by SEBI. It is worth noting that while finalizing the

Investigation Report SEBI has not considered M/s APM Financial Consultants (P) Ltd. as one of the suspected entity.

41.2. That as directed during the personal hearing the details of trading in share during 6 months prior and 6 months after the investigation period viz. 1st January 2005 to 31st March 2006 are being enclosed.

41.3. That vide show cause notice dated November 08, 2017, SEBI had adjudication proceeding was initiated against them.

42. No additional written submission was submitted by Peeyush and Omkam.

FINDINGS & CONSIDERATIONS

43. I have perused the interim order, SCN, replies, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

(i) Whether the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations have been violated by Noticee No. 1 to 6 and whether the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of SEBI(PFUTP) Regulations have been violated by Noticee No. 7 and 8?

(ii) If issue No. (1) is determined in affirmative, then what directions should be issued against the Noticees?

Preliminary Objection:

44. Before moving forward in the matter, I firstly discuss preliminary objection raised by the Noticees:

44.1. ***Inordinate delay***:

44.1.1. Noticees contended that there has been inordinate delay by SEBI in the initiation of the proceedings. The matter is very old and relates back to year 2005. Investigation period was from July 04, 2005 to September 2005. SEBI started investigation in the matter in the year 2010. SEBI completed investigation in the matter in the year 2015 i.e. after 10 years from the date of transaction. The interim order was passed by SEBI on February 02, 2016 i.e. almost after 11 years from the date of transaction. Thus, inordinate delay in conducting the present

proceeding renders the proceedings as nugatory and meaningless. Further, no justification or reasons for passing of Interim Order after such a long gap from the date of transactions has been mentioned in the Interim Order. Hence, they should not be made victim for delay on the part of SEBI.

44.1.2. In this regard, I note that under Section 11C of SEBI Act, ***at any time,*** SEBI is empowered to investigate the transactions in securities which are being dealt with, in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market that has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder**.** Hence, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. Thus, I am of the view that SEBI Act has not prescribed any limitation period on SEBI to initiate or conclude investigation.

44.1.3. I also note that under Section 11(4) of SEBI Act, either pending investigation or on completion of such investigation, SEBI is empowered to pass an order in writing to impound and retain the proceeds or securities in respect of any transaction which is under investigation. Further, SEBI shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned. Thus, I am of the view that no limitation period has been prescribed under Section 11(4) of SEBI Act, on SEBI for quasi-judicial proceeding under Section 11(4) of SEBI Act.

44.1.4. In the present matter, I note that SEBI had initiated investigation in the matter of PPIL under Section 11C of SEBI Act. Thereafter, pursuant to the completion of investigation, under Sections 11(1), 11(4) and 11B of SEBI Act, SEBI passed the ex-parte interim order dated February 02, 2016 against the Noticees for impounding the alleged illegal gains for the possible violation of the provisions of SEBI Act, 1992 and PFUTP Regulations.

44.1.5. Further, I also note that there is no provision in SEBI Act or PFUTP Regulations which lays down any limitation period for action under it. Further, in the case of *Metex Marketing Pvt. Ltd. vs.SEBI* decided on June 4, 2019, Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act*

or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."

44.1.6. Hence, in view of the above, I am of the view that passage of time in initiating and concluding investigation proceedings and initiating quasi-judicial proceedings through issuance of an ex-parte to interim order itself cannot be a ground for exonerating the Noticees. . However, I add that interest of investors would be protected timely, if action for investigation for fact finding is initiated sufficiently early, if the allegation of violation comes to the knowledge of SEBI. The elapse of time can be treated as a mitigating factor for moulding the directions, if any, in the facts and circumstances of the case. Thus, I do not find any merit on the said contention of the Noticees that elapse of time alone makes the proceedings nugatory.

44.2. ***No reason for urgency for passing an ex-parte order***:

44.2.1. Noticees contended that no plausible reason has been given in the interim order dated February 02, 2016 to indicate the urgency of impounding the proceeds nearly eleven years after the so called alleged price manipulation has taken place. That in the instant case the order has been passed after a period of more than 10 years from the dates of settled transaction. Hence, had there been any urgency it was at the time when the investigation was initiated.

44.2.2. In this regard, I note that paragraph 10 of the interim order clearly state out the urgency for passing an ex-parte order, which is reproduced as under:

"…….

10. Considering the facts and circumstances of the case, the balance of convenience lies in favour of SEBI. With the initiation of investigation and quasi-judicial proceedings, it is possible that entities/ persons herein may divert the unlawful gains (subject to the adjudication of the allegation on the merits in the final order), which may result in defeating the effective implementation of the direction of disgorgement, if any to be passed after adjudication on merits. Non-interference by the Regulator at this stage

would therefore result in irreparable injury to interests of the securities market and the investors….

44.2.3. Thus, I find that interim order clearly states the reason for urgency of issuance of order i.e. with initiation of quasi-judicial proceedings, there is a risk of diversion of unlawful gains, which may result in defeating the effective implementation of the direction of disgorgement if found to be necessary and Non-interference by the Regulator at that stage would therefore result in irreparable injury to interests of the securities market and the investors. Hence I do not find any merit in the contention of Noticees that no plausible reason has been given in the interim order dated February 02, 2016 to indicate the urgency of impounding the proceeds.

44.2.4. Further, I note that the only way for SEBI to impound and retain the proceeds or securities in respect of any transaction is by way of order in writing under Section 11(4)(d) of SEBI Act. SEBI may pass the order either pending investigation or on completion of investigation and shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned which was indeed done.

44.2.5. In the present matter, it is only after the completion of investigation, SEBI had crystalized that Noticees had made unlawful alleged gains (alleged gain of ₹2,22,82,044 + interest of ₹2,80,75,375 from August 01, 2005 to January 31, 2015). Therefore, the ex-parte interim order dated February 02, 2016 for impounding the alleged gains was passed by SEBI after the completion of investigation and not during pendency or at the time of initiation of investigation. Hence, I do not find any merit in the contention of the Noticee that urgency for passing interim order was at the time when the investigation was initiated.

44.3. ***Act of SEBI, ultra vires the SEBI Act and the Constitution of India:***

44.3.1. Noticees contended that with the directions to Banks not to make any debits, they have been denied the basic fundamental right of 'Right to Life' and 'Right to do trade business and commerce' which is guaranteed by the Constitution of

India. Therefore, the interim order is in violation of the Constitution of India. Noticees further contented that the direction of SEBI to Banks and Depositories to not to debit, without instructions is akin to attaching the same. As a matter of fact SEBI is undoubtedly empowered to attach bank accounts by following a procedure which is precisely covered under provisions of Section 11(4)(e) of SEBI Act and requires prior approval of a Judicial Magistrate of the first class having jurisdiction. The said procedure as laid down in Section 11(4)(e) of SEBI Act has not been followed while issuing instructions to Banks and SEBI has transgressed its powers. Thus, this act of SEBI is also ultra vires the SEBI Act and the Constitution of India and is bad in law.

44.3.2. In this regard, I note that section 11(4)(e) of the SEBI Act requires an approval of the Judicial Magistrate of the first class only for the purpose of attachment of "bank account(s)". It is to be noted that directions vide interim order dated February 02, 2016 is to impound the alleged unlawful gains (alleged gain of ₹2,22,82,044 + interest of ₹2,80,75,375 from August 01, 2005 to January 31, 2015) jointly and severally from the Noticees and no debits in bank accounts and demat accounts of Noticees, however, credit into the accounts is allowed. I note that vide said order there is no direction of attachment of bank accounts of Noticees. The direction of no debits in bank accounts and demat accounts of Noticees is to be read with the extent of amount to be impounded (Rs. 5,03,57,419/-) from the Noticees. Further, it is to be noted that Section 11(4)(e) of SEBI Act, 1992 applies to the attachment of the bank accounts. SEBI has powers under Section 11(B) of the SEBI Act to impose restriction on debits/credit in bank accounts and demat accounts.

