Department: Investigation	Segment: All
Circular No: MSE/ID/16952/2025	Date: April 01, 2025

Subject: SEBI Order in the matter of suspected front running of the trades of Tusk Investment Ltd. by Mr. Rohan Banerjee.

To All Members,

SEBI vide Order no. QJA/GR/IVD-2/ID20/31339/2024-25 dated March 28, 2025, wherein SEBI has restrained following entities from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the following period, from the date of this order.

Noticee Nos	Name of Entity	PAN
1.	Rohan Banerjee	COHPB4169L
2.	Rahul Banerjee	AEAPB6055J

Further, SEBI has directed that If the Noticees have, any open position in any exchange traded derivative contracts, as on the date of the order, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier

This order shall come into force with immediate effect.

Members of the Exchange are advised to take note of the full text of the order available on SEBI's website [www.sebi.gov.in] and ensure compliance.

For and on behalf of

Metropolitan Stock Exchange of India Limited

Sushil Kumar
Assistant Manager

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Noticee No.	Noticee Name	PAN
1.	Rohan Banerjee	COHPB4169L
2.	Rahul Banerjee	AEAPB6055J

In the matter of suspected front running of the trades of Tusk Investment Ltd. by Mr. Rohan Banerjee

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

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation to ascertain as to whether Mr. Rohan Banerjee and Mr. Rahul Banerjee (hereinafter referred to as "**Noticee No.1**" and "**Noticee No.2**" respectively and collectively referred to as "**Noticees**") were front running the trades of Tusk Investment Limited ("hereinafter referred to as "**Big Client / BC**" or "**Tusk**"), in violation of the provisions of Securities and Exchange Board of India Act, 1992 ("hereinafter referred to as "**SEBI Act**") and Regulations framed thereunder and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 {hereinafter referred to as "**SEBI PFUTP Regulations**"}. The period of investigation is from January 01, 2021 to August 31, 2023 (hereinafter referred to as "**Investigation Period"** or **"IP**"). However, whenever deemed necessary, references have been made to the events/timeframes outside this period.

2. Based on the findings of the investigation, Show Cause Notice dated June 19, 2024 **("SCN")** was issued to the Noticees, which, inter-alia, stated the following: -

   a) Noticee No.1 was employee of the Big client during the IP and Noticee No.2 is the father of Noticee No.1. Noticee No.1 was given the role of Equity Analyst in Tusk

(Big Client) and was responsible to place orders of Tusk by calling the dealers of respective brokers of Tusk.

b) *During the investigation, it was observed that majority of the trades of Tusk were placed through broker, Sanctum Wealth Private Limited and Ambit Capital Private Limited by calling their respective dealers and Noticee No.1 himself made these calls. Detailed investigation revealed that Noticee No.1 had the knowledge of impending big orders of Tusk, as he was responsible to place orders for Tusk. Thus, this information was being used to front run the trades of Big Client by Noticees.*

c) *It is observed that Noticee No.1 had 364 front running instances in equity segment against big client and the total profit earned through front running is ₹28.49 lakhs. Further, Noticee No.2 had 74 front running instances in equity segment against big client and the total profit earned through front running is ₹8.30 lakhs. Similarly, Noticee No.1 had 164 front running instances in equity derivative segment against big client and the total profit earned through front running is ₹10.42 lakhs. However, no trades were observed in F&O Segment by Noticee No.2.*

d) *Noticee No.1, having complete information of the orders of Big client, was placing front running orders in his own as well as Noticee No.2's account. Further, IP addresses of trades placed in the account of Noticee No.2 matched with IP addresses of Noticee No.1 and devices used for the order placement were also same for both the Noticees, thus, corroborating that trades of Noticee No.2 were also being placed by Noticee No.1.*

e) *It was alleged that by undertaking the aforementioned front running trades during the IP, Noticee No.1 has earned profit amounting to ₹28.49 Lakhs in Equity segment and has earned profit of ₹10.42 Lakhs in Equity Derivatives segment. Noticee No.2 has earned profit amounting to ₹8.30 Lakhs in Equity segment. Hence, the Noticees have collectively made unlawful profit of ₹47,22,325/-.*

3. In view of the above, it was alleged that Noticee No. 1 and 2 had front run the trades of Tusk/Big Client during the IP and therefore have violated Section 12A (a), (b), (c) and (e) of SEBI Act read with Regulation 3(a), 3(b), 3(c), 3(d), 4 (1) and 4 (2)(q) read with Regulation 2(1)(c) of the PFUTP Regulations.

4. Accordingly, thereafter, vide the SCN, the Noticees were called upon to show cause as to why suitable direction(s), under 11B (1) and 11(4) read with Section 11(1) of the SEBI

Act, 1992 and under Sections 11(4A) and 11B (2) for imposing penalties under SEBI Act read with Sections 15HA of SEBI Act should not be issued against them for the alleged violations mentioned above. Further, Noticees were also show caused as to why any directions for disgorgement of total wrongful gain of Rs.47,22,325/-, jointly and severally should not be issued against them.

SERVICE OF SCN, REPLIES AND HEARING

5. The SCN along with annexures was served on the Noticees through speed post acknowledgment due (SPAD) and email. It was duly delivered to all the Noticees. Thereafter the Noticees filed Settlement Application dated July 12, 2024, however the same was subsequently withdrawn by the Noticees. The withdrawal of the applications was informed to SEBI by the Noticees vide letter dated September 24, 2024. The Noticees vide letter dated September 13, 2024 (Rohan Banerjee) and (Rahul Banerjee) submitted their preliminary reply to the SCN and requested inspection of documents and copies thereof. Accordingly, inspection of documents was scheduled on October 25, 2024. On the said date, the Authorised Representative ('AR') of the Noticees visited SEBI Office and inspected the documents. The Noticees vide letter dated October 25, 2024 submitted post inspection reply and sought additional documents. SEBI in response to the said request informed the Noticees vide email dated November 12, 2024 that the requested additional documents are either not available with SEBI or provided during the inspection of documents. Thereafter, vide letter dated November 23, 2024 (Mr. Rohan Banerjee) and November 25, 2024 (Mr. Rahul Banerjee) again sought additional documents and provided list of the same. Accordingly, the National Stock Exchange of India Ltd. ('NSE') Report was provided to the Noticees. Thereafter vide letters dated January 18, 2025, the Noticees submitted written reply to the SCN and subsequently vide letters dated January 31, 2025 additional reply was submitted by the Noticees. The key submissions of the Noticees are reproduced as under:

- ***Rohan Banerjee***

A. My role in the company shifted mostly to the trading side where Mr. Pranay helped me understand the charts and the patterns (technical analysis). Although nothing changed in the appointment letter, my work slowly started shifting mostly after 2021. As the portfolio of Tusk started growing, Mr. Pranay gave me promotions and gave me the role of calling the dealers as well in addition to my existing role in

order to trade for the Company. However, it is pertinent to note that Mr. Pranay took all the decisions.

B. On perusal of the KYC documents of Tusk as received a/ w the Email dated 02.12.2024, it is submitted that it was not only me who was responsible for the Order placement of Tusk. There was other Principal Officer/ senior associate/ CIO that used to place orders on behalf of Tusk.

C. In respect to the trading done by Mr. Rahul, I humbly submit that at times, I used to place orders on his behalf in his account and at time he used to himself place orders in his account. Hence, it is not the case that I have always traded on his behalf.