44.3.3. I also note that vide interim order dated February 02, 2016, Noticees were directed to credit the sum of Rs. 5,03,57,419/- (alleged gain of ₹2,22,82,044 + interest of ₹2,80,75,375 from August 01, 2005 to January 31, 2015) to an escrow account. The said order also directed that on production of proof by any of the Noticees, that the said money is deposited in the escrow account, SEBI shall communicate to the Banks and Depositories to defreeze the accounts. Hence, I am of the view that subsequent to the issuance of the interim order, Noticees had an opportunity to deposit Rs. 5,03,57,419/- in an interest bearing escrow account and

on production of proof of the same, freezing of their debits in bank and demat account will be lifted and thereafter they can continue with their business operation. I find that in the present case, on February 23, 2016 only Omkam had made a fixed deposit in favour of SEBI for a sum of Rs. 39,56,290/- which was equivalent of its unlawful gains including interest and thereafter, the freezing of debits in the bank and demat accounts of Omkam was lifted. Thus, I am of the view that Noticees always had an opportunity to continue to operate their business subsequent to the deposit of Rs. 5,03,57,419/- in an interest bearing escrow account which they had failed to avail except Omkam.

44.3.4. I note that the interim directions not to allow debits in the bank accounts of the Noticees were issued considering the modus operandi adopted by the Noticees which, prima facie, was fraudulent and with the apprehension of diversion of fund. Further, the possible directions such as disgorgement etc. under final order in the matter should not become infructuous. Therefore, towards implementation of impounding the alleged unlawful gains from the Noticees, no debits in the bank accounts and demat accounts of the Noticees have been directed. The legal effect of this direction is different from the legal effect of attachment. Thus, neither any direction of attachment of the Noticees bank accounts has been issued vide the interim order nor have any of the bank accounts of the Noticees been attached pursuant to SEBI's order. Therefore, the requirement of prior permission of Judicial Magistrate under section 11(4)(e) of the SEBI Act does not arise and SEBI has acted well within its scope and powers. Hence, in view of the above, I do not find any merit in the contention of the Noticees that action taken by SEBI vide interim order ultra vires the SEBI Act.

44.3.5. Further, I also note that the Fundamental Rights guaranteed by the Constitution of India are not absolute. There are certain restrictions which can be imposed by the state according to the procedure established by law. Article 19 of the Constitution of India covers these fundamental freedoms as well as the restrictions which can be imposed on these rights. Article 19(2) to 19(6) of Constitution of India stipulate the grounds and the purposes under which reasonable restriction can be imposed on fundamental rights. The phrase

'reasonable restriction' connotes that the limitation imposed upon a person, in enjoyment of the fundamental right, should not be arbitrary or of an excessive nature, but what is required is 'in the interest of public'.

44.3.6. I note that under Section 11(1) of SEBI Act SEBI is empowered to take such measures as it deems fit to protect the interest of investors. Further, under Sections 11(1), 11(4) and 11B of SEBI Act, SEBI is empowered to pass an interim order in the interest of investor and to promote the development of and to regulate the securities market. In the present cases the vide interim order dated February 02, 2016, interim direction to impound the alleged unlawful gains from the Noticees and not to allow debits in their bank and demat accounts were imposed in the interest of securities market and interest of investor. Under Sections 11(1), 11(4) and 11B of SEBI Act, SEBI is the parliamentary enactment recognizing the reasonable restrictions. The directions envisaged under the said Sections are empowerment by the enactment to impose reasonable restrictions. Therefore, the said directions which is imposed in the interest of public investors, are well covered under the reasonable restriction which can be imposed on fundamental rights as per Article 19(2) to 19(6) of Constitution of India. Hence, the action taken by SEBI is well within its legal power as permitted to it under SEBI Act. Therefore, I do not find any merit in the contention of the Noticees that action taken by the SEBI ultra vires the Constitution of India.

44.4. ***Alleged provisions of Law are not mentioned in interim order:***

44.4.1. Noticees contended that in the interim order dated February 02, 2016, there is no allegation of a single violation of any provision of SEBI Act and/ or regulations made there under or violation of any provision of any law for the time being in force against them.

44.4.2. In this regard, upon perusal of interim order February 02, 2016, it is noted that perusal of the interim order, the paragraph 2 reads as *"The investigation was conducted in order to inter alia ascertain the possible violation of the provisions of the SEBI Act, 1992 (hereinafter referred to as SEBI Act) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003".* The conclusion of paragraph 6 of the interim order

reads as *"From the table above, it can be observed that the suspected entities were involved in the creation of artificial volume by indulging in synchronized trading for more than one day"*. The paragraph 7 of the interim order reads as *"The investigation also observed that the suspected entities had contributed to the price rise in the scrip of PPL during the investigation period. The following table shows the contribution of suspected entities (on buy side) in positive LTP:"* Therefore, perusal of the interim order shows that there is a finding on "price rise" and "artificial volume" which are prohibited under PFUTP Regulations. Further,, I note a common SCN dated June 06, 2019 has been issued against all the Noticees which is in continuation of interim order dated February 02, 2016. The said SCN specified that provisions of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations has been allegedly violated by Noticee No. 1 to 6 and provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations has been allegedly violated by Noticee No. 7 and 8. Furthers, I note that Noticees were given 21 days' time from the date of receipt of SCN to submit their reply in the matter. Further, subsequent to the issuance of SCN dated June 06, 2019 an opportunity of hearing was also granted to the Noticees. Hence, the principle of Natural Justice has also been fully complied with. Thus, I am of the view that Noticees are aware about the provisions of law which they have been allegedly violated in view of the interim order and subsequent issuance of SCN dated June 06, 2019, which is in continuation of interim order dated February 02, 2016.

44.5. ***Opportunity of hearing not granted, Ex-parte order passed:***

44.5.1. Peeyush contended that SEBI had not provided the opportunity of hearing before issuance of interim order dated February 02, 2016.

44.5.2. In this regard, I note that under Sections 11(1), 11(4) and 11B of SEBI Act, SEBI is empowered to pass an interim order in the interest of investors and to promote the development of and to regulate the securities market. I also note that under Section 11(4) of SEBI Act, either pending investigation or on completion of such investigation, SEBI is empowered to pass an order in writing to impound and retain the proceeds or securities in respect of any transaction which is under

investigation. Further, SEBI shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

44.5.3. In the present matter, I note that subsequent to the issuance of ex-parte interim order dated February 02, 2016, all the Noticees were granted an opportunity of hearing on September 26, 2018. DPK, Shivam, Supreme, AJC and Caps had availed the same and Peeyush, Omkam and Shailja sought adjournment. Thereafter, Peeyush, Omkam and Shailja were once again granted an opportunity of hearing on November 06, 2018. Shailja availed the same and Peeyush and Omkam once again sought adjournment. Hence, Peeyush and Omkam were once again granted an opportunity of hearing on February 13, 2019 and they had availed the same. Hence, I am of the view that principle of natural justice is fully complied with and issuance of ex-parte interim order dated February 02, 2016 by SEBI was well within its legal power.

44.6. ***Change in criteria of investigation by SEBI:***

44.6.1. Peeyush, Omkam and Shailja contended that BSE investigation report though examined Peeyush, Omkam and Shailja transactions in the scrip of PPIL, it did not make any negative observation, comment against them. BSE Report took connection between the entities as a threshold for investigations, SEBI furthered the investigations based on the quantum of trades. BSE report dated 29.06.2007 did not named Shailja as connected entity. The criteria of investigation applied by SEBI was that it targeted on the top 10 clients by their gross buy/sell quantities independently. Thus, the abrupt change in criteria of investigation i.e. the change in direction of investigations from 'analyzing manipulative trade practices by the common/connected entitles' to 'analyzing top 10 clients independently by their gross buy/sell quantities' vitiated the investigations.

44.6.2. In this regard, I note that BSE examination / investigation report is in the nature of a preliminary examination and detailed investigation was conducted by SEBI. As per Section 11C of SEBI Act, SEBI is empowered to investigate the affairs of intermediary or persons associated with securities market. I also note that SEBI's investigation powers under the SEBI Act are wide enough to include any possible violation of SEBI Act and Regulations made thereunder. Thus, I am of the view that in order to identity possible violation of SEBI Act and

Regulations made thereunder, the observation to focus only analyzing the trades of 'connected suspected entities' and not 'top 10 clients independently by their gross buy/sell quantities' cannot be construed to limit the scope of investigation. Hence, I do not find any merit in the contention of Peeyush, Omkam and Shailja that change in criteria of investigation by SEBI vitiate the investigation.