D. The type, nature and pattern of transactions executed enclosed as Annexure 10 of SCN does not match with the definition of front running as mentioned in SEBI's Circular dated 25.05.2012 bearing ref. no. CIR/EFD/1/2012, more particularly about usage of "Non-public" information. Notably, I was assigned job of placing the Orders on behalf of Tusk on the basis of the decision taken by Mr. Pranay. Besides, the volume of trades executed by me was not voluminous to have impact on the price of the shares having liquidity and based on host of factors having impact on volatility on price. The aforesaid is evidence from the meagre profit earned on most of the impugned transactions erroneously alleged to be front-run trades.

E. I place reliance on the judgment dated 20.09.2017 passed by the Hon 'ble Supreme Court in the matter of SEBI v/s Kanaiyalal Baldevbhai Patel (CA No. 2595 of 2013) and connected Appeals for the alleged front running done by the Respondents therein. On perusal of the same, I understand that trading is alleged to be manipulative/ fraudulent when there is breach of confidential information or information is acquired in bad faith. In my case the same is not applicable.

<u>Analysis w.r.t. Time Differences between order time of Noticee and BC:</u>

A. On analysis of the Order start time of the Noticee and the Order start time of the BC, it is submitted that there is a variance/ time difference in both the order times.

a) For Instances, in my case, there are 344 instances (EQ) out of which 194 pertain to BBS pattern and 150 pertain to SSB pattern. Pertinently, on consideration of 194 instances (EQ) of BBS pattern of trading and analysis in respect of the same (Annexure 6 of the Reply), it is submitted that in majority of cases there is a substantial time difference between my Sell Order start time and Buy Order start time of BC. In majority of the cases, BC has started buying the scrip and after a

certain time difference, I have started selling the scrip. Hence, in case, I was privy to the trades of the BC, I would have simultaneously punched sell order as soon as the BC started placing the buy order. In fact, in one of the Instances of BPCL on 16.09.2021 (Sr. No. 14 to the Annexure - 6 of Reply), the BC Buy Order start time is 9:15:13 and the Sell Order start time in my case is 15:02:37. Hence, there is a substantial time difference of around 6 hours. This inter alia indicates that in case I was aware of the time of Buy Order of the BC, I would have sold the shares within a short span of seconds, as the price of the scrip of BPCL would have been affected because of BC's buy Order.

b) On consideration of 150 instances (EQ) of SSB pattern of trading and analysis in respect of the same (Annexure 7 of the reply), it is submitted that in majority of the cases there is a substantial time difference between my Buy Order start time and Sell Order start time of BC. In the majority of cases the BC has started selling the scrip and thereafter after a certain time difference I have started buying the scrip. Hence, in case I would have been privy to the trades of the BC, I would have simultaneously punched in buy order as soon as the BC started placing the sell order. In fact, in one of the Instances of DHANUKA on 05.05.2022(Sr. No. 70, Annexure — 7 of Reply), the BC Sell Order start time is 10:32:41 and the Buy Order start time in my case is 14:59:26. Hence, there is a substantial time difference of around 4 and a half hour. This inter alia indicates that incase I was/ would have been aware of the time of Sell Order of the BC, I would have bought the shares within a short span of seconds as the price of the scrip of DHANUKA would have been affected because of the BC's sell Order.

c) In view thereof, it is humbly submitted that there is a time difference between the Order times of the BC and that of the alleged Front Runner and therefore it cannot be said that the Noticees have derived any unfair profit due to the trades of the BC.

- ***Rahul Banerjee***

A. The said alleged trades were executed by my son, i.e. Mr. Rohan, and I am totally unaware of the same in any manner whatsoever. Pertinently, the said fact can also be understood on the perusal of the SCN.

B. Further, I am not associated with Tusk in any manner whatsoever and it is merely that my son (Noticee No.1) used to work in that company. Since I do not have any direct connection with Tusk and therefore it is not possible for me to have information of any

trade of Tusk. In fact, I have limited knowledge and understanding about trading in the securities market. Pertinently, since I am a retired person, I generally trade with caution in the securities Market.

C. *It was submitted that that the volume of the alleged Front Running trades is minuscule in comparison to the total volume (GTV) during the Investigation Period. Regarding this, it was said that, the total volume of buy FR Trade is 8.24 crores (out of which trades to the value of 32.47 Lakhs is not considered since it is a loss) and the total volume of sell FR trade is 7.93 Crores (out of which trades to the value Rs 5.28 Lakhs is not considered since it is a loss). Hence, the total alleged FR volume is 15.80 crores (after deducting the Loss Trades). However, the total GTV of the Noticee during the IP was 52.72 crores.*

D. *The alleged Front Running profit made in my account in the Equity Segment is Rs. 8,30,122/- which pertains to 74 instances. Furthermore, the said instances are further mentioned herein under:*

Sr. No.	***Name***	***BBS Pattern***	***SSB Pattern***	***No. of Instances***	***Gross Profit Earned***
I	*Rahul Banerjee (Equity Segment*	*BBS*		*37*	
			SSB	*35*	
TOTAL				*72*	*Rs. 8,30,122/-*

Note - In the Instances, the 2 Instances which have not been considered as FR (Due to Loss) are not included*

The profit range in respect of the said trades is as under:

Profit Range (in Rs.)	***Instances***
0- 1000	*12*
1000 - 2000	*7*
2000 - 3000	*13*
3000 - 5000	*10*
5000 10000	*15*
10000 - 20000	*7*
20000 50000	*4*
50000 - 100000	*3*
Above 100000	*1*
Total	*72*

E. *Accordingly, it was submitted that in the majority of cases, the profit derived is in minuscule amounts. Further, out of 72 instances, in case of 57 Instances, there is a profit of less than Rs.10,000/-. Pertinently, the same has to be considered as a mitigating factor while alleging adverse inference.*

- ***Common submissions of Rahul Banerjee and Rohan Banerjee***

Preliminary Contention

A. SEBI must clarify the exact measure it is contemplating, to enable the Noticee to make effective submissions, failing which these proceedings would be violative of natural justice and therefore infirm

(I) Sections 11 and 11B of the SEBI Act have been used by SEBI variously to issue an extremely wide range of directions, purporting to act in the interests of the investors and the securities market. It is incumbent for SEBI to provide notice of what specific measure SEBI is contemplating, so that the Noticees are able to present their case on the suitability / appropriateness or otherwise of the specific measure proposed. The law governing the subject makes such an approach mandatory. The case law is cited below:

*(a) In **Gorkha Security Services v. Govt. of NCT of Delhi & Ors.**, (decided on 04.082014), the Hon'ble Supreme Court ruled that it would be incumbent for a show cause notice to contain the exact nature of the measure that it proposes to take, failing which, the order passed would be violative of the principles of natural justice and would be liable to be set aside. The relevant portion of the said judgment are extracted below:*

*"**Contents of show cause notice***

21. The Central issue, however, pertains to the requirement of stating the action, which is proposed to be taken. The fundamental purpose behind the serving of show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement on imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us. is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorilv explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee

does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirement of principles of natural justice, a show cause notice should meet the following two requirements viz:

i. The material/gçounds to be stated on which according to the Department necessitates an action;

ii. Particular penalty/action, which is proposed to be taken. It is this second requirement, which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement." [Emphasis Supplied]

*(b) In **Royal Twinkle Star Club Private Ltd v. SEBI**, (decided on03.02.2016), the Hon'ble Securities Appellate Tribunal reiterated the principle laid down by the Hon'ble Supreme Court in Gorkha Security Services v. Govt. of NCT of Delhi & Ors.*

In light of the above, it was submitted that the principles laid down by the Hon'ble Supreme Court in Gorkha Security Services v. Govt. of NCT of Delhi & Ors. are well settled and in accordance with Article 141 of the Constitution. The said principles are to be mandatorily followed by all subordinate courts including SEBI. It is therefore submitted that, SEBI must clarify the exact measure it is contemplating, to enable the Noticee to make effective submissions, failing which these proceedings would be violative of natural justice and therefore infirm. The submissions made herein are without prejudice to the fundamental failure in the SCN.