44.7. ***SCN issued by SEBI without considering their replies to the interim order:***

44.7.1. Noticees contended that their earlier replies and written submissions made pursuant to the interim order were not disposed of by any order either by way of confirmatory order or by revoking the interim order directions. Additionally, after providing hearing for interim order, SEBI issued SCN on June 06, 2019 on the same lines of interim order. Thus, no order against them should be passed by issuing any direction under section 11B read with sections 11(4)(d) of SEBI Act without considering their replies and written submissions.

44.7.2. In this regard, I note that Section 11(4) of SEBI Act empowers SEBI to pass an order for reasons to be recorded in writing, in the interest of investors or securities market, by taking any of the measures mentioned in Section 11(4) of SEBI Ac. The said order can be passed either pending investigation or inquiry or on completion of such investigation or inquiry.

44.7.3. Hon'ble Supreme Court in Securities and Exchange Board of India vs. Pan Asia Advisors Limited and Another, [(2015) 14 SCC 71] has set out the scope of Section 12A of the SEBI Act. The Supreme Court held that:-

"By virtue *of such clear cut prohibition set out in Section 12-A of the Act, in exercise of powers under Section 11 referred to above, as well as Section 11-B of the SEBI Act, it must be stated that the Board is fully empowered to pass appropriate orders to protect the interest of investors in securities and securities market and such orders can be passed by means of interim measure or final order as against all those specified in the above referred to provisions, as well as against any person. The purport of the statutory provision is protection of interests of the investors in the securities and the securities market."*

44.7.4. I note that the stage at which an interim order is required to be passed is also dependent on the nature of the interim measures apart from other requirements. When the enforcement objective sought to be achieved is by means of taking the measures mentioned in Section 11(4) of SEBI Act, an interim order can be passed directing those measures. I also note one of the measures mentioned in the Section 11(4)(d) of SEBI Act is impounding the proceeds and securities in respect of any transaction which is subject matter of investigation.

44.7.5. In the instant matter, keeping in mind the balance of convenience, the interim order had been passed at that stage, after crystallization of the unlawful gains. The said crystallization was over pursuant to the completion of investigation. Alternatively, while pending investigation, on prima facie evidence of ascertainment of some unlawful gains, the interim measure at that stage, which SEBI may have taken could have been for freezing the entire bank account, as the crystallised fact of unlawful gains was not ascertained then as investigation was pending.

44.7.6. Further, I also note that consideration of replies of the entity made pursuant to the interim order and bringing to logical end by way of confirmatory order or revocation order was essential / considered in a scenario, when, pending investigation, an ex-parte interim order was passed on the basis of *prima facie* findings, which can be disputed by the entity through replies and hearing. However, when on completion of investigation, an ex-parte interim order is passed, the case against the entity is crystalized, which can be disputed by the entity through their separate replies and hearing.

44.7.7. In the present matter, in tune with the requirement of balance of convenience, at the stage of completion of investigation, interim direction pursuant to crystallization of unlawful gains was passed for the reasons already mentioned in the interim order dated February 02, 2016. However, the said interim order did not provide for the opportunity to the Noticees to submit as to why the amount impounded should not be disgorged. The opportunity to submit as to why the amount impounded should not be disgorged is required to be given along with the opportunity to submit as to why certain crystalized amount should not be impounded, as there were no more facts needed to be ascertained

through investigation in support of facts warranting disgorgement, as the investigation was already completed. The interim order dated February 02, 2016 only provided for the opportunity to the Noticees to submit as to why the amount mentioned therein should not be impounded. Thus, in the present case, interim order which was issued post completion of investigation proceeding, does not call upon all the Noticees to show cause why direction of disgorgement should not be issued against the Noticees. Therefore, additional SCN dated June 06, 2019 was issued giving an opportunity to the Noticees to submit as to why the amount impounded should not be disgorged. Had the interim order itself contained a clause to the effect that opportunity is granted to the entity as to submit to why the amount should not be disgorged, in that case then the Noticees would have got an opportunity to defend, inter alia, on two grounds, i.e., disputing the order of impounding and the proposed disgorgement. Therefore, in the instant proceedings, the Noticees are getting the same opportunity on both the grounds by way of interim order as well as SCN.

44.7.8. Further, I also note that allegation mentioned in SCN is same as that of interim order. Therefore, all replies of the Noticees which have been made by them in respect of interim dated February 02, 2016 along with other replies submitted pursuant to the SCN are considered in this order together. Thus, the replies of the Noticees filed after the interim order dated February 02, 2016 were not considered and an order was not passed considering their replies and the SCN dated June 06, 2019 has been issued to them.

45. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI ACT, 1992 and PFUTP Regulations, which read as under:

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;

(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;

(c) .....

(d) .....

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

(f) ……..

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

46. I now proceed to consider the issues framed above. On the basis of documents available on record, my observations on above issues are as under:

<u>ISSUE No. 1</u>- Whether the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations have been violated by Noticee No. 1 to 6 and whether the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of SEBI(PFUTP) Regulations have been violated by Noticee No. 7 and 8?

47. ***Issue No. 1(a):*** *Whether all the Noticees are connected as alleged in the interim order and SCN..*

47.1. The interim order dated February 02, 2016 and SCN dated June 06, 2019, alleged that all the Noticees were connected to each other and also with PPIL. The details of their alleged connection as mentioned in the interim order and SCN are as under:

Table - 1

Sl. No.	Name of Entity	Linkages
1.	DPK	Proprietorship firm of Mr. D.K. Kapur (HUF).
2.	Caps	The directors during investigation period were Mr. D.K. Kapur and his wife Ms. Sushma Kapur
3.	AJC	The directors during investigation period were Mr. D.K. Kapur and his wife Ms. Sushma Kapur
4.	Shivam	This is proprietorship firm of Ms. Sushma Kapur wife of Mr. D.K. Kapur
5.	Supreme	The directors during investigation period were Mr. D.K. Kapur and his wife Mrs.Sushma Kapur.
6.	Peeyush Agarwal	**a.** Mr. Peeyush Agarwal is former director of PPIL who resigned on October 28, 2004. **b.** Mr. Peeyush Agarwal had financial dealings with a company of Mr. D.K. Kapur (namely APM Financial Consultants P. Ltd.) in 2005. **c.** Off-market transfer of PPIL shares by Mr. Peeyush Agarwal and/or its group companies to promoters of PPIL during 2005.
7.	Omkam	
8.	Shailja	**a.** This is an entity of Mr. Ramesh Kumar Jain, who was the director in the group companies of PPIL during 1990-2002. **b.** There was financial dealings between promoters of PPIL and Shailja Investments Ltd. & its group entities during July 2005.

47.2. With regard to the connection between DPK, Caps, AJC, Shivam and Supreme among themselves, it is noted from their submission that they have not disputed their aforesaid connection with Mr. D.K. Kapur. Further, during the course of hearing, Mr. D.K. Kapur had appeared on behalf of DPK, Caps, AJC, Shivam and Supreme and stated that DPK, Caps, AJC, Shivam and Supreme are his entities. Further, DPK, Caps, AJC, Shivam and Supreme had not denied rather accepted that Mr. D.K. Kapur was director of APM Financial Consultants P. Ltd (hereinafter referred to as **"APM"**). Thus, I am of the view that DPK, Caps, AJC, Shivam and Supreme are connected with each other and they are also connected to APM.

47.3. With regard to the connection of Peeyush Agarwal and Omkam, it is noted that Peeyush Agarwal is the director of Omkam and the same was accepted by it. Further, Peeyush had accepted that he was non-executive director in PPIL from September 27, 2001 to October 28, 2004. Thus, I am of the view that Peeyush and Omkam are connected with each other and Peeyush, Omkam and PPIL are connected with each other.

47.4. With respect to the connection of DPK, Caps, AJC, Shivam and Supreme with Peeyush Agarwal and Omkam, they submitted the following:

47.4.1. DPK, Caps, AJC, Shivam and Supreme submitted that the transaction alleged in the interim order between Peeyush Agarwal and APM is a loan transaction between APM and Omkam. The said loan was taken via cheque on December 01, 2005 i.e. after the investigation period and same was repaid via cheque on July 05, 2007. Copy of ledger account of Omkam in the books of APM was submitted.

47.4.2. Peeyush submitted that he never had any personal dealing with APM in 2005. That on December 01, 2005 Omkam gave loan of Rs. 5,00,000/- to APM and such transaction does not pertain to the investigation period. Such an isolated transaction which does not have any relation to the investigation and could not be used for purpose of deriving connection.

47.4.3. Omkam submitted that Omkam's transaction of Rs. 5,00,000/- with APM was carried out on December 01, 2005 as loan; such amount was given through cheque, and the loan was repaid to Omkam on July 05, 2007 through a demand draft. Further, the said transaction does not falls under the investigation period i.e. July 04, 2005 to September 13, 2005. That such an isolated transaction which does not have any relation to the Investigation and even falls beyond Investigation Period could not be used for purpose of deriving connection.

47.5. From the document available on records, I find that SEBI's allegation of connection between Peeyush and Mr. D.K. Kapur was on the basis of fund transaction between Omkam and APM which had taken place on December 01, 2005.

47.6. It is noted that DPK, Caps, AJC, Shivam, Supreme, Peeyush and Omkam had accepted that on December 01, 2005, Omkam gave loan of Rs. 5,00,000/- to APM and same was repaid by APM to Omkam on July 05, 2007. It is also noted that the investigation period was from July 04, 2005 to September 13, 2005. Thus, I find that

that the said fund transaction between Omkam and APM has indeed taken place post investigation period.

47.7. Further, I find that there are no documents / evidence available on record which suggest that DPK, Caps, AJC, Shivam, Supreme, Peeyush and Omkam are connected with each other during the investigation period i.e. during July 04, 2005 to September 13, 2005.

47.8. Thus, from the above, I am of the view that there is no doubt that DPK, Caps, AJC, Shivam, Supreme, Peeyush and Omkam are connected with each other post investigation period i.e. from December 01, 2005. However, in the absence of any documentary evidence, I am of the view that DPK, Caps, AJC, Shivam, Supreme, Peeyush and Omkam are not connected with each other during the investigation period (i.e. during July 04, 2005 to September 13, 2005) when the alleged manipulation of price and volume in the scrip of PPIL had happened.

47.9. With respect to the connection of Shailja, interim order and SCN alleged that Shailja is an entity of Mr. Ramesh Kumar Jain and had financial dealings with Promoters of PPIL in July 2005. Mr. Ramesh Kumar Jain was a director of PPIL during 1990 to 2002. Hence, Shailja is connected with PPIL. Further, as Peeyush and PPIL are connected with each other, thereby Shailja is connected with Peeyush.

47.10. In this regard, Shailja submitted that on affidavit that since inception (1995 till 2016) Shailja is neither an entity of Mr. Ramesh Kumar nor he was / is the director or promoter or shareholder of Shailja. Further, in its support, Shailja had submitted the copy of Annual Returns submitted with Registrar of Companies and MCA from 1995 to 2016. Shailja further submitted that it had no association with promoters of PPIL or with PPIL. Shailja also submitted that interim order and SCN neither alleged PPIL nor promoters of PPIL for any manipulation of price and volume.

47.11. From the documents available on record, I find that SEBI's allegation of connection between Shailja and PPIL was on the basis of letter dated March 22, 2011 submitted by Mr. Anil Agarwal, director of PPIL, which state that M/s A.V. Enterprises, a partnership firm of Polar group has fund transaction of Rs. 5,00,000/- with Shailja, a Mr. R.K. Jain entity. However, I note that no third party verifiable document such as bank statement of either M/s A.V. Enterprises or Shailja is available on record to justify the said financial dealings between Shailja and promoters of PPIL. Hence, in

the absence of bank statement or any other document which justify fund transaction between Shailja and promoters of PPIL and Shailja's statement on affidavit that it is not an entity of Mr. Ramesh Kumar Jain, I am of the view that Shailja and PPIL are not connected with each other, thereby Shailja is not connected with Peeyush and other Noticees.

47.12. Thus, from paragraphs 47.1 to 47.11, I conclude the following that during investigation period i.e. July 04, 2005 to September 13, 2005:

47.12.1. DPK, Caps, AJC, Shivam and Supreme are connected with each other.

47.12.2. Peeyush and Omkam are connected with each other. Peeyush and Omkam are not connected with Shailja, DPK, Caps, AJC, Shivam and Supreme.

47.12.3. Shailja is not connected with any other Noticees i.e. Peeyush, Omkam, DPK, Caps, AJC, Shivam and Supreme.

48. Now it is already established that during the investigation period all 8 Noitcees are not connected with each other. Hence, trading activity of all 8 Noticees cannot be clubbed together to determine price and volume manipulation in the scrip of PPIL during the investigation period. Now the following question has arises for determination:

48.1. *Whether trading activity of DPK, Caps, AJC, Shivam and Supreme have manipulated the price and volume of the scrip of PPIL.*

48.2. *Whether trading activity of Peeyush and Omkam have manipulated the price and volume of the scrip of PPIL.*

48.3. *Whether trading activity of Shailja has manipulated the price and volume of the scrip of PPIL.*

49. ***Issue 1(b):*** *Whether trading activity of DPK, Caps, AJC, Shivam and Supreme have manipulated the price and volume of the scrip of PPIL**?***

Volume Manipulation:

49.1. Interim order and SCN alleged that the major trading in the scrip of PPIL during the investigation period was being done by the Noticees and such trading had allegedly fraudulently contributed to the trading volume in the scrip of PPIL.

49.2. In this regard, I note that during the investigation period, DPK, Caps, AJC, Shivam and Supreme have traded in the scrip of PPIL. At BSE, during the investigation total traded volume in the scrip of PPIL was 28,67,344 shares. The details of DPK, Caps, AJC, Shivam and Supreme buy and sell during the investigation period are as under:

Name of entity	Gross Buy Qty.	Gross buy qty. as % of mkt.	Gross Sell Qty.	Gross sell qty. as % of mkt.	Net buy (sell) qty.
AJC	1,92,729	6.72	1,22,839	4.28	69,890
Caps	2,86,978	10.01	2,04,447	7.13	82,531
Shivam	2,33,330	8.13	1,04,295	3.63	1,29,035
Supreme	1,77,873	6.21	91,848	3.2	86,025
DPK	2,38,849	8.33	1,75,425	6.12	63,424
Total	**11,29,759**	**39.4**	**6,98,854**	**24.36**	**4,30,905**

49.3. From the above table I find the that, out of total traded volume of 28,67,344 shares, DPK, Caps, AJC, Shivam and Supreme together had bought 11,29,759 shares i.e. 39.4% and sold 6,98,854 shares i.e. 24.36%, of the total traded volume.

49.4. From the trade log, I also find that during the investigation period the said 5 Noticees namely DPK, Caps, AJC, Shivam and Supreme have also traded among themselves in the scrip of PPIL. The details of trading among themselves are as under:

Entity	Buy Volume among 5 Entities	% to the total market volume	Sell Volume among 5 Entities	% to the total market volume
AJC	59,572	2.07	73,208	2.55
DPK	97,600	3.40	1,35,570	4.72
Caps	1,36,635	4.76	1,29,878	4.53
Shivam	1,14,251	3.98	56,520	1.97
Supreme	69,426	2.42	82,308	2.87
Total	**4,77,484**	**16.65**	**4,77,484**	**16.65**

49.5. From the aforesaid two tables, I note that DPK, Caps, AJC, Shivam and Supreme, out of their total buy quantity of 11,29,759 shares and total sell quantity of 6,98,854 shares, have traded among themselves in 4,77,484 shares i.e. 16.65% of total market volume and 42.26% of their total buy volume and 68.32% of their total sell volume.

Such trading among themselves as a group cannot be considered as genuine transfer of beneficial ownership in the shares bought and sold by them.