Other Contentions

A. During the course of Inspection and communication thereafter (Email dated 02.12.2024), we were provided with the NSE Examination Report a/ w covering letter dated 28.12.2023. On perusal of the same r/w the Annexures as referred thereto it is submitted as under:

a) Under Para No. 2.5 (g) on Unnumbered Page No. 5 of Examination Report, it is mentioned that "FR client earned a positive square off difference of INR 6.82 lacs through Front Running trades which constituted 784% of total profit earned by the clients. However, no clarification is provided in respect to the calculation of 784%, which is the positive square-off difference.

B. *Discrepancy in the Gross Traded Value in Examination Period in the Equity Segment as mentioned under Para No. 7.6 and 8.1 of the Examination Report:*

a) It is humbly submitted that under Para No. 7.6 of the Examination Report, it is mentioned that Gross Traded value in Equity Segment during the Examination Period of Mr. Rohan is Rs.5272.88 Lakhs and that of Mr. Rahul is Rs.57, 263.82 Lakhs.

b) Further, under Para No. 8.1 of the Examination Report, it is mentioned that the Gross Traded value in Equity Segment during the Examination Period of Mr. Rahul is Rs.5272.88 Lakhs and that of Mr. Rohan is Rs.57,691.86 Lakhs.

Legal Submissions

A. *Strict Proof Required for a serious charge of 'fraud'*

It is wholly untenable for any authority to arrive at a finding of 'fraud' solely on the basis of surmises *and conjurers. I would like to draw your kind attention to following cases:*

(a) In the matter of ***R. K. Global Share and Securities Limited v/s SEBI*** *(Appeal no. 158/2008 decided on 16.09.2010), Hon 'ble Securities Appellate Tribunal observed as under:*

"...Let us not forget that the Appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have firmer ground to stand upon. A higher degree of probability must exist before such a charge could be found to have been established"

(b) In the matter of ***Narendra Ganatra v/ s SEBI*** *(Appeal No 47 of 2011 decided on 29.07.2011), Hon 'ble Securities Appellate Tribunal observed as under:*

"... We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures..."

(c) In matter of ***SterZite Industries (India) Ltd. V. SEBI*** *(2001) 34 SCL 485 (SAT), Hon'ble Securities Appellate Tribunal observed as under:*

"Chairman holding the appellant guilty of indulging in price manipulation has stated that 'creation of false market and price manipulation is a very serious offence'. Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of

market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having large number of investors. The stigma sticks and it also hurts, not the com ant/ alone but its shareholders as well. 'Not all the King's horses and all the King's men' can ever salvage the situation. Mere coniunctures and surmises are not adequate to hold a person guilty of such a serious offence.»

(d) In the matter of ***Videocon International v/s SEBI*** *(2002) 4 CLJ 402 (SAT) it was held that in the absence of reasonably good evidence to support, charge of market manipulation which is very serious charge, cannot stick on surmises and conjunctures. The Hon 'ble Tribunal observed that Regulation 4(a) of the PFUTP Regulation attracts only if the transaction is made so as to induce any other person to sell or purchase securities.*

(e) In the matter of ***Parsoli Corporation v/ s SEBI*** *(Appeal No 146/2010 decided on 12.08.2011); Hon'ble Securities Appellate Tribunal had observed that since charge of 'fraud' is serious, higher has to be degree of probability to establish the same. Thus, same cannot be pressed against an individual on random allegations based on surmises and conjectures.*

4. Thereafter, in accordance with the principles of natural justice, the Noticees were granted an opportunity of personal hearing. In this connection, SEBI vide Hearing Notice ('HN') dated December 20, 2024 informed the Noticees that personal hearing is scheduled on January 08, 2025. Subsequently, as per the request of the Noticees (submitted vide letter dated January 02, 2025) the hearing of Noticees was rescheduled to January 21, 2025. Thereafter vide letter dated January 15, 2025 the Noticees again sought adjournment and requested to schedule the hearing after January 22, 2025. Hence, the Noticees were informed to appear for the personal hearing on January 23, 2025. On the said dates, the Authorised Representatives ('AR') of the Noticees appeared and reiterated the written submissions submitted by them. In addition, the ARs of the Noticees sought permission to submit supplementary submissions, which was accepted. Subsequently, the Noticees submitted supplementary written replies.

5. Before proceeding to deal with the allegations against the Noticees on merits, I shall first address the contention raised by the Noticees with regard to violation of principles

of natural justice. In this regard, the Noticees had submitted that the SCN has failed to specify the exact measure which the SEBI is contemplating stating that the ambit of Section 11 and 11B of SEBI Act is very broad and hence wide range of directions can be issued against the Noticees under those provisions. It was said that it is incumbent for SEBI to provide what specific measures SEBI is contemplating to enable the Noticees to make effective submissions, failing which the present proceedings would be violating the principles of natural justice.

6. With regard to the above contention, I note from the SCN that the violations alleged against the Noticees were explained therein and subsequently in Para 3.8 and 3.9 of the SCN the Noticees were called upon to show cause why appropriate directions under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992 for disgorgement of unlawful gains of ₹ 47,22,325/- i.e. Forty Seven Lakhs Twenty Two Thousand Three Hundred and Twenty Five Rupees) should not be issued against them. Further the Noticees were also called upon to show cause as to why appropriate directions imposing penalty under Section 11(4A) and 11B(2) r/w Section 15HA of SEBI Act, 1992 and r/w the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 should not be issued against them.

7. I note that SEBI being a statutory body derives its powers from the SEBI Act wherein Chapter IV of the said Act enumerates the powers and functions of the SEBI. Upon completing the investigation, in furtherance of the principles of natural justice the Noticees were served with the SCN explaining the allegations. Thereafter, at the request of the Noticees an opportunity to inspect the relevant documents was provided on October 25, 2024, which was availed by the Noticees through their authorised representative. Subsequently, the Noticees appeared before the undersigned for personal hearing through their authorised representative wherein the charges were duly explained. Regarding the proposed actions against the Noticees, I note from the SCN that various provisions of SEBI Act were invoked which provide the actions which the Noticees would be liable for upon establishing the allegations. The penal provision invoked in the instant matter i.e. section 15HA of SEBI Act provides the minimum and maximum amount that a person would become liable to pay.

8. Likewise, Section 11(4) of SEBI Act, which is also invoked in the present matter, outlines the measures that can be used against an entity upon completion of inquiry, the measures mentioned therein are following:

"(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation."

9. In view of the above, I note that the judgment of Hon'ble Supreme Court in *Gorkha Security Services v. Govt. of NCT of Delhi & Ors. (Civil Appeal Nos. 7167-7168 of 2014, Decided on 04.08.2014)* relied upon by the Noticees, is not squarely applicable in the present matter as the Noticees in the present matter were duly informed about the possible directions and the relevant legal provision for the same vide the SCN, as stated above. It is further clarified that in *Gorkha Security Services (supra)*, the interpretations offered by the court were made in respect of questions arising out of a commercial dispute, while the present matter relates to actions contemplated by SEBI for violations of statutory provisions. Accordingly, I note that the requirement specified by the Hon'ble Supreme Court in the said judgment that, "*though it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."* is met in the instant matter.