49.6. I also note that during the investigation period DPK, Caps, AJC, Shivam and Supreme had traded in the scrip of PPIL in a synchronized manner for a total quantity of 64,640 shares (i.e. 2.24% of the market volume) during the period of investigation. Details of synchronized trades among DPK, Caps, AJC, Shivam and Supreme during the investigation period are as under:

Seller→ Buyer↓	**AJC**	**Caps**	**DPK**	**Supreme**	**Total as buyer**
(No. of trades) (No. of days), (Synchronized Qty.), (% of Synchronized Volume to Market Volume)					
AJC	(0), (0), 0, (0)	(0), (0), 0, (0)	(2), (1), (10000), (0.35%)	(1), (1), (400) (0.01%)	(3), (2), (10400) (0.36%)
Caps	(1), (1), (350), (0.01%)	(1), (1), (890), (0.03%)	(6), (4), (20500), (0.71%),	(0), (0), 0, (0),	(8), (6), (21740), (0.75%)
DPK	(0), (0), 0, (0)	(4), (1), (17500), (0.61%)	(0), (0), 0, (0)	(0), (0), 0, (0)	(4), (1), (17500), (0.61%)
Shivam	(0), (0), 0, (0)	(6), (2), (15000), (0.52%)	(0), (0), 0, (0)	(0), (0), 0, (0)	(6), (2), (15000), (0.52%)
Total as Seller	**(1), (1), (350), (0.01%)**	**(11), (4), (33390), (1.16%)**	**(8), (5), (30500), (1.06%)**	**(1), (1), (400), (0.01%)**	**(21), (11), (64,640), (2.24%)**

49.7. From the above table, I find that DPK, Caps, AJC, Shivam and Supreme as a group had traded in synchronized manner among themselves for 11 days. Such synchronized trading were observed in 21 trade for 64,640 shares which is 2.24% of total market volume.

49.8. Thus, from the above, it is observed that in the securities market where thousands of investors were trading in the scrip of PPIL, out of which only 5 Noticees namely DPK, Caps, AJC, Shivam and Supreme who are connected with each other, had bought and sold approx. 40% and 25% shares of PPIL respectively and significantly traded among themselves i.e. approx. 16.65% of total market volume. This clearly shows that DPK, Caps, AJC, Shivam and Supreme were driving the volume in scrip of PPIL as a group. Thus, I am of the view that the major trading in the scrip of PPIL during the investigation period was being done by DPK, Caps, AJC, Shivam and Supreme, including among themselves.

49.9. With regard to synchronized trading, DPK, Caps, AJC, Shivam and Supreme contended that there is difference in quantity of order placed and trade executed on the relevant day i.e. the quantity of order placed was much higher than the traded quantity, hence no adverse inference of synchronization be drawn. The trading details are as under:

49.9.1. Supreme on 12.09.2005, on sell side had placed an order quantity of 22,500 shares, traded quantity was 20,500 shares and synchronized trade was for 400 shares.

49.9.2. AJC on 23.08.2005, on buy side had placed an order quantity of 16,000 shares, traded quantity was 13,000 shares and synchronized trade was for 5000 shares. AJC on 09.09.2005, on sell side had placed an order quantity of 62,172 shares, traded quantity was 19,315 shares and synchronized trade was for 350 shares.

49.9.3. Caps on 29.08.2005, on buy side had placed an order quantity of 16,000 shares, traded quantity was 16,000 shares and synchronized trade was for 15,000 shares. Caps on 26.08.2005, on sell side had placed an order quantity of 19,000 shares, traded quantity was 15,000 shares and synchronized trade was for 10,000 shares.

49.9.4. Shivam on 26.08.2005, on buy side had placed an order quantity of 15,000 shares, traded quantity was 14,730 shares and synchronized trade was for 10,000 shares.

49.9.5. DPK on 12.09.2005, on buy side had placed an order quantity of 47,100 shares, traded quantity was 45,000 shares and synchronized trade was for 17,500 shares. DPK on 26.08.2005, on sell side had placed an order quantity of 15,000 shares, traded quantity was 15,000 shares and synchronized trade was for 10,000 shares.

49.10. In this regard, I note that synchronized trading means where buy order quantity, sell order quantity and rates were identical and orders for the same were placed with in close proximity of time. Further, synchronized trading is trading where orders are placed within close proximity of time and not where orders placed throughout the day in totality (as contented by DPK, Caps, AJC, Shivam and Supreme). With regard to the synchronized trading, from trade and order log, I note that following:

49.10.1. On 12.09.2005, Supreme sold 400 shares of PPIL @ Rs. 62.45 to AJC at 14:52:13. The buy order was placed by AJC at 14:52:13 @ Rs. 62.45 for 500

shares and the sell order was placed by Supreme at 14:51:37 @ Rs. 62.45 for 500 shares. The order time difference was 36 second.

49.10.2. On 09.09.2005, AJC sold 350 shares of PPIL @ Rs. 62.25 to Caps at 10:33:06. The buy order was placed by Caps at 10:32:45 @ Rs. 62.45 for 500 shares and the sell order was placed by AJC at 10:33:06 @ Rs. 62.25 for 500 shares. The order time difference was 21 second.

49.10.3. On 29.08.2005, Caps bought 5,000 shares of PPIL @ Rs. 54.75 from DPK at 11:01:36. The buy order was placed by Caps at 11:01:30 @ Rs. 54.75 for 5,000 shares and the sell order was placed by DPK at 11:01:36 @ Rs. 54.75 for 5,000 shares. The order time difference was 6 second.

49.10.4. On 26.08.2005, Shivam bought 3,133 shares of PPIL @ Rs. 55.45 from Caps at 11:54:45. The buy order was placed by Shivam at 11:54:44 @ Rs. 55.45 for 5,000 shares and the sell order was placed by Caps at 11:54:45 @ Rs. 55.45 for 5,000 shares. The order time difference was 1 second.

49.10.5. On 26.08.2005, DPK sold 5,000 shares of PPIL @ Rs. 56.00 to AJC at 11:17:41. The buy order was placed by AJC at 11:17:41 @ Rs. 56.00 for 5,000 shares and the sell order was placed by DPK at 11:17:06 @ Rs. 56.00 for 5,000 shares. The order time difference was 35 second.

49.11. Further, synchronized trading were observed among DPK, Caps, AJC, Shivam and Supreme for a total of 64,640 shares of PPIL which is 2.24% of total market volume. I note that synchronized trading per se is not illegal, however in cases where entities are connected with each other and driving the market in the said scrip in terms of volume / price, then their trading in a synchronized manner cannot be considered as legal. Hence, I am of the view that DPK, Caps, AJC, Shivam and Supreme were trading among themselves in a synchronized illegal manner.

49.12. Thus, from the above, I do not find any merit in the contention of DPK, Caps, AJC, Shivam and Supreme that on the relevant day the quantity of order placed was much higher than the traded quantity or their contention that the synchronized trading was miniscule quantity, hence no adverse inference of synchronization be drawn.

49.13. Thus, I am of the view that DPK, Caps, AJC, Shivam and Supreme by trading among themselves in a synchronized manner and also by trading among themselves which resulted in creation of approx. 16.65% of total market volume through their trades, they had majorly contributed to the trading volume in the scrip of PPIL, thereby created artificial volume and gave false and misleading appearance to the genuine investors in the scrip of PPIL. Hence, DPK, Caps, AJC, Shivam and Supreme had manipulated the volume in the scrip of PPIL.

Price Manipulation:

49.14. Interim order and SCN alleged that during the investigation period, Noticees had allegedly fraudulently contributed to the price rise in the scrip of PPIL.