10. Hence, I note that the possible direction of disgorgement was brought to the notice of the Noticees vide the SCN and the amount for the same was also specified therein.

Regarding other directions, I note that, it is only upon conducting the proceedings and upon examining the matter after taking into consideration all the materials placed before the undersigned and the submissions made by the Noticees, the same can be arrived upon. The language of the provisions of SEBI Act viz. Sections 11B(1), 11(4) and Section 11(1) were legislated in furtherance of the same. Accordingly, the instant contention of the Noticee cannot be accepted.

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

ISSUES FOR CONSIDERATION

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

(1) Whether the trades of the Noticees during the IP were not executed in the normal course of trading and were in the nature of trades that were executed to front run the trades of Big Client?

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

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

SEBI Act

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

12A. No person shall directly or indirectly—

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

…

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

PFUTP Regulations

Definitions* 2. *(1) …

…

…

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

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

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

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

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

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

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

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

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

And "fraudulent" shall be construed accordingly;

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

…

…

…

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

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

FINDINGS ON ISSUES

(1) Whether the trades of the Noticees, during the IP, were not executed in the normal course of trading and were in the nature of trades that were executed to front run the trades of Big Client?

15. In this respect, I note from the material available on record that SEBI internal alerts were generated against Noticee No.1 for suspected front running of the trades of Tusk. Upon examination of the same, it was observed that Noticee No. 1 and 2 ("***suspected entities***") were consistently placing orders ahead of the orders of Big Client in Equity segment and Equity Derivatives segment and majorly squaring off the positions against the Big Client orders. In most cases the square off orders placed by the aforesaid Noticees were getting matched with the orders of Big Clients. The pattern observed in

the given case was majorly Buy-Buy-Sell ('BBS') and Sell-Sell-Buy ('SSB') pattern. These patterns are explained and examined in detail in the subsequent paragraphs.

16. At the outset, I note that the Noticees have contended that there are certain discrepancies in the NSE's Examination Report ("***NSE Report***") and since the Investigation Report ('IR') of SEBI in instant case is based on the said NSE Report the present proceedings ought to be quashed and set aside. In this regard, I note from the reply of the Noticees that the discrepancies / errors highlighted by the Noticees are either typographical or non-material with respect to the key allegation made against the Noticees. From the submission of the Noticees, I note that the discrepancies / errors pointed out by the Noticees in NSE Report broadly pertains to the following:
    a Lack of clarification in respect of the calculation of 784%, which is the positive square-off difference earned by the Noticees.
    b The analysis of the Bank statement given by trading members is incorrect as the comments of the analysis in respect of Mr.Rohan are mentioned in the column of Mr. Rahul and that of Mr. Rahul are mentioned in that of Mr. Rohan.
    c The value of Gross Traded Value (GTV) arrived for the Noticees in the NSE Report suffers discrepancy as inconsistent data is mentioned regarding the same.

17. Upon considering the above and also the fact that the NSE Report was only the preliminary examination by the exchange of the possible front running activities by the Noticees and subsequently the matter was examined in detail by SEBI and fresh IR was prepared, the submission of the Noticee that the instant proceedings needs to be dropped due to the discrepancies in the NSE Report is devoid of any merit and untenable. Further, I add that the Noticees have failed to demonstrate how the above discrepancies in the NSE Report have caused them prejudice and crippled them in defending the charges raised in the SCN. Hence, the instant contention of the Noticees cannot be accepted.

Front Running

18. In order to examine the veracity of allegations raised in the SCN, it is pertinent to mention what constitutes front running in the securities market and the jurisprudence surrounding it. The Hon`ble Supreme Court, for the first time, in the matter of ***SEBI Vs. Kanaiyalal Baldevbhai Patel*** [(2017) 15 SCC 1], set out contours within which any conduct alleged to be front running must be examined. Hon'ble Court referred to wide

range of authoritative resources to arrive at proper definition of front running in India, this included examination of definition thereof in Major Lax Lexicon by P. Ramanatha Aiyer, Black`s Law Dictionary, as also Wall Street Journal.

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

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

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

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

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

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

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

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

'However, SEBI Act does not prescribe or specify as to which practice would be considered to be fraudulent and unfair trade practices. While the fraudulent and

unfair trade practices are commonly understood, it would be desirable if these practices are defined specifically...this will bring about clarity among the intermediaries, issuers, investors and other connected persons in the securities markets about the practices that are prohibited, fraudulent and unfair. ...The draft defines fraudulent and unfair trade practices. These regulations seek to cover market manipulation on the stock exchanges also. Practices like wash sales, ***front-running****, price rigging, artificial increasing or decreasing the prices of the securities are brought within the ambit of the regulations'*

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

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

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

Front Running Patterns

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

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

    b) **Sell-Sell-Buy ("SSB")** -In this type of front running behaviour, the trader/investor by using the non-public information regarding an impending Sell order of the Big Client, places his Sell order(s) before the execution of the Big Client's Sell order.

As and when the Sell order of the Big Client gets executed, the price of the security falls which gives an opportunity to the trader/investor to buy back the securities at a lower price to meet his obligations which he had created earlier by selling securities. Thus, pocketing the difference between the price at which he had sold his securities and the new lower price, which is established during / post Big Client's Sell trades. This pattern of front running is labelled as SSB denoting 'Sell' by the trader/investor, 'Sell' by the Big Client, 'Buy' by the trader/investor in the sequence mentioned.

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

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

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

the two legs of the orders of the front-runner is higher, if executed on the same day, as opposed to the two legs being executed over two days.

Recent Legal Position on Front Running

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

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

(1) …

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

(a)…

…

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

26. The above provision was not part of the SEBI PFUTP Regulations initially but was added subsequently vide SEBI (PFUTP) (Amendment) Regulations, 2018, which came into force on February 1, 2019. Before the substitution, the provision read as follows:

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

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

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

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

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

44. Taking into consideration the facts and circumstances of the case before us and the law laid down herein above and SEBI v. Kishore R. Ajmera [(2016) 6 SCC 368] can only lead to one conclusion that concerned parties to the transaction were involved in an apparent fraudulent practice violating market integrity. The parting of information with regard to an imminent bulk purchase and the subsequent transaction thereto are so intrinsically connected that no other conclusion but one of joint liability of both the initiator of the fraudulent practice and the other party who had knowingly aided in the same is possible."

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

30. Keeping in mind the aforesaid, I note from the SCN that in the present case, SEBI found during the investigation that the suspected entities (Noticee No.1 and 2) trading through their respective stock brokers were consistently placing orders ahead of the orders of Big Client in Equity and derivative segments and squaring off their positions against Big Client's orders. This raised the suspicion of front running by the said suspected entities.

31. Apart from the trading patterns as described above, the provision Regulation 4(2)(q) of SEBI PFUTP Regulations which is invoked in the instant matter, has certain other requirements which needs to be satisfied before establishing the charges under the said provision. The same are mentioned below:

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

…

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

32. Accordingly, in the present matter it was observed during investigation that Noticee No.1 by virtue of being employee of the Big Client, during the IP, was aware about the impending orders of the Big Client, and was alleged to be placing orders for himself and Noticee No.2 based on the said information. Hence, before proceeding with the analysis of alleged front running trades of suspected entities, the following issues need consideration:

i. Whether, in the instant case, the information regarding the impending orders of the Big Client was not available to public and hence was an insider information?

ii. Whether the impending transaction in securities of the Big Client were that of substantial quantity?