49.15. In this regard, I note that during the investigation period DPK, Caps, AJC, Shivam and Supreme had contributed to LTP. The details of their contribution to LTP during investigation period are as under:

Name	All Trades			LTP > 0			LTP < 0			LTP = 0		% of positive LTP to total mkt. positive LTP
	Net LTP	Qty. traded	No. of trades	LTP impact	Qty. traded	No. of trades	LTP impact	Qty. traded	No. of trades	Qty traded	No. of trades	
Caps	3.95	2,86,978	368	35.15	64,275	84	-31.2	61,804	121	1,60,899	163	7.40
AJC	11.7	1,92,729	233	25.15	64,187	73	-13.45	29,156	66	99,386	94	5.29
Supreme	10.25	1,77,873	255	24.2	65,715	70	-13.95	11,937	58	1,00,221	127	5.09
DPK	11.15	2,38,849	122	13.05	55,502	32	-1.9	55,200	8	1,28,147	82	2.75
Shivam	-2.95	2,33,330	128	7.05	56,041	24	-10	43,556	25	1,33,733	79	1.48
Total of group	**34.1**	**11,29,759**	**1106**	**104.6**	**3,05,720**	**283**	**-70.5**	**2,01,653**	**278**	**6,22,386**	**545**	**22.01**
Total Market	**44.05**	**28,67,344**	**5,156**	**475.05**	**6,91,833**	**1,301**	**-431**	**4,74,092**	**1,112**	**1,701,419**	**2,743**	

49.16. From the above table, I find that DPK, Caps, AJC, Shivam and Supreme as a group had contributed Rs. 104.6 in positive LTP i.e. 22.01% of total positive LTP in the market and their net LTP contribution was Rs. 34.1/-. I also note that during investigation period price of scrip had increased from Rs. 17.50/- on July 04, 2005 to Rs. 65.55/- on September 13, 2005, registering thereby an increase of Rs. 48.05/- (i.e. about 274.57%)

49.17. It was contended that during the investigation period, on buy trades, Supreme in 127 trades (constituting 49.80% of its buy trades); Shivam in 79 trades (constituting 61.72% of its buy trades); Caps in 163 trades (constituting 44.29% of

its buy trades); AJC in 94 trades (constituting 40.34% of its buy trades); DPK in 82 trades (constituting 66.21% of its buy trades) had no impact on LTP. This proves beyond reasonable doubt that they had no intent to manipulate price of PPIL scrip (either upward or downward).

49.18. In this regard, during investigation period, on buy trades, I note the following

49.18.1. Supreme in 70 trades had positive impact on LTP i.e. a total of 27.5% of its buy trades had positive impact on LTP.

49.18.2. Shivam in 24 trades had positive impact on LTP i.e. a total of 18.75% of its buy trades had positive impact on LTP.

49.18.3. Caps in 84 trades had positive impact on LTP i.e. a total of 22.82% of its buy trades had positive impact on LTP.

49.18.4. AJC in 73 trades had positive impact on LTP i.e. a total of 31.46% of its buy trades had positive impact on LTP.

49.18.5. DPK in 32 trades had positive impact on LTP i.e. a total of 26.22% of its buy trades had positive impact on LTP.

49.19. It is noted that every trade in the scrip has an impact on the price of the scrip. In the instant matter, during the investigation period the price of the scrip increased from Rs. 17.50/- to Rs.65.55/- i.e., an increase of 274.57%, which in itself would cast a shadow of doubt on the genuineness of the increase. Further, 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 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 / non-genuine trades, 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..."

49.20. Out of total 1,106 buy trades of Supreme, Shivam, AJC, Caps and DPK, 283 trades had positive impact on LTP which constitute 25.58% of their total buy trades. Thus, I find that more than 25% of their trades had positive impact on LTP due to which the net LTP contribution was Rs. 34.1. Hence, I do not find any merit in their contention that they had no intent to manipulate price of PPIL scrip as approx. 50% of their buy trades are at zero LTP. Further, it is difficult to accept in a scheme of fraud of price increase, the same will be achieved through consistent positive LTP Contribution. What needs to be seen is the attendant circumstances such as the relationship and trading among themselves. If seen along with this attendant circumstances, the fact that negative LTP contribution is also present in the matter cannot have decisive influence over the manipulated price increase.

49.21. I am also of the view that due to the concerted effort of DPK, Caps, AJC, Shivam and Supreme the price of the scrip in BSE had increased from Rs. 17.50/- on July 04, 2005, touched the high to Rs. 65.55/- on September 13, 2005 within a period of two & half month and DPK, Caps, AJC, Shivam and Supreme contribution were significant in it. This gave an impression to other investors in the market that the scrip of PPIL was being actively traded at the prevailing price but actually this was not the case.

49.22. The trading pattern of DPK, Caps, AJC, Shivam and Supreme indicates several instances where the time difference between buy and sell orders was less than 1 minute. No unknown person can trade continuously with same set of persons by putting orders in such pattern contributing significantly to total volume in the market. The DPK, Caps, AJC, Shivam and Supreme have transacted amongst themselves in the shares of PPIL in a contrived pricing pattern and it led to creation of artificial volumes in the scrip. The increase in the trading volume of PPIL shares can be attributed to the trades done by DPK, Caps, AJC, Shivam and Supreme in collusion among themselves.

49.23. A trade can be executed on the screen and still be manipulative in nature. Considering the number of such trades, it is clear that there has been a gross mis-use of the screen based trading system. Thus, these trades were fraudulent and manipulative in nature as DPK, Caps, AJC, Shivam and Supreme have misused the trading mechanism and also created artificial trading volume.

49.24. In the present case, the records show that most of the trading carried out by the DPK, Caps, AJC, Shivam and Supreme are amongst themselves. Therefore, the trading pattern of the DPK, Caps, AJC, Shivam and Supreme leads to the finding that they are not genuine trades. Thus, I am of the view that the trades of the DPK, Caps, AJC, Shivam and Supreme were with the intention not to transfer the beneficial ownerships of the shares of PPIL but with an intention to operate only as a device to manipulate in the price of shares of PPIL for wrongful gains. Thus DPK, Caps, AJC, Shivam and Supreme in collusion among themselves has transacted in the shares of PPIL in such a manner that it led to creation of artificial volumes in the scrip and a false market leading to price movement in the scrip.

50. ***Issue 1(c):*** *Whether trading activity of Peeyush and Omkam have manipulated the price and volume of the scrip of PPIL.*

50.1. Interim order and SCN alleged that the major trading in the scrip of PPIL during the investigation period was being done by the Noticees and such trading had allegedly fraudulently contributed to the trading volume in the scrip of PPIL. Also Noticees had allegedly fraudulently contributed to the price rise in the scrip of PPIL.

50.2. As it is already established that during the investigation period only 5 Noticees namely, Shivam, Supreme, DPK, AJC and Caps are connected with each other. Hence, trading activity of Peeyush and Omkam cannot be clubbed together with other Noticees to determine price and volume manipulation in the scrip of PPIL during the investigation period.

50.3. It is noted that during the investigation, total traded volume in the scrip of PPIL was 28,67,344 shares. During the investigation period, Peeyush and Omkam did not buy any shares, however they have sold 4,59,100 shares i.e. 16% of total traded volume. Further, it is also noted that the said shares which were sold by Peeyush and Omkam during the investigation period were purchased by them in the year 2001 and 2003 respectively. Thus, I am of the view that they were holding the shares for a long period.

50.4. From the trade log, I note that during the investigation period, Peeyush had first sold the shares of PPIL on August 09, 2005 at the price of Rs. 39/- per shares and last sold on September 09, 2005 at the price of Rs. 61.4/- per share. Thus, Peeyush had sold the shares of PPIL at the price range from Rs. 39/- to Rs. 61.4/-.

50.5. From the trade log, I note that during the investigation period, Omkam had first sold the shares of PPIL on July 15, 2005 at the price of Rs. 32.25/- per shares and last sold on September 12, 2005 at the price of Rs. 61.25/- per share. Thus, Omkam had sold the shares of PPIL at the price range from Rs. 32.25/- to Rs. 61.25/-.

50.6. Interim order and SCN also alleged that during the investigation period Peeyush had indulged in synchronized trading with other Noticees namely, DPK, Caps, AJC, Shivam and Supreme i.e. Peeyush had executed synchronized trading in the scrip of PPIL for 8 days in 33 trades for 1,79,900 shares with DPK, Caps, AJC, Shivam and Supreme.

50.7. In this regard, I note that synchronized trading per se is not illegal, however in cases where entities are connected with each other and driving the market in the said scrip, then their trading in a synchronized manner cannot be considered as legal. In the present case it is already established that Peeyush and Omkam are not connected with Shailja, DPK, Caps, AJC, Shivam and Supreme, hence synchronized trades of Peeyush with DPK, Caps, AJC, Shivam and Supreme cannot be considered as illegal.

50.8. I also note that there was no allegation of synchronized trading against Omkam in the interim order and SCN.

50.9. I also note that there was no allegation of LTP against Peeyush and Omkam in the interim order and SCN.

50.10. Thus, from the above, considering that during the investigation period, Peeyush and Omkam are not connected with Shailja, DPK, Caps, AJC, Shivam and Supreme; Synchronized trades of Peeyush with DPK, Caps, AJC, Shivam and Supreme are cannot be considered as illegal; there was no allegation of synchronized trading against Omkam and; there was no allegation of LTP against Peeyush and Omkam, I am inclined to give the benefit of doubt to Peeyush and Omkam. Hence, during the investigation period, there is insufficient material on record to evidence that the trading activity of Peeyush and Omkam resulted in manipulation of the price and volume of the scrip of PPIL.

51. ***Issue 1(d):*** Whether *trading activity of Shailja has manipulated the price and volume of the scrip of PPIL.*

51.1. Interim order and SCN alleged that the major trading in the scrip of PPIL during the investigation period was being done by the Noticees and such trading had allegedly fraudulently contributed to the trading volume in the scrip of PPIL. Also Noticees had allegedly fraudulently contributed to the price rise in the scrip of PPIL.

51.2. Interim order and SCN also alleged that during the investigation period Shailja had contributed Rs. 36.65 in positive LTP i.e. 7.71% of total positive LTP in the market and its net LTP contribution was Rs. 28.2/- as part of the connected entity.

51.3. It is already established that during the investigation period only 5 Noticees, namely, Shivam, Supreme, DPK, AJC and Caps are connected with each other. Hence, trading activity of Shailja cannot be clubbed together with other Noticees to determine price and volume manipulation in the scrip of PPIL during the investigation period.

51.4. It is noted that during the investigation, total traded volume in the scrip of PPIL was 28,67,344 shares. During the investigation period, Shailja had bought 1,42,361 shares i.e. 4.96% of total traded volume and sold 11,000 shares i.e. 0.38% of total traded volume. In this regard, Shailja submitted that since 2001, they have been a regular

trader in the scrip of PPIL along with other scrips. Shailja has not traded in the PPIL scrip only during the said Investigation Period (July 04, 2005 to September 13, 2005) but also much prior to the investigation period and continued to trade in the scrip even after the Investigation Period. Shailja had submitted its demat statement indicating that they were trading the scrip of PPIL since 2001 to 2005. Shailja had also submitted their trading history (details of traded shares) before six months of investigation period, during the investigation period and after six month of investigation period.

51.5. I also note that there was no allegation of synchronized trading against Shailja in the interim order and SCN.

51.6. I also note that during the investigation period Shailja had bought more shares of PPIL than sold. Further, Shailja was trading in the scrip of PPIL since 2001. Thus, I am of the view that trading of Shailja in the scrip of PPIL appears to be in normal course of its business and its LTP contribution does not appear to be with an intention to manipulate the price of the scrip of PPIL.

51.7. Thus, from the above, considering that during the investigation period, Shailja is not connected with Peeyush, Omkam, DPK, Caps, AJC, Shivam and Supreme; there was no allegation of synchronized trading against Shailja and; Shailja was a regularly trading in the scrip of PPIL since 2001, I am inclined to give the benefit of doubt to Shailja. Hence, during the investigation period, there is insufficient material on record to evidence that the trading activity of Shailja resulted in the manipulation of price and volume of the scrip of PPIL.

52. In note that the definition of fraud and fraudulent is defined under regulation 2(1)(c) of the PFUTP Regulations which reads as under:-

Definition of 'fraud" – Regulation 2(1)(c).

"……..

(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;

……"

53. Thus, from paragraph 49 above, I am of the view that trading done by DPK, Caps, AJC, Shivam and Supreme in the scrip of PPIL were 'fraudulent' as defined in regulation 2(1)(c) of the PFUTP Regulations.

54. Upon considering all facts and circumstances in totality, I find that trading by DPK, Caps, AJC, Shivam and Supreme in the scrip of PPIL were with the intention not to transfer the beneficial ownerships of the shares of PPIL but with an intention to operate only as a device to manipulate the price of shares of PPIL for wrongful gains. DPK, Caps, AJC, Shivam and Supreme in collusion among themselves has transacted in the shares of PPIL in such a manner that it led to creation of artificial volumes in the scrip and a false market leading to price movement in the scrip. Such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors. Such entities cannot be allowed to unjustly enrich themselves at the cost of innocent investors.

55. Thus, from paragraph 49 above, I am of the view that alleged violation of provisions Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations against DPK, Caps, AJC, Shivam and Supreme stands established.

56. From paragraphs 47 and 50 above, I am of the view that the alleged violation of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (e) & (g) of PFUTP Regulations against

Peeyush and alleged violation of provision of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations against Omkam do not stand established.

57. From paragraphs 47 and 51 above, I am of the view that alleged violation of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a) and (e) of PFUTP Regulations against Shailja do not stand established.

ISSUE No. 2*- If issue No. 1 is determined in affirmative, then what directions should be issued against the Noticees**?*

58. I note that interim order and SCN alleged that combined unlawful gains made by the Noticees from trading in the scrip of PPIL in a manipulative manner was Rs. 2,22,82,044. Interim order also alleged that it was reasonable and necessary to levy an interest at the rate of 12% simple interest per annum from the year 2005 when the alleged unlawful gains were made. Hence, the alleged illegal profits made by the Noticees stands at Rs. 5,03,57,419 (alleged gain of Rs. 2,22,82,044 + interest of Rs. 2,80,75,375 from August 01, 2005 to January 31, 2015) through manipulative trading in the scrip of PPIL. Details of the alleged gain along with the interest is as under:

Name of Entity	PAN	Gain (in Rs)	Interest 12% p.a.**	Total (Rs.)
DPK	AACHB9339M	12,48,644	15,73,292	28,21,936
Caps	AAACC4192J	5,95,117	7,49,848	13.44,965
AJC	AABCA1253B	4,28,111	5,39,420	9,67,530
Shivam	ABMPK8540Q	17,38,023	21,89,909	39,27,932
Supreme	AABCS8098J	1,52,677	1,92,373	3,45,051
Peeyush	AACPA6470C	1,31,93,000	1,66,23,180	2,98,16,180
Omkam	AACCK3363K	17,50,571	22,05,719	39,56,290
Shailja	AAACS3302E	31,75,900	40,01,635	71,77,535
Total		**2,22,82,044**	**2,80,75,375**	**5,03,57,419**

** Interest calculated on illegal gains from 01/08/2005 till 31/01/2016

59. In this regard, I note that alleged violations against Peeyush, Omkam and Shailja do not stand established. Therefore, the gains made by them while trading in the scrip of PPIL during the investigation period cannot be considered as unlawful gains. As the said gain is not unlawful, therefore gain made by Peeyush, Omkam and Shailja while trading in the scrip of PPIL during investigation period cannot be disgorged and therefore an interest

since year 2005 cannot be levied on the said gains. Hence, I am of the view that gain including interest since year 2005 is not liable to be disgorged from Peeyush, Omkam and Shailja.

60. Further, I note that alleged violations against DPK, Caps, AJC, Shivam and Supreme stand established. Therefore, I am of the view that the gains made by them while trading in the scrip of PPIL during the investigation period through their manipulative trades as established above are unlawful gains. The details of the unlawful gains (including notional profits) made by DPK, Caps, AJC, Shivam and Supreme as calculated and mentioned in the interim order and SCN is as under:

Name of Entity	Buy Qty.	Weighted Average buy price	Sell Qty.	Weighted Average sell price	Remaining or excess shares	Calculations	Gain (Amount in Rs.)
A	**B**	**C**	**D**	**E**	**F**	**G**	**H**
DPK	2,38,849	53.12	1,75,425	57.19	63,424	[(D*E)+(F*61.55)]-B*C	**12,48,644**
Caps	2,86,978	57.51	2,04,447	58.79	82,531	[(D*E)+(F*61.55)]-B*C	**5,95,117**
AJC	1,92,729	57.85	1,22,839	59.23	69,890	[(D*E)+(F*61.55)]-B*C	**4,28,111**
Shivam	2,33,330	51.54	1,04,295	55.82	1,29,035	[(D*E)+(F*61.55)]-B*C	**17,38,023**
Supreme	1,77,873	59.22	91,848	58.7	86,025	[(D*E)+(F*61.55)]-B*C	**1,52,677**
Total							**41,62,572**

The closing price on the last day of the investigation period was Rs. 61.55. For the calculation of the alleged unlawful gains, these figures have been reckoned.