33. With regard to the first issue above, I note from the submission of the Noticees that the investment decision of Tusk were taken by Mr. Pranay Agarwal ("Pranay"), Chief Investment Officer (CIO) of Tusk (Big Client). Thereafter, Mr. Pranay would direct

Noticee No.1 to call the broker for placing the orders for Tusk. Following details also emerged from the said submission:

a) Tusk is an investment company, and the main line of business is trading and investment in securities. Tusk executes many trades on day-to-day basis.

b) Tusk was a family business and therefore the role of Noticee No.1 was a bit haywire, and he used to work in all the departments. Further, no formal training of any kind of rules/ regulations/ SEBI laws was given.

c) When Noticee No.1 joined Tusk, his role was mostly as an IT associate, however that changed to Management Trainee Equity Analyst.

d) During COVID-19, at times, Noticee No.1 used to work from home. There were 3 people majorly looking into the Equity markets in Tusk- Pranay, Mr. Amit Agarwal and Noticee No.1 who was an Analyst.

e) As the portfolio of Tusk started growing, Mr. Pranay gave Noticee No.1 promotions and gave the role of calling the dealers as well in addition to the existing role in order to trade for Tusk. However, Mr. Pranay took all the decisions.

f) During 2020-2021, the dealer number of the company given to the brokers was either Mr. Pranay or my number. [Emphasis Supplied]

34. Further, I note from IR that during the investigation the representatives of Tusk were summoned by the Investigating Authority ('IA') of SEBI and following was gathered from the statements made by them before the IA:

a. Mr. Rohan (Noticee No.1) was an analyst who looked after technical analysis and was responsible to place orders through calling dealers on behalf of Tusk. He was solely responsible for placing orders for about 2 years during 2021 to 2023. During 2022, Anup Agarwal joined so sometimes he also placed orders.

b. Mr. Rohan used to call dealers of our brokers for order placement. It was Mr. Rohan's strong preference that he will place orders through calls only.

c. There is no written Code of conduct for employees regarding trading as such. However, they generally ask their employees to desist from trading. This is done orally.

35. From the above submissions of Noticee No.1 and the Big Client, I note that the decision of investments of Tusk was communicated to Noticee No.1 for placing the order with the broker/s of Big Client. Hence, I note that the information regarding the impending orders of Big Client was only available with the concerned persons of the Big Client

including Noticee No.1 before the same was communicated to the Broker of the Big Cleint. I also note that the link between the broker of Big Client and the Big Client was Noticee No.1 during the IP. Hence, I am satisfied that the information regarding the impending orders of Big Client was not publically available and was an insider information when the alleged front running trades were executed by the Noticees.

36. Now I shall proceed to examine the second issue regarding the *substantiality* of the impending orders of the Big Client. The same is not defined in the Regulations. However, the IR states following regarding the same;

"*Tusk Investment Limited is an investment company and its main line of business is investment in securities. The order timing sheet provided by NSE, revealed that atleast 37% of the orders placed by the Big Client in cash segment accounted for more than 5% of the trading volume in a particular scrip on the referred scrip day and also in 80% of the instances in cash segment, the number of shares traded exceeded 5000 in number which was considerable in volume. Further, atleast 35% of the orders placed by the Big Client in equity derivative segment accounted for more than 5% of the trading volume in a particular contract in the referred scrip and also in 96% of the instances in equity derivative segment, the number of contracts traded exceeded 5000 which was considerable in volume. Investigations further revealed that in 16 instances the total traded quantity of the big client was more than 30% of the total traded quantity in the scrip.*

This shows that orders of Big Client were of substantial quantities, which had the potential to make an impact on the price movement of those particular scrips upon their placement. Also, the profit per instance made by the suspected entities evidences the fact that the price of the scrip moved substantially pursuant to trades executed in the accounts of Big Client." *[Emphasis Supplied]*

37. In addition to above, I note that the relevant provision of PFUTP Regulations i.e. Regulation 4(2)(q), invoked in the present matter, employs the term *substantial* for a single *order* which is placed by a person who intends to front run the impending trade of a Big Client. However, in the instant matter, it was observed that the Noticees, for a period of over two years were found to be placing orders ahead of Tusk in total 602 instances and made profits. Further, during the investigation it was found that the total profit made by the Noticees from the said trades is more than Rs.47 Lakhs. Hence, I

note that upon considering all the trades of the Big Client/Tusk which were allegedly front ran by the suspected entities and the fact that Noticee No.1 was aware about all those orders of Big client by virtue of been the person responsible to place the orders with the brokers of the Big Client, the condition regarding the *substantial quantity* as stated in regulation 4(2)(q) of PFUTP Regulations is satisfied in the instant matter.

38. As seen above, since it is established that Noticee No.1 was in possession of the undisclosed information regarding the impending substantial orders of Big Client, I shall proceed to examine whether the trades undertaken by the Noticees, during the IP, were in furtherance of alleged front running, as stated in the SCN.

Analysis of Alleged Front Running Trades of Suspected Entities

39. I note from the IR that the suspected entities placed the orders through the following brokers:

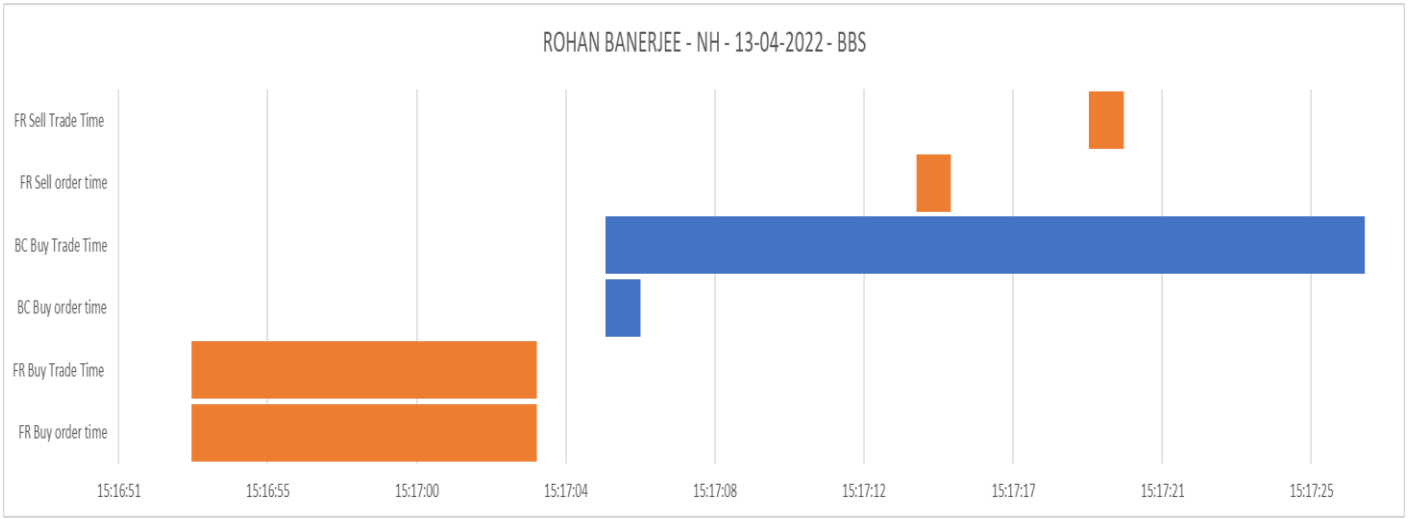
Name of the Suspected Entity	***Broker through whom trades were executed***
Rohan Banerjee	Zerodha Broking Limited
Rahul Banerjee	Angel Broking Private Limited

40. Similarly, the trades of Big Clients which were allegedly being front run were mostly executed by broker Sanctum Wealth Private Limited and Ambit Capital Private Limited (hereinafter referred as 'Sanctum and Ambit') respectively.

<u>Trading Pattern of suspected entities in the present matter</u>

41. As per SCN, in front running the trades of Big Client, the following pattern was observed in the trades of suspected entities :

- <u>Noticee No.1'sTrade in the scrip of NH on 13-April-2022- NSE</u>



42. Buy orders were placed by Noticee No.1 from his trading account for 3000 shares between 15:16:53 to 15:17:03 and the buy trades were executed between 15:16:53 and 15:17:03 at an average price of ₹732.30865. The buy order was placed by big client at 15:17:05 for 7000 shares and buy trades were executed by big client between 15:17:05 and 15:17:27 at an average price of ₹737.5487.

43. As soon as big client started buying, sell order for 3000 shares was placed at 15:17:14 and sell trade (single trade) was executed at 15:17:19 from the trading account of Noticee No.1 at a price of ₹738.00.

44. Total number of shares sold by Noticee No.1 in Tranche-I were 3,000 shares in 1 trade. Out of which, 100% shares got matched with big client in 1 trade. The total profit made from the trade was of ₹17,074.05.

45. From the chart above, it is observed that the major activity of Noticee No.1 happened just before the big client. It is further observed that the sell order is being placed in a single tranche by Noticee no.1 which got 100% matched with the big client.

CDR Analysis:

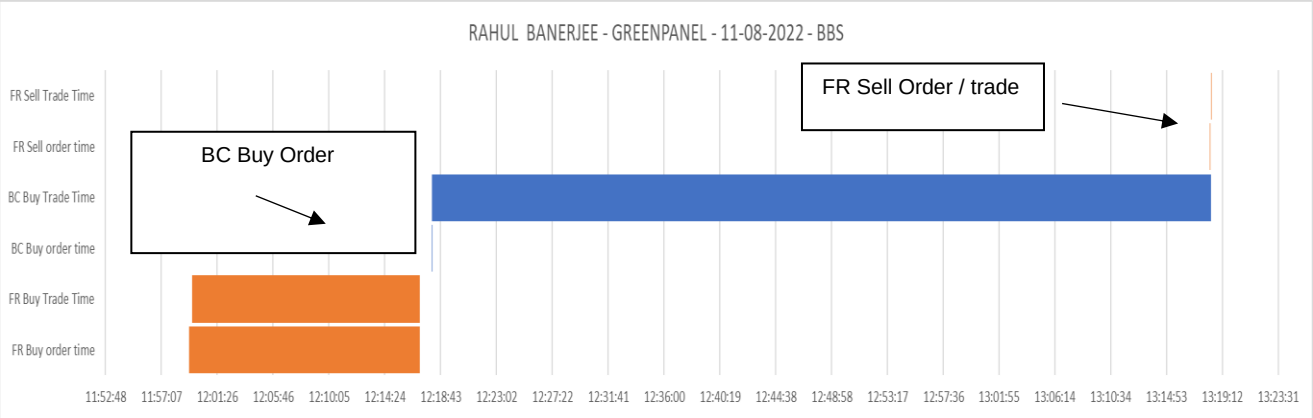
46. From the CDR analysis, I note from IR that it was observed that Mr. Rohan placed the above order of the big client with the dealer of Sanctum by calling from his own mobile number i.e. 798xxxx742[1] at 15:16:45 hours. It was further observed that this call was placed from the office of Tusk.

47. Further, from the submissions of Zerodha during investigation, it was observed that the above front running order placed by Mr. Rohan was placed from the device name Macbook- Macintosh Intel Mac OS X 10_15_7, which as confirmed by Tusk, was being used by Mr. Rohan. Further, as mentioned by Zerodha, the said mobile number i.e. 798xxxx742 was being used for logging into trading account of Mr. Rohan. Thus, it was observed that the front running order was placed from the office of Tusk itself by Mr. Rohan. Also Noticee No.1 in his statement made before the IA during the investigation

[1] Mobile numbers have been masked to ensure privacy.

had admitted that he used Tusk's wifi while being in the office and placing orders in his account.

- Noticee No.2's trade in the scrip of GREENPANEL on 11-Aug-2022- NSE



48. I note from the SCN that buy orders were placed by Noticee No.1 from the trading account of Noticee No.2 for 3200 shares between 11:59:16 to 12:17:08 and the buy trades were executed between 11:59:30 and 12:17:08 at an average price of ₹437.116015. The buy order was placed by the Big Client for 11300 shares at 12:18:04 and the buy trades were executed between 12:18:04 and 13:18:18 at an average price of ₹438.2798.

49. As soon as the Big Client started buying, sell order was placed at 13:18:13 and the position was squared off in the trading account of Noticee No.2 at an average price of ₹438.90, at 13:18:18. The total profit made from the trade was of ₹5,708.75.

50. From the chart above, it is observed that major trading activity of Noticee No.2 happened just before the Big Client. It is further observed that the sell order is being placed in a single trade in the trading account of Noticee No.2 which got 100% matched with the Big Client.

51. From the illustrations mentioned above, it was observed that the buy orders from the trading account of Noticees started before the impending buy order of the Big Client. Further, as and when the buy order of the Big Client was placed in the system, because of the sudden surge in demand for a considerable quantity, there was an upward movement in the price of the scrip and correspondingly, sell trades were executed from the trading accounts of Noticees.

52. From the further analysis of FR Instances, it was also observed that the sell orders from the trading account of Noticees started before the impending sell order of the Big Client. Further, as and when the sell order of big client was placed in the system, there was a downward movement in the price of the scrip because of the sudden surge in the number of shares available for sale vis-à-vis demand for the same and correspondingly, buy trades are getting executed from the trading account of Noticees.

53. Thus, as observed from the above and the various other trades undertaken by the Noticees during the IP, orders were consistently being placed in the accounts of Noticees right before the impending orders of the Big Client and were getting squared off immediately thereby making profits.

Role of Noticee No.2

54. I note from the IR that Noticee No.1 in his statement made before the IA during the investigation stated that Noticee No.1 carried out intraday trades in the account of Noticee No.2 and only long term investments were handled by Noticee No.2. Noticee No.2 in response to the SCN has stated that the said alleged trades were executed by his son, i.e. Noticee No.1, and he was totally unaware of the same in any manner whatsoever. Further, he was not associated with Tusk in any manner whatsoever and it is merely that his son (Noticee No.1) used to work in that company. Since he did not have any direct connection with Tusk and therefore is not possible for him to have information of any trade of Tusk.

55. As observed in preceding paragraphs, Noticee No.1 had complete information of the orders of the Big Client and was placing front running orders in his own as well as Noticee No.2's account. Further, I note from SCN that the IP addresses of trades placed in the account of Noticee No.2 matched with IP addresses of Noticee No.1 and devices used for the order placement were also same for both Noticees, thus, corroborating that trades of Noticee No.2 were also being placed by Noticee No.1.

56. Further, Noticee No.2, had also admitted in his written submission that in the instances of front running orders placed in his trading account, the same were placed by Noticee No.1 (i.e. his son) and decision regarding those trades was taken by Noticee No.1.

57. At the first instance, I want to note that the fact that the trading account of Noticee No.2 was used by Noticee No.1 to execute trades during the IP and Noticee No.2 was aware about the same is not denied by Noticee No.2. Further, from the facts of the case and the submissions of the Noticees, I also infer that Noticee No.2 allowed the access of his trading account to Noticee No.1 to carry out trades in his name. Since the orders were placed by Noticee No.1 from the trading account of Noticee No.2 through online mode, also shows that the credentials of the trading account of Noticee No.2 and the required authentication details (One Time Passwords) were shared with Noticee No.1. Considering all the facts together and the submission of the Noticees, I note that there was implied authorisation of Noticee No.2 in favour of Noticee No.1 to carry out trades on his behalf, hence the liability of the trades undertaken from the account of Noticee No.2 by Noticee No.1 falls upon Noticee No.2.

58. With respect to the trading patterns observed by SEBI viz. SSB and BBS, in the instances of alleged front running, the Noticees had contended that the same is not followed in many instances and also there is considerable time difference in the orders placed by the Big Client and the suspected entities hence their trades cannot be called fraudulent. In this regard, I note that the traditional patterns of front running viz. SSB and BBS, as already discussed elaborately in previous parts of the order, are not the only methods through which one can make profit while front running the trades and there are various other patterns available with the front-runners. Hence, the violation with respect to front running will not go away only because a certain pattern is not followed in few instances. Likewise, time difference of few hours between the orders placed by the Big Client and the suspected entities also does not wither away the observations of front running.

59. The market mechanism provides various methods for a trader to place orders and execute their trades and hence the time lag between the trades of the suspected entities and the Big Client will not act as a hindrance in achieving the desired outcome. Here it is pertinent to highlight the profits made by the Noticees through the said trades during the IP. At the end, I note that the key consideration while dealing with the allegation of front running shall always be the possession of non-public information regarding the impending substantial orders of Big Client and on that basis placing of orders by the front-runners ahead of the said impending orders of Big Client. Since both

the requirements are satisfied against the Noticees, the instant contentions of the Noticee cannot be accepted and the submission that the trades of the Noticees cannot be considered fraudulent is not tenable. I also emphasise that the trades where the front running patterns were observed against the suspected entities but they failed to make any profit have already been excluded from the scope of the instant proceedings.

60. I note from SCN that Noticee No.1 had 364 front running instances in equity segment against the Big Client and the total profit earned through front running is ₹28.49 lakhs. Further, Noticee No.2 had 74 front running instances in equity segment against the Big Client and the total profit earned through front running is ₹8.30 lakhs. Noticee No.1 had 164 front running instances in equity derivative segment against the Big Client and the total profit earned through front running is ₹10.42 lakhs. However, no trades were observed in F&O Segment by Noticee No.2.

61. Consequently, I note that the suspected entities made significant profits through intra-day trading, majority of which was made on common scrip days with the Big Client with minimal time difference with Big Client in placing the orders and also squaring off the trades with the Big Client to book profit indicates that the trades during the IP were not executed in the normal course of trading but were in the nature of trades that were executed for front running the trades of the Big Client. This inference is in line with the judgment of Hon'ble Supreme Court in ***Securities and Exchange Board of India vs. Kishore R. Ajmera*** [(2016) 6 SCC 368] wherein it was held that it is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled.

62. Further, it is also pertinent to refer to the order of the Hon'ble SAT in ***Madhu Chanda and others vs. SEBI*** (Appeal no. 335 of 2023, Date of decision: October 30, 2023) involving front running in multiple accounts, wherein it was held that:

"...We find that the very nature front running refers to an extremely precise trading activity which is impossible to achieve unless the front runner had access to the non-public information about the impending orders of the Big Client (in this case the, Sterling group). For this reason, matching of common scrip days, common

percentage of shares, precise matching of price by the front runner with the Big Client, earning significant amounts of profits on common scrip days with the Big Client when compared to non-common scrip days are all extremely strong indicators that the front runners were placing its orders ahead of and in tandem with the large orders of the Big Client in order to make gains for themselves. Thus, due to the trading based on prior information of trades of the Sterling group, the front runners and the entities who facilitated them gained unlawfully and caused loss to other investors / deprived the investors from profits."

63. The Noticees while relying on the judgment of ***SEBI vs. Kanaiyalal Baldevbhai Patel & Ors.*** *(supra)* submitted that since the instructions to place the order were shared by Mr. Pranay (CIO of Tusk) with Noticee No.1 itself establishes that Noticee No.1 has not acquired the information in bad faith and therefore trades executed in the account of Noticee No. 1 and 2 cannot be treated as fraudulent.

64. For the above, I shall again refer to the trading pattern of Noticee No.1 and 2 during the IP along with the admission of the said Noticees during investigation regarding executing trades in the same scrip as that of Big Client for the purpose of making profits. In the statement made during the investigation on January 24, 2024, Noticee No. 1 admitted that he was front running the trades of Tusk from his own as well his father's (Noticee no.2) account since 2021.

65. Taking it all in consideration it cannot be said that the act of Noticee No.1 and 2 was not in bad faith or fraudulent as the motive of the Noticees was only to take benefit of the information regarding impending orders of the Big Client. Hence, the said trades were not undertaken in the normal course rather Noticee No.1 and 2 took advantage of the information which was not available with public i.e. impending orders of the Big Client. Accordingly, I note that the same amounts to fraudulent in terms of Regulation 4(2)(q) read with 2(1)(c) of SEBI PFUTP Regulations. Hence, the contention of the Noticee is devoid of any merit and accordingly cannot be accepted.

66. With regard to the acts of the Noticees being fraudulent, I further mention that in ***SEBI and Ors. vs. Kanaiyalal Baldevbhai Patel and Ors.*** *(supra),* the Hon'ble Supreme Court had held that;

"41. Now we come back to the Regulations 3 and 4 (1) which bars persons from dealing in securities in a fraudulent manner or indulging in unfair trade practice. Fairness in financial markets is often expressed in terms of level playing field. A playing field may be uneven because of varied reasons such as inequalities in information etc. Possession of different information, which is a pervasive feature of markets, may not always be objectionable. Indeed, investors who invest resources in acquiring superior information are entitled to exploit this advantage, thereby making markets more efficient. The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result for others.

42. The law of confidentiality has a bearing on this case instant. "Confidential information acquired or compiled by a corporation in the course and conduct of its business is a species of property to which the corporation has the exclusive right and benefit, and which a court of equity will protect through the injunctive process or other appropriate remedy." The information of possible trades that the company is going to undertake is the confidential information of the company concerned, which it has absolute liberty to deal with. Therefore, a person conveying confidential information to another person (tippee) breaches his duty prescribed by law and if the recipient of such information knows of the breach and trades, and there is an inducement to bring about an inequitable result, then the recipient tippee may be said to have committed the fraud.

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

67. With regard to the allegation of *fraud* and violation of the provisions of SEBI PFUTP regulations, I again refer to the judgment of Hon'ble Supreme Court in ***SEBI v. Shri Kanaiyalal Baldevbhai Patel*** *(supra)*. In the part of the judgment delivered by Justice Ranjan Gogoi, a liberal interpretation has been given to the definition of fraud under

Regulation 2(1)(c). It has been observed that fraud, as per the definition, even includes an act, expression, omission or concealment which, even though was not committed in a deceitful manner, but has (or had) the effect of inducing another person to deal in securities. The burden on SEBI in such a case will not be to prove that the person did the inducement dishonestly or in bad faith, but only to establish that the person so induced would not have acted the way he did if he was not induced.

68. A similar interpretation was given by Hon'ble SAT in ***Pyramid Saimira Theatre Ltd. v. SEBI*** (Appeal No. 242 of 2009 decided on April 07 2010) in which the ratio laid down by Supreme Court in ***Chairman, Sebi v. Shriram Mutual Fund*** (2006 (5) SCC 361), that *mens rea* is not a sine qua non for establishing violation of chapter VIA of SEBI Act, was extended to all the provisions of SEBI Act and the PFUTP Regulations. It was also observed that the words indicated in the definition of '*fraud*' under Regulation 2(1)(c) of the PFUTP Regulations *"whether in a deceitful manner or not"* are significant and clearly indicate that intention to deceive is not an essential requirement of the definition of fraud. The decisions in both these cases were rendered on the basis that proceedings initiated by SEBI are civil in nature. Accordingly, I note that whether the acts of the Noticees were done in bad faith or not have no bearing in the instant matter.

69. In line with the principles set out by the Hon'ble Supreme Court in ***Kishore R. Ajmera*** (Supra), for the purpose of front running, I note that in the instant matter, the number of scrips which were common in trades of the Big client and that of suspected entities, the time difference between trades of the suspected entities and the Big client, the trading pattern of suspected entities during the IP on common scrip days with the Big Client are the key considerations. I also note that Noticee No.1, during investigation, has admitted that he had prior access and possession of information about impending orders of the Big client and the same was used by him to place orders for himself and on behalf of Noticee No.2 (father of Noticee No.1). Therefore, I find no reason to defer from the findings of the SCN regarding front running activities carried out by the Noticees during the IP.

70. In view of the above, I conclude from the examination of facts, the material placed on record, the pattern of trades executed by Noticee No.1 and 2 wherein orders were placed prior to trades of the Big client as Noticee No.1 was aware of the impending

orders of Big Client and subsequent squaring off the position to make profits, the charges of front running as made out in the SCN stands established against Noticee No.1 and 2.

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

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on an exchange. They also prohibit persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. ....."

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

73. Thus, keeping in mind the aforesaid findings, I note that Noticee No.1, while being employee of the Big Client used to punch orders for the Big Client through its brokers. Having knowledge of the Big clients' impending trade orders, Noticee No.1 front ran the trades of Big Client through trading accounts of himself as well as of Noticee No.2's account during the IP and made unlawful gains. Thus, I note that the Noticees namely, Rahul Banerjee and Rohan Banerjee, in the process of front running trades of the Big clients have not only interfered with the market forces of supply and demand of a particular scrip but have also artificially influenced the price and volume of the scrip and have thus, prima facie distorted them. The aforesaid is tantamount to *fraud* within the meaning provided in Regulation 2(1)(c) of the PFUTP Regulations as well as *unfair trade practice*. Therefore, I note that the Noticees have violated Section 12A(a), (b),

(c), (e) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(q) read with Regulation 2 (1) (c) of PFUTP Regulations.

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

74. The allegations against Noticees are examined and established above. As observed in the previous parts of this order, Noticee No.1 and 2 while having access and possession of non-public information about impending trade orders of the Big client, executed trades in equity segment as well as derivative segment and earned illegitimate profits. Accordingly, I find that Noticees are liable to be imposed with appropriate penalty under Section 15HA of the SEBI Act. Further, I find that appropriate directions need to be issued against the Noticees for such serious violations.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

76. With respect to the liability of penalty, Noticee No.2 had submitted that SEBI vide order dated January 31, 2024, in the matter of *Front-Running of the trades of Sanctum Wealth Management Private Limited* (Date of Order 31.01.2024) has not imposed any penalty on Noticee No.2 to 8 of the said matter upon considering their roles and similar approach may be followed in the instant matter. To consider the instant submission, the said order of SEBI was perused and it is gathered that the front runner in that case i.e. Kishan Vishram Nanda, opened trading accounts of other front runners and used to trade through those accounts also he was transferring funds from the bank accounts from these other entities to carry out the trades. However, in the instant matter, Noticee

No.2 gave access of his trading account to Noticee No.1 to handle his trading account and to execute intraday trades (front running trades). Hence, in the instant case, as established above, it was an arrangement made by the Noticees wherein as per common knowledge of the Noticees the front running activities were carried out. Hence, the instant submission of the Noticee cannot be accepted.

77. From the SCN, I note that the examination of the order timing data revealed that there were 438 instances in equity segment and 164 instances in equity derivatives segment wherein Noticee No.1,and 2 had front run the trades of Big Clients during the IP. The summary of ill-gotten profits of Noticees by the said front running trades is as following:

Mr. Rohan Banerjee (Noticee No.1)	Profit in equity segment	₹ 28,49,232
	Profit in equity derivative segment	₹ 10,42,971
Mr. Rahul Banerjee (Noticee No.2)	Profit in equity segment	₹ 8,30,122
TOTAL		**₹47,22,325**

78. Hence, I note that Noticee No. 1 and 2 were engaged in Front Running trades during the IP and made wrongful gain of ₹47,22,325/-. In view of the above, I find that necessary directions are required to be issued and appropriate penalty is required to be imposed on the Noticees after considering the role played by them alongwith the amount of wrongful profit earned and the number of trades undertaken.

DIRECTIONS

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

a. Noticee No.1 and 2 are directed to disgorge jointly and severally a sum of **Rs. 47,22,325/-** (Rupees forty seven lakhs twenty two thousand three hundred and twenty five only) within 45 days from the date of this order and the same shall be credited into the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, within 45 days from the date of this order.

b. The Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the following period, from the date of this order:

Name of Noticee	PAN	Period of Debarment
Rohan Banerjee	COHPB4169L	**1 Year**
Rahul Banerjee	AEAPB6055J	**1 Year**

c. If the Noticees have, any open position in any exchange traded derivative contracts, as on the date of the order, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

d. In addition, in exercise of powers conferred upon me under sections 11(4A) and 11B(2), the Noticees are hereby imposed with the following monetary penalties:

Noticee No.	Name of the Noticee	Penal Provision	Amount (in Rupees)
1.	Rohan Banerjee	Section 15HA of SEBI Act, 1992	**10,00,000/- (Ten Lakhs)**
2.	Rahul Banerjee		**5,00,000/- (Five Lakhs)**

e. Noticee No.1 and 2 are prohibited from selling their assets, properties including mutual funds/shares/securities held by them in demat and physical form except for the purpose of effecting disgorgement as directed in point (a) above. Further, the banks are directed to allow debit from the bank accounts of the Noticees, only for the purpose mentioned in point (a) and (d) above. This direction shall cease to operate upon the payment of respective disgorgement and penalty amount.

f. The Noticees shall remit / pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee(s) may contact the support at portalhelp@sebi.gov.in.

g. The Noticee(s) shall forward details of the online payment made in compliance with the directions contained in this Order to the Division Chief, IVD-ID-20, SEBI, SEBI Bhavan II, Plot no. C -7, “G” Block, Bandra Kurla Complex, Bandra(E), Mumbai-400 051” and also to e -mail Id: tad@sebi.gov.in in the format as given in table:

Case Name	
Name of the Payee	

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

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

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

Date: March 28, 2025
Place: Mumbai

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