61. With respect to the notional profit, I find that Shivam, Supreme, DPK, AJC and Caps by trading among themselves in the scrip of PPIL (which is approx. 16.65% of total market volume) have manipulated the price i.e. had positive LTP impact of 22.01% of total market positive LTP and created the artificial volume without change in beneficial ownership. Due to their trading among themselves (i.e. manipulative trades), price of the scrip had increased during the investigation period. The price of scrip at the end of the investigation period (closing price on September 13, 2005) was Rs. 61.55/-. Total shares held by them at the end of the investigation period i.e. on September 13, 2005 was 4,30,905 shares (DPK held 63,424, shares, Caps held 82,531 shares, AJC held 69,890 shares, Shivam held 1,29,035 shares and Supreme held 86,025 shares). Further, at the end of the investigation period, Shivam, Supreme, DPK, AJC and Caps had the opportunity to sell their balance shares at price of Rs. 61.55/-, which they did not do. Had they sold their shares on

September 13, 2005 at Rs. 61.55/-, they would have made the profit, because they had bought the shares at lower price.

62. Further, Hon'ble SAT in the matter of Dushyant N. Dalal vs. SEBI dated November 12, 2010 observed that *".....the whole time member in the impugned order has worked out the notional gain with reference to the closing price of the shares on the first day of listing and deducted the issue price therefrom. As at present advised, we can think of no better way of calculating the notional gain made by the appellants. Even if there is better method of calculation the notional gains, we do not think that the method adopted by the whole time member is any way arbitrary or unfair calling for our inference. Surely the appellant corner the shares through illegal means and they cannot be heard to say that the notional profits should not be worked out merely because they continue to hold some of them. They cannot be allowed to unjustly enrich themselves...."*

63. Thus, in view of the Hon'ble SAT judgment and considering that the Shivam, Supreme, DPK, AJC and Caps had the opportunity to sell the balance shares at end of the investigation period, I find no abnormality, arbitrary or unfair in calculating the unlawful gains including notional profit as mentioned in the interim order.

64. Further, interim order also alleged that it was reasonable and necessary to levy an interest at the rate of 12% simple interest per annum from the year 2005 when the alleged gains were made. In this regards, DPK, Caps, AJC, Shivam and Supreme had made following submissions:

    64.1.1. That no plausible reason or the basis has been given in the said order regarding reasonability of the interest and no basis has been explained in the order to charge interest at the rate of 12%.

    64.1.2. That the interest can be charged from the date when these proceedings attain finality and they are pronounced guilty of alleged market manipulation. Charging of interest by SEBI which is ultra vires the SEBI Act is contempt of court, without finalizing the proceedings amounts to 'unjust enrichment'.

64.1.3. That Hon'ble Securities Appellant Tribunal (SAT) in the case of Shailesh S Jhaveri (Appeal no. 79 of 2012) has already decided the period on which SEBI can charge interest.

65. In this regard, it is relevant to refer the judgment of Hon'ble Supreme Court in Civil Appeal No. 5677 of 2017 in the matter of Dushyant N. Dalal and Others Vs. SEBI dated October 04, 2017 where it is held that: *"….. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings……. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity…"*

66. Further, in Trojan and Co. v. Nagappa Chettiar (1953 SCR 789), Hon'ble Supreme Court observed that interest can be imposed in the case of money obtained or retained by fraud.

67. I note that under Section 11(1) of SEBI Act, in the interest of investor and to promote the development of and to regulate the securities market, SEBI is empowered to take such measures as it deems fit to protect the interest of investors. Hence, I am of the view that SEBI is empowered to levy interest. Further, in view of the above judgment of Hon'ble Supreme Court, SEBI has the power to impose interest on unlawful gains from the date of arising of cause of action till the date of commencement of recovery proceedings. Therefore, SEBI vide interim order dated February 02, 2016, has rightly imposed interest on unlawful gains made by DPK, Caps, AJC, Shivam and Supreme from August 2005. However, in the present case, I note that the date of cause of action i.e. date of transaction was of August – September 2005, investigation started in year 2011 and interim order was passed in February 2016. Thus, considering long elapse of time since the date of transaction, I am of the view that the quantum of interest imposed on the unlawful gains made by DPK, Caps, AJC, Shivam and Supreme shall be reduced from 12% simple interest to 4% simple interest from the last date of investigation period i.e. September 13, 2005 till the date of expiry of period prescribed for disgorgement under this order. In case of failure to pay the disgorgement amount within the said prescribed period, interest at the rate of 12% per annum shall be liable to be paid for the remaining period.

Order:

68. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions:

68.1. DPK Stock & Securities Limited, Shivam Investments, Caps Finstock Services Private Limited, AJC Securities & Fin. Pvt. Limited and Supreme Lease Finvest Private Limited shall, disgorge an amount of Rs. 41,62,572/- as ascertained in paragraph 60 above along with simple interest calculated at the rate of 4% per annum from the date of end of investigation period i.e. September 13, 2005, till the date of payment within 45 days from the date of service of this order. In case of failure to pay the disgorgement amount within 45 days from the date of service of this order, interest at the rate of 12% per annum shall be applicable for the period, starting from the end of 45 days from the date of service of this order, till the date of payment.

68.2. DPK Stock & Securities Limited, Shivam Investments, Caps Finstock Services Private Limited, AJC Securities & Fin. Pvt. Limited and Supreme Lease Finvest Private Limited shall pay the above amount within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment* to SEBI account as detailed below.

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

** Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details:	

68.3. The Banks, with whom the DPK, AJC, Caps, Shivam and Supreme have bank accounts, are directed that they shall continue not to permit debit, without permission of SEBI, in respect of the bank accounts held, by DPK, AJC, Caps, Shivam and Supreme except for the purposes of compliance of this order. However, credits, if any, into the accounts maybe allowed.

68.4. The Depositories, with whom DPK, AJC, Caps, Shivam and Supreme have demat accounts are directed that they shall continue not to permit debit, without permission of SEBI, in respect of the demat accounts held, by DPK, AJC, Caps, Shivam and Supreme and Registrar and the Transfer Agents are directed that no debit and redemption of mutual funds units shall be made, except for the purposes of compliance of this order. However, credit, if any, of securities including mutual funds units, into the accounts of DPK, AJC, Caps, Shivam and Supreme is allowed.

68.5. On compliance of the direction mentioned at paragraphs 68.1 and 68.2, DPK, AJC, Caps, Shivam and Supreme shall apply to SEBI for an instruction to defreeze their bank accounts and demat accounts and for instruction to RTA in respect of mutual fund units.

68.6. DPK, AJC, Caps, Shivam and Supreme are also directed not to dispose of or alienate any of their assets/ properties/ securities, till such time the direction of this order is complied with.

68.7. The directions issued vide interim order dated February 02, 2016 qua Mr. Peeyush Agarwal, Omkam Commodities Private Limited (Earlier Known as "Kanhai Commodity Intermediaries Private Limited") and Shailja Investments Limited are revoked and accordingly SCN dated June 06, 2019 qua Mr. Peeyush Agarwal, Omkam Commodities Private Limited (Earlier Known as "Kanhai Commodity Intermediaries Private Limited") and Shailja Investments Limited is disposed off without any directions.

68.8. It is clarified to the Banks that lien in favour of SEBI on fixed deposit in the escrow account dated February 23, 2016 made by Omkam Commodities Private Limited and Mr. Peeyush Agarwal dated April 13, 2017 shall stand released from the date of this order.

69. The order shall come into force with immediate effect.

70. A copy of this order shall be served upon all the Noticees, Stock Exchanges, Banks, Depositories, Registrar and Transfer Agents for necessary action and compliance with the above directions.

-Sd-

DATE: January 15, 2020 **MADHABI PURI BUCH**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA