

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

ORDER

**Under sections 11B and 11(4) of Securities and Exchange Board of India Act,
1992**

In re front-running of HDFC Group's trades by Sanghvi Group and Kalpana Group

In respect of

Sl. No.	Name	Permanent Account Number
1	Nilesh Kapadia	AABPK0356Q
2	Kalpana Kapadia	AKVPK6646D
3	Rajiv Sanghvi	AAVPS8908E
4	Rajiv Sanghvi-HUF	AAAHR3188Q
5	Sanjay Sanghvi	AAIPS3640Q
6	Sonal Sanghvi	AYJPS9541D
7	Dipti Mehta	AHKPM9167B

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1. Securities and Exchange Board of India ('SEBI'), on receipt of references from Bombay Stock Exchange Limited and National Stock Exchange of India Limited regarding suspected instances of front-running of the orders of HDFC Mutual Fund and other related entities, undertook an investigation, which revealed the role of Mr. Nilesh Kapadia, Mr. Rajiv Ramniklal Sanghvi and others. In view thereof, during the pendency of the investigation, SEBI passed an *ad-interim ex-parte* order on June 17, 2010 in respect of Mr. Nilesh Kapadia, Mr. Rajiv Ramniklal Sanghvi and others wherein *inter alia* the Trustees of HDFC Mutual Fund were directed to set up an investigation committee to examine all transactions/dealings done by Mr. Nilesh Kapadia, in his position as the dealer of HDFC Asset Management Company Limited ("HDFC AMC") to identify whether he had indulged in similar front-running activities on other occasions. In compliance with the above directions, HDFC AMC submitted the report on "*the investigations into alleged front running activities by Mr. Nilesh Kapadia, Dealer-Equities, HDFC AMC*". Based on this report, SEBI conducted a detailed investigation into the matter of front-running by certain entities during the period June 2000 to June 2010.
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2. After completion of investigation in the matter, SEBI vide *ad interim ex parte* order dated January 15, 2016 issued directions in the matter to *Sanghvi Group*, i.e., Mr. Nilesh Kapadia (Nilesh), Mr. Rajiv Sanghvi (Rajiv), Rajiv Sanghvi-HUF (Rajiv-HUF), Mr. Sanjay Sanghvi (Sanjay), Ms. Dipti Mehta (Dipti) and Ms. Sonal Sanghvi (Sonal) and *Kalpna Group* i.e., Mr. Nilesh Kapadia (Nilesh) and Ms. Kalpana Kapadia (Kalpana). The directions were *inter alia* for impounding the unlawful gains of a sum of ₹2,17,14,284/- (gain of ₹1,05,02,417/- + interest of ₹1,12,11,866/-) jointly and severally from the Sanghvi Group, and a sum of ₹1,18,45,638/- (gain of ₹47,24,293/- + interest of ₹71,21,345/-) jointly and severally from the Kalpana Group. Vide the said order dated January 25, 2016, the Banks and Depositories were directed that no debit shall be made without the permission of SEBI, in respect of Bank accounts and Depository demat accounts held jointly or severally, by the Sanghvi Group and Kalpana Group, till the aforesaid amounts were impounded in escrow accounts as stipulated in the said Order.
3. Aggrieved by the said order, all the entities except Ms. Dipti Mehta filed appeals before Hon'ble Securities Appellate Tribunal ("SAT"). Vide order dated March 4, 2016, Hon'ble SAT disposed of the appeals and permitted the appellants to sell the securities lying in their respective demat accounts so as to enable them to deposit only the amount of undue profits set out in the impugned order and not the interest amount. All the contentions on both the sides were kept open. Hon'ble SAT also directed that on the appellants depositing the quantum of undue profits in the manner set out in the impugned order, SEBI shall defreeze all the accounts of the appellants and intimate the same to the concerned authorities forthwith.
4. Vide letter dated June 28, 2016, Kalpana Group confirmed the deposit of the amount to the extent of ₹47,24,293/- in an escrow account bearing no. 35817841878 with the State Bank of India. Vide letter dated January 18, 2017, Sanghvi Group confirmed the deposit of the amount of ₹1,05,2,417/- in an escrow account bearing no. 3539316591 created with Central Bank of India.
5. Thereafter, in view of the findings of the detailed investigation, a show cause notice dated February 14, 2017 (hereinafter referred to as "the SCN") was issued to Mr. Nilesh Kapadia, Mr. Rajiv Sanghvi, Rajiv Sanghvi-HUF, Mr. Sanjay Sanghvi, Ms. Dipti Mehta, Ms. Sonal Sanghvi and Ms. Kalpana Kapadia (hereinafter collectively referred to as the "Noticees" and individually by their respective names) calling upon them to show cause as to why suitable directions under section 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") should not be issued against them, to confirm the impounding order dated January 15, 2016, and to disgorge the aforesaid amount, including the wrongful gains made and the

interest earned thereon by indulging in transactions in contravention of the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations"). The SCN contained the following allegations:

- i) Investigations revealed that trades of a group of six entities, viz. Mr. Nilesh Kapadia (Nilesh), Mr. Rajiv Sanghvi (Rajiv), Rajiv Sanghvi-HUF (Rajiv-HUF), Mr. Sanjay Sanghvi (Sanjay), Ms. Dipti Mehta (Dipti) and Ms. Sonal Sanghvi (Sonal) [hereinafter collectively referred to as 'Sanghvi Group' and individually by their respective names] and another group of two entities viz., Mr. Nilesh Kapadia (Nilesh), and Ms. Kalpana Kapadia (Kalpana) [hereinafter collectively referred to as 'Kalpana Group' and individually by their respective names] were in the nature of front-running the trades of the HDFC Mutual Fund, HDFC Asset Management Company Limited and trades of HDFC AMC's portfolio management client(s) (collectively referred as 'HDFC Group').
- ii) Nilesh Kapadia was the equities dealer for HDFC AMC. Rajiv Sanghvi, on receiving instructions from Nilesh, dealt in various scrips through the sub-broker, Om Enterprises on NSE and BSE, ahead of the orders of HDFC Group. Rajiv Sanghvi dealt through the accounts of Rajiv-HUF (Rajiv is the karta of Rajiv-HUF), Sanjay (brother of Rajiv), Sonal (wife of Rajiv), Dipti (entity connected to Rajiv) and his own trading account (the said Noticees constituting the Sanghvi Group). The said Noticees were found to have front run the trades of HDFC Group in 42 transactions. Similar front running activities were observed in the trading account of Kalpana, wife of Nilesh Kapadia (constituting the Kalpana Group with Nilesh). The said Noticees were found to have front run the trades of HDFC Group in 93 transactions.

FRONT RUNNING BY SANGHVI GROUP

- iii) HDFC AMC had submitted call records and transcripts pertaining to 30 suspected front running transactions vide its letters dated June 26, 2012 and July 11, 2012. It was observed that the instructions to trade in the scrips were given from the dealer room phone to the mobile number '9322228959' belonging to Rajiv Sanghvi. HDFC vide its letter dated March 26, 2014 informed that HDFC's Executive Director & Chief Investment Officer and three Senior Fund Managers had identified the person's voice in the dealer room conversations with the mobile number '9322228959' as Nilesh Kapadia, Ex-Equities Dealer. Nilesh had been the equities dealer for HDFC AMC since June 2000 to till 2010.

- iv) It was observed from the BSE & NSE trade logs that the trades were executed in the trading account of Rajiv, Rajiv-HUF, Sanjay and Dipti. It was also observed that certain trades were executed in the trading account of Sonal Sanghvi (Sonal).
- v) It was observed from the mobile call records of Nilesh that Rajiv (9322228959) and Nilesh (9820221553) had talked to each other 333 times during the period August 6, 2007 to March 7, 2009.
- vi) It was observed from the audio conversation between Rajiv and Nilesh that Rajiv had reported the trades executed in the trading account of Dipti viz., the buy traded quantity, buy average rate, sell traded quantity and sell average rate in five instances. It could not have been possible for Rajiv to report Dipti's trading details to Nilesh on repeated instances unless they had a prior understanding among themselves. Further, the reporting of only Dipti's trades' details to Nilesh by Rajiv when so many entities in the market had traded in the respective scrips on the respective dates could not be a mere coincidence. It is therefore, inferred that Dipti is connected to Sanghvi group. Thus, these connected entities namely, Nilesh, Rajiv, Rajiv-HUF, Sonal, Sanjay and Dipti are collectively referred as '*Sanghvi Group*'.

MODUS-OPERANDI OF SANGHVI GROUP

- vii) Two trading patterns of front running viz., Sell-Sell-Buy and Buy-Buy-Sell were observed in respect of the trading of Sanghvi Group. It was observed that the trades of HDFC Mutual Fund, HDFC Asset Management Company Limited and trades of HDFC AMC's portfolio management client - Sudir Enterprises Pvt Ltd were front run. Trades of HDFC AMC, HDFC MF and HDFC AMC's client are collectively referred as 'HDFC trades'.
- viii) **Sell-Sell-Buy (SSB):** As a dealer of HDFC, Nilesh had the information of HDFC's sell order details viz., scrip, quantity and price range and had the discretion of time. Based on this, Nilesh had given instructions from the dealer-room telephone to Rajiv's mobile phone 9322228959 to sell the shares of the same scrip which HDFC was going to sell. The shares were sold in any of the trading accounts of Sanghvi Group immediately i.e., before HDFC started selling in the same scrip. Thereafter, Nilesh started selling the shares for HDFC in the same scrip through various brokers. Simultaneously, the Sanghvi group entities bought the shares in their trading accounts to square-off the trades (sell). Most of the buy orders of Sanghvi group entities matched with HDFC's sell orders. The details of trade executed in the trading accounts of Rajiv, Rajiv-HUF, Sanjay, Sonal or Dipti, viz., traded

quantity in the respective scrip and average traded price were informed by Rajiv to Nilesh in coded words.

ix) Buy-Buy-Sell (BBS): As a dealer of HDFC, Nilesh also had the information of HDFC's buy order details viz., scrip, quantity and price range and had the discretion of time. Based on this, Nilesh had given instructions from the dealer-room telephone to Rajiv's mobile phone 9322228959 to buy the shares of the same scrip which HDFC was going to buy. The shares were bought in any of the trading accounts of Sanghvi Group immediately i.e., before HDFC started buying in the same scrip. Thereafter, Nilesh started buying the shares for HDFC in the same scrip through various brokers. Simultaneously, the Sanghvi group entities sold the shares in their trading accounts, to square-off the trades. Most of the sell orders of the Sanghvi group entities had matched with the buy orders of HDFC. The details of the trades executed in the trading accounts of Rajiv, Rajiv-HUF, Sanjay, Sonal or Dipti viz., traded quantity in the respective scrip and average traded price were informed by Rajiv to Nilesh.

x) The sample analysis of front running of Sanghvi Group is as under:

Front running of HDFC's trades in the scrip of Punj Lloyd by Dipti (on BSE) and Sanjay (on NSE) on June 05, 2007 – BBS pattern:

- a) It was observed that on Jun 05, 2007, Nilesh had instructed from the dealer-room phone to Rajiv on his mobile phone number 9322228959 to buy 2 lakh shares of Punj Lloyd (Punj). The relevant extract of the audio conversation between Nilesh and Rajiv is given below:

Start Time 14:35:33 – End Time 14:36:04 (Audio file no.:458732)

Rajiv: Hello.

Nilesh: What is Punj Lloyd?

Rajiv: 232, 25.30

Nilesh: You buy 200,000 BSE mein.

Rajiv: Okay.

- b) It was observed from the trade log of Punj Lloyd on BSE for 05.06.2007 that the shares were bought in the trading account of Dipti. The share purchase started from 14:36:11.
- c) Further on the same date, on NSE, shares of Punj Lloyd were also bought in the trading account of Sanjay and the said purchase started from 14:36:18.
- d) It was observed that the purchase of Punj Lloyd shares in both the trading accounts viz., Dipti and Sanjay at BSE and NSE, respectively started almost

simultaneously and immediately after the instruction was received by Rajiv from Nilesh.

- e) After the Punj Lloyd shares were bought on both the exchanges, Rajiv had given the status of the trades executed in the trading accounts of Dipti and Sanjay to Nilesh. The following are the relevant audio conversations:

Start Time 14:41:26 – End Time 14:42:01(Audio file no.:458742)

Rajiv: Hello. Haan ho gaya (Yes, It is done) 130 BSE, 233.33, 175 on NSE, 233.77.

Nilesh: Aur hai na jagah? (Is there any scope).

Rajiv: Haan hai. (Yes)

Nilesh: Aur kar lo 1 lakh. (Do about 1 lakh)

Rajiv: Okay.

- f) It was observed from the BSE trade log that 1,30,000 shares @ ₹233.32 were bought in the trading account of Dipti. The same was updated by Rajiv to Nilesh in coded words i.e., 130 BSE, 233.33. Similarly, it was observed from NSE trade log that 1,75,000 shares @ ₹233.77 were bought in the trading account of Sanjay. The same was updated by Rajiv to Nilesh in coded words i.e., 175 on NSE, 233.77.
- g) It was observed that pursuant to Nilesh's instruction, additional shares were bought in the trading account of Sanjay and Dipti. The confirmation of the total bought quantity was updated by Rajiv to Nilesh. The relevant conversations are given below:

Start Time 14:42:22 – End Time 14:43:30 (Audio file no.:458743)

Rajiv: Hello.

Nilesh: Ho gaya? (Is it done).

Rajiv: Haan 165 on BSE, 233.47 and 241 NSE, 233.95.

- h) It was observed from BSE trade log that 1,65,000 shares @ ₹233.47 were bought in the trading account of Dipti at 14:42:40. The trade details of bought quantity and the average buy rate was then confirmed by Rajiv to Nilesh. These shares were bought between 14:36:11 and 14:42:40.
- i) It was observed from NSE trade log that 2,40,869 shares @ ₹234.00 were bought in the trading account of Sanjay at 14:43:03. The trade details of bought quantity and the average buy rate was then confirmed by Rajiv to Nilesh. These shares were bought between 14:36:18 and 14:46:20.

- j) The above status was communicated by Rajiv to Nilesh in coded words i.e., the bought quantity of 1,65,000 shares @ ₹233.47 at BSE was communicated as 165 on BSE, 233.47 and the bought quantity of 2,40,869 shares @ ₹234 at NSE was communicated in coded words as 241 NSE 233.95.
- k) Nilesh had instructed Rajiv to put sell order at ₹236.50 in a coded word 36.50. Immediately, the sell order for the rate of ₹236.50 was placed in Dipti's trading account at 14:43:49 and Sanjay's trading account at 14:43:51. The relevant audio conversations are given below:

Start Time 14:42:22 – End Time 14:43:30 (Audio file no.:458743 Contd...)

Nilesh: Kya aa raha hai abhi? (What is the rate at this time).

Rajiv: Haan 235.70, 236.

Nilesh: 36.50 me daal do. (Put it on 36.50)

- l) Nilesh had given instruction to the broker of HDFC to buy the shares at ₹236.50 in coded words. It is pertinent to mention that Nilesh had already instructed Rajiv to sell the shares at ₹236.50 i.e., Nilesh had structured the trades between HDFC and the front runners.

Start Time 14:44:11– End Time 14:47:11(Audio file no.:458745)

Nilesh: Ek kaam kar NSE pe lakh share lene daalo, BSE pe 1.50 lene daalo, 36.50 kar ke phataphat daalo. (Buy 1 lakh share on NSE and 1.50 lakh on BSE around 36.50 immediately).

Broker: Haan sir daalta hun. (okay will do it).haan aa gaya sir. (it has come)

- m) HDFC had bought 2,75,000 shares between 14:45:04 to 15:23:26 through the broker HSBC Securities & Capital Markets India Private Limited out of which 1,47,996 shares matched Dipti's sell order who had entered sell order for 1,65,000 shares @ ₹236.50 at 14:43:49. Similarly, out of the sell order for 2,75,000 shares placed in Sanjay's trading account at 14:43:51, 53,682 shares matched with HDFC's trades. After the completion of the purchase and sale of shares, Rajiv has given the consolidated update on the trading position to Nilesh. The relevant conversations are given below:

Start Time 14:44:11– End Time 14:47:11 (Audio file no.: 458745)

Rajiv: NSE pe gaya, BSE bhi ho gaya, dono. (Yes it is done on both NSE and BSE)

Nilesh: Kya average bolo. (Tell me the average)

Rajiv: 165, 233.47 and 236.50 and 2,40,000 at 233.96 and 236.50 clear.

n) As per the trade log, 1,65,000 shares were bought at ₹233.47 and sold at ₹236.50 in the trading account of Dipti and the same was communicated by Rajiv to Nilesh in coded words 165, 233.47 and 236.50. Similarly 2,40,869 shares were bought at ₹234 and sold at ₹236.50 in the trading account of Sanjay and the same was communicated in coded words 2,40,000 at 233.96 and 236.50.

o) It was observed from the above that Sanghvi Group had front run HDFC's trades and made a profit of ₹11 lakh. The summary of the trades is given below:

Exc.	FR Name	Date	Scrip	Type	Buy TQ	Sell TQ	Buy AR	Sell AR	Profit*
BSE	DIPTI	5-Jun-07	PUNJLLOYD	BBS	1,65,000	1,65,000	233.47	236.50	5,00,008
NSE	SANJAY	5-Jun-07	PUNJLLOYD	BBS	2,40,869	2,40,869	234.00	236.50	6,02,853
Total									11,02,861

*Profit is calculated on actual rate instead of average rate(AR).

xi) It was observed that the Sanghvi group indulged in 42 instances of front running (24 BBS Pattern and 18 SSB Pattern). The details of the 24 instances (BBS) of front running activities by Sanghvi Group and the profit made (calculated on actual rate on squared-off quantity) is given below:

S.N.	Excha nge	Date	Scrip Name	Client Name	Institution name	FR Buy Qty	HDFC Buy Qty	Sell Qty (Squared -off)	Matched quantity	Match ing %	Profit in ₹
1.	BSE	5-Jun-07	PUNJLLOYD	DIPTI	HDFC MF	165,000	275,000	165,000	147,996	89.69	500,007.85
2.	BSE	13-Jun-07	NESTLE LTD	DIPTI	HDFC MF	4,153	230,000	4,153	1,652	39.78	18,513.00
3.	NSE	23-May-06	ASHOKLEY	RAJIV	HDFC MF	650,000	2,750,000	650,000	596,167	91.72	916,325.25
4.	BSE	28-Aug-06	ISMT LTD	RAJIV	HDFC MF	5,500	300,000	8,089	2,500	30.91	8,775.15
5.	BSE	18-Jan-07	BIOCON LTD	RAJIV	HDFC MF	9,000	305,013	9,000	7,000	77.78	91,498.89
6.	BSE	22-Feb-07	ZEE ENTER	RAJIV	HDFC MF	4,010	280,000	4,010	4,010	100.0	7,350.40
7.	NSE	2-Aug-07	SUZLON	RAJIV	HDFC AMC	13,813	66,000	13,813	7,019	50.81	344,940.60
8.	NSE	7-Aug-07	SUZLON	RAJIV	HDFC MF	25,798	187,000	25,798	22,124	85.76	697,216.49
9.	NSE	8-Aug-07	MPHASIS	RAJIV	HDFC MF	62,101	275,000	62,101	61,379	98.84	191,023.60
10.	NSE	8-Aug-07	MARICO	RAJIV	HDFC MF	102,020	195,000	102,020	101,019	99.02	122,174.84
11.	NSE	5-Jun-07	PUNJLLOYD	SANJAY	HDFC MF	240,869	350,000	240,869	53,682	22.29	602,852.79
12.	BSE	2-Aug-07	SUZLON	SANJAY	HDFC AMC	7,000	24,000	7,000	2,000	28.57	155,864.70
13.	BSE	7-Aug-07	SUZLON	SANJAY	HDFC MF	13,800	80,000	13,800	13,007	94.25	342,328.55
14.	BSE	8-Aug-07	MPHASIS	SANJAY	HDFC MF	64,112	125,000	64,112	64,112	100.0	181,453.85
15.	BSE	8-Aug-07	MARICO	SANJAY	HDFC MF	53,500	105,000	53,500	45,000	84.11	68,124.80

S.N.	Exchange	Date	Scrip Name	Client Name	Institution name	FR Buy Qty	HDFC Buy Qty	Sell Qty (Squared-off)	Matched quantity	Matching %	Profit in ₹
16	BSE	9-Aug-07	SUZLONENER	SANJAY	HDFC MF	28,005	40,000	28,005	28,005	100.0	439,934
17	BSE	10-Aug-07	SUZLON	SANJAY	HDFC MF	30,112	57,000	29,937	28,940	96.67	376,066.25
18	BSE	5-Sep-07	SUZLON	SANJAY	HDFC MF	20,029	40,000	20,029	20,029	100.0	185,264.35
19	BSE	6-Sep-07	GUJAR IN	SANJAY	HDFC MF	142,500	400,000	140,000	116,601	83.29	217,409.24
20	BSE	13-Jul-05	ISMT LTD	SONAL	HDFC MF	175,504	622,701	175,504	174,504	99.43	653,374.60
21	BSE	18-Apr-06	TATA ELXSI	SONAL	HDFC MF	27,700	60,500	27,700	27,400	98.92	307,591.50
22	NSE	2-Jun-06	FINANTECH	SONAL	HDFC-Portfolio client	3,850	13,077	3,850	3,850	100.00	373,486.10
23	BSE	22-Jun-06	AIAENG	SONAL	HDFC MF	9,000	25,500	9,000	4,730	52.56	271,651.09
24	NSE	22-Jun-06	AIAENG	SONAL	HDFC MF	10,200	24,500	10,200	10,107	99.09	239,254.09
SANGHVI'S GROUP – BBS PATTERN - PROFIT											73,12,481.58

xii) The details of the 18 instances (SSB) of front running activities by Sanghvi Group and the profit made (calculated on actual rate on squared-off quantity) is given below:

S. N.	Exchange	Date	Scrip Name	Client Name	Institution name	FR Sell Qty	HDFC Sell Qty	Buy Qty (Squared-off)	Matched quantity	Matching %	Profit in ₹
1.	NSE	13-Feb-07	TULIP	SONAL	HDFC MF	12,000	142,000	12,000	12,000	100.00	158,123.40
2.	BSE	21-Aug-07	SUNTV	SANJAY	HDFC AMC	40,000	164,198	40,000	39,069	97.67	391,572.19
3.	BSE	20-Aug-07	MAHARASH SEA	SANJAY	HDFC MF	26,969	47,500	26,969	26,370	97.78	127,150.34
4.	BSE	2-Aug-07	WIPRO	SANJAY	HDFC AMC	35,200	145,925	35,200	34,409	97.75	181,599.15
5.	BSE	1-Aug-07	SUNTV	SANJAY	HDFC MF	15,000	16,100	15,000	14,120	94.13	63,647.15
6.	NSE	5-Jun-07	DISHTV	SANJAY	HDFC MF	55,759	540,000	55,759	47,805	85.74	76,179.54
7.	NSE	5-Jun-07	EICHERMOT	SANJAY	HDFC MF	3,653	12,750	3,653	2,504	68.55	15,863.39
8.	NSE	1-Jun-07	DISHTV	SANJAY	HDFC MF	71,000	504,334	71,000	71,000	100.00	232,575.15
9.	NSE	14-May-07	CIPLA	SANJAY	HDFC MF	240,686	690,000	240,686	240,686	100.00	327,966.35
10.	NSE	13-Feb-07	ASHOKLEY	RAJIV- HUF	HDFC AMC	350,000	1,200,000	350,000	347,167	99.19	444,850.65
11.	BSE	13-Feb-07	ASHOKLEY	RAJIV- HUF	HDFC AMC	231,000	755,415	231,000	66,751	28.90	291,609.25
12.	BSE	13-Feb-07	ASHOKLEY	RAJIV- HUF	HDFC MF	50,299	119,022	50,299	50,299	100.00	119,861.75
13.	NSE	13-Feb-07	TULIP	RAJIV- HUF	HDFC MF	57,077	142,000	57,077	55,624	97.45	116,368.90
14.	NSE	2-Aug-07	WIPRO	RAJIV	HDFC AMC	30,500	150,000	30,500	30,400	99.67	150,276.89
15.	NSE	1-Aug-07	SUNTV	RAJIV	HDFC AMC	39,213	47,650	39,213	39,213	100.00	179,715.70
16.	BSE	5-Jun-07	EICHERMOT	DIPTI	HDFC MF	3,702	9,300	3,702	2,852	77.04	17,737.89
17.	BSE	1-Jun-07	DISHTV	DIPTI	HDFC MF	49,186	317,722	49,186	49,186	100.00	161,249.50
18.	BSE	18-Apr-07	PRAJ INDUSTR	DIPTI	HDFC-Portfolio	20,000	70,645	20,000	20,000	100.00	133,588.15
SANGHVI'S GROUP – SSB PATTERN - PROFIT											31,89,935.34

xiii) The entity-wise profit made by Sanghvi Group entities is given below:

Client Name	Buy Buy Sell Pattern		Sell Sell Buy Pattern		Total	
	No. Instances	Profit in ₹	No. Instances	Profit in ₹	No. Instances	Profit in ₹
DIPTI	2	5,18,521	3	3,12,576	5	8,31,096
RAJIV	8	23,79,30	2	3,29,993	10	27,09,298

Client Name	Buy Buy Sell Pattern		Sell Sell Buy Pattern		Total	
	No. of Instances	Profit in ₹	No. of Instances	Profit in ₹	No. of Instances	Profit in ₹
RAJIV- HUF	-	-	4	9,72,691	4	9,72,691
SANJAY	9	25,69,29	8	14,16,55	17	39,85,851
SONAL	5	18,45,35	1	1,58,123	6	20,03,481
Grand	24	73,12,48	18	31,89,93	42	1,05,02,41

xiv) It was observed that Sanjay had front run on 17 instances and made a profit of ₹39,85,851, Sonal had front run on 6 instances (profit of ₹20,03,481), Rajiv had front run on 10 instances (profit of ₹27,09,298), Rajiv-HUF had front run on 4 instances (profit of ₹9,72,691) and Dipti had front run on 5 instances (profit of ₹8,31,096). In total, Sanghvi Group had made a profit of ₹1.05 crore from 42 instances of front running. Since, Nilesh had instructed to execute these trades to front run HDFC's trades, HDFC had lost the price advantage in these trades and the profit made in the trading accounts of Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti in these trades is the loss of price advantage to HDFC. Therefore, it was alleged that these trades were executed in a fraudulent manner by Nilesh, Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti who had acted in concert, to defraud HDFC and other investors.

xv) It was observed from the audio conversation records that out of the 42 instances, on 29 instances Nilesh had instructed Rajiv Sanghvi to buy/sell before HDFC's trades. The examination of trade and order logs revealed that the trades confirmed by Rajiv to Nilesh were all executed in the trading accounts of Sonal / Rajiv / Rajiv-HUF / Sanjay / Dipti. Further, no other clients' trades were matching with the trade confirmation given by Rajiv to Nilesh on respective days and scrips. The trade confirmation details given by Rajiv such as quantity and average rate were matching with trades of Sonal / Rajiv / Rajiv-HUF / Sanjay / Dipti.

xvi) The available call data in respect of 29 instances revealed how these front running trades were executed. On 13 instances, where audio conversation records are not available, the trading pattern clearly establishes that similar modus-operandi was followed by Sonal, Rajiv, Rajiv-HUF and Sanjay (family members) and Nilesh to front run HDFC's trades.

xvii) Matching of trades with HDFC's trades on 42 instances cannot be a mere coincidence. The matching of trades in the trading accounts of Sonal / Rajiv / Rajiv-HUF / Sanjay / Dipti, the time of trade execution and the conversation time and traded quantity communicated by Rajiv to Nilesh clearly establish that Nilesh, Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti had acted together as a group.

xviii) The 42 front running instances were not the routine trades of Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti. These trades were executed only with an intention to

square-off by matching with HDFC's forthcoming trades and earn profit. As stated earlier, most of the square-off trades matched with HDFC trades. These trades could not have been executed if Nilesh had not instructed to trade. In the absence of trades of Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti, HDFC and the other investors would have obtained better price. These trades had disturbed the market equilibrium and normal price discovery mechanism of stock exchanges.

xix) Since, Nilesh had instructed to execute these trades to front run HDFC trades, HDFC had lost the price advantage in these trades and the profit made in the trading accounts of Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti in these trades is the loss of price advantage to the HDFC and other investors. These trades were executed in fraudulent manner by Nilesh, Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti who had acted in concert, to defraud HDFC. These trades had created false or misleading appearance of the trading in the securities market.

FRONT RUNNING BY KALPANA GROUP

xx) The report submitted by HDFC AMC had identified 100 suspected front running transactions by Kalpana Kapadia, wife of Nilesh Kapadia. These two entities are collectively referred to as 'Kalpana Group'.

MODUS OPERANDI OF KALPANA GROUP

xxi) The examination of the trade log details revealed that out of 100 suspected front running transactions identified in the HDFC AMC report, on 93 instances Kalpana front run HDFC's trades and matched with HDFC's trades while squaring-off her trades. It could not have been possible for Kalpana to match HDFC's trades on 93 instances unless Nilesh and Kalpana had a prior understanding between them. Therefore, it is inferred that there was communication of information between Nilesh and his wife - Kalpana regarding the details of HDFC's trades.

xxii) Two trading patterns of front running viz., Sell-Sell-Buy and Buy-Buy-Sell were observed in the front running of HDFC's trades by Kalpana Group.

xxiii) Sell-Sell-Buy (SSB): As a dealer of HDFC, Nilesh had HDFC's sell order details viz., scrip, quantity, price range and discretion of time. Therefore, before HDFC's orders were placed, Kalpana had executed her sell transactions for the same scrip. Thereafter, when HDFC placed its sell order, Kalpana had executed her buy transactions around the same time so that her buy orders could match with HDFC's sell orders thereby squaring-off her sell transactions with a profit.

xxiv) Buy-Buy-Sell (BBS): As a dealer of HDFC, Nilesh had the information of HDFC's buy order details viz., scrip, quantity, price range and discretion of time. Therefore, before HDFC's buy order was placed, Kalpana had executed her buy transactions for the same scrip. Thereafter, when HDFC placed its buy order, Kalpana had executed her sell transactions around the same time so that her sell orders could match with HDFC's buy orders thereby squaring-off her buy transactions with profit.

xxv) SSB pattern in the share of BEML on June 10, 2003:

- Kalpana had sold 43,156 shares of BEML at NSE on June 10, 2003 between 10:07:51 and 10:29:27. HDFC had sold 65,000 shares of BEML on the same day at NSE between 10:33:22 and 10:40:56. It was observed that before HDFC had started selling the shares of BEML, Kalpana had started buying the shares of BEML.
- After HDFC started selling the shares, Kalpana had immediately started buying the shares at 10:37:16. Kalpana had bought 43,156 shares between 10:37:16 and 10:52:02. Out of 43,156 shares bought by Kalpana, 37,803 shares were matched with the sell trades of HDFC i.e., 87.60% of the buy trades of Kalpana matched with HDFC's sell trades.
- Kalpana group had made a profit of ₹85,239 by front running HDFC's trades. The summary of the trades is given below:

Sell Qty	HD FC Sell Qty	Bu y Qty	Sel l AR	Bu y AR	Profit *	Matched volume	Match ed %	Sell Start Time	Sell End Time	HDF C Sell Start Time	HDF C Sell End Time	Buy Start Time	Buy End Time
43,156	65,000	43,156	85.98	84.00	85,238.80	37,803	87.60	10:07:51	10:29:27	10:33:22	10:40:56	10:37:16	10:52:02

* Profit is calculated on actual rate instead of average rate(AR).

- Adopting the above discussed *modus-operandi*, Kalpana had front run the trades of HDFC on 34 more instances (SSB pattern).

xxvi) BBS pattern in the scrip of Syndicate Bank on May 02, 2002:

- Kalpana had bought 2,15,066 shares @ ₹13.29 of Syndicate Bank between 12:26:16 and 14:07:05. HDFC had started buying 3,67,005 shares of Syndicate Bank on the same day between 14:06:20 and 15:28:36. It was observed that

before HDFC had started buying the shares of the Syndicate bank, Kalpana had started buying the shares of Syndicate Bank.

- b. After HDFC started buying the shares, Kalpana had sold 2,15,066 shares between 14:07:23 and 14:19:56. The entire shares sold by Kalpana were matched with HDFC's buy trades.
- c. Kalpana group had made a profit of ₹1,20,074 by front running HDFC's trades.

The summary of the trades is given below:

Buy Qty	HDFC Buy Qty	Sell Qty	Buy AR	Sell AR	Profit*	Match ed volum e	Match ed %	Buy Start Time	Buy End Time	HDFC Buy Start Time	HDFC Buy End Time	Sell Start Time	Sell End Time
2,15,066	3,67,005	2,15,066	13.29	13.85	1,20,074	2,15,066	100	12:26:16	14:07:05	14:06:20	15:28:36	14:07:23	14:19:56

- d. Adopting the above discussed *modus-operandi*, Kalpana had front run the trades of HDFC on 57 more instances (BBS pattern).

xxvii) In total, 35 instances of SSB and 58 instances of BBS front running pattern were observed. It is pertinent to mention that most of Kalpana's trades were matched with HDFC's trades including 100% matching on 33 instances. The details of the 58 instances (BBS front running) by Kalpana Group and the profit made (calculated on actual rate on squared-off quantity) is given below:

S.N .	Date	Scrip Name	FR Buy Qty	HDFC Buy Qty	Sell Qty (Square d-off)	Matched Qty	Matched %	Profit IN ₹
1.	01-Nov-	MTNL	9,000	22,770	9,000	727	8.08	18,002.50
2.	02-Nov-	HINDPETRO	8,500	25,000	8,500	8,499	99.99	6,554.75
3.	08-Nov-	MTNL	6,456	14,119	6,456	1,619	25.08	9,978.25
4.	28-Nov-	HINDPETRO	3,951	18,433	3,951	3,951	100.00	5,514.20
5.	28-Nov-	BHEL	5,000	23,392	5,000	4,950	99.00	4,672.65
6.	29-Nov-	HINDPETRO	15,000	43,144	15,000	13,418	89.45	22,071.10
7.	29-Nov-	GODREJCP	10,000	25,458	10,000	10,000	100.00	12,529.75
8.	14-Dec-	ASHOKLEY	5,000	11,914	5,000	4,875	97.50	6,250.00
9.	19-Dec-	ASHOKLEY	12,000	35,788	12,000	12,000	100.00	13,990.50
10.	20-Mar-	UCALFUEL	3,631	4,481	3,631	3,631	100.00	7,168.25
11.	20-Mar-	HEROHOND	2,000	4,000	2,000	2,000	100.00	4,659.70
12.	27-Mar-	UCALFUEL	2,185	2,858	2,185	2,185	100.00	937.00
13.	29-Apr-	SYNDIBANK	1,10,16	2,16,166	1,10,165	1,10,165	100.00	59,222.60
14.	30-Apr-	SYNDIBANK	68,000	2,12,211	68,000	68,000	100.00	34,570.75
15.	02-May-	SYNDIBANK	2,15,06	3,67,005	2,15,066	2,15,066	100.00	1,20,074.9
16.	22-May-	HIMATSEIDE	7,725	12,000	7,725	7,725	100.00	36,835.25
17.	22-May-	DRREDDY	3,000	6,000	3,000	1,484	49.47	17,195.90
18.	13-Jun-	CENTENKA	17,063	37,050	17,063	16,063	94.14	29,659.10
19.	24-Jul-02	SHASUNCH	8,018	11,136	8,018	7,950	99.15	16,519.05
20.	25-Jul-02	SHASUNCH	40,863	59,349	40,863	40,763	99.76	84,294.45
21.	26-Jul-02	SHASUNCH	5,501	9,854	5,501	5,501	100.00	5,169.40
22.	30-Jul-02	JBCHEPHAR	7,780	13,457	7,780	7,780	100.00	18,667.00
23.	30-Jul-02	SHASUNCH	5,000	12,241	5,000	4,900	98.00	5,361.40
24.	30-Aug-	HDFC	4,000	9,500	4,000	3,337	83.43	11,933.85

S.N .	Date	Scrip Name	FR Buy Qty	HDFC Buy Qty	Sell Qty (Square d-off)	Matched Qty	Matched %	Profit IN ₹
25.	22-Oct-	COSMOFILM	30,000	55,000	30,000	23,406	78.02	62,369.80
26.	28-Jan-	PAPERPRO	1,978	2,670	1,978	1,978	100.00	5,583.00
27.	30-Jan-	PAPERPRO	5,000	14,441	5,000	5,000	100.00	7,702.55
28.	21-Mar-	ASHOKLEY	1,772	1,24,550	1,772	1,772	100.00	1,874.00
29.	23-May-	IPCL	27,175	99,136	22,175	22,174	100.00	20,076.23
30.	28-May-	GAIL	90,000	3,03,500	90,000	54,838	60.93	1,69,207.5
31.	28-May-	BEML	24,700	74,976	19,700	19,230	97.61	11,834.36
32.	06-Jun-	J&KBANK	28,774	34,181	28,646	28,246	98.60	84,845.53
33.	09-Jun-	J&KBANK	11,157	37,000	11,185	10,777	96.35	24,726.78
34.	26-Jun-	MAHSEAML	18,600	78,545	18,000	17,800	98.89	35,891.66
35.	11-Jul-03	IOC	6,044	39,000	6,044	1,463	24.21	49,540.85
36.	16-Jul-03	NATIONALU	99,661	4,05,000	99,661	11,729	11.77	3,18,783.7
37.	17-Jul-03	BEL	10,192	20,308	10,192	4,050	39.74	20,750.85
38.	24-Jul-03	BHEL	49,120	1,62,000	49,120	31,086	63.29	1,21,747.0
39.	28-Jul-03	CENTURYTE	55,000	11,23,66	50,000	33,740	67.48	2,94,288.9
40.	30-Jul-03	CORPBANK	10,000	3,05,000	10,000	6,812	68.12	14,206.75
41.	01-Aug-	BEL	10,075	40,162	10,075	8,279	82.17	57,029.05
42.	04-Aug-	IPCL	12,500	1,50,000	12,500	3,874	30.99	34,406.00
43.	13-Aug-	CORPBANK	14,706	1,37,000	11,000	9,636	87.60	48,394.04
44.	19-Aug-	GAIL	5,000	2,55,000	5,000	650	13.00	9,000.00
45.	25-Aug-	CORPBANK	9,562	3,10,000	9,562	3,510	36.71	18,713.90
46.	03-Sep-	GNFC	795	10,33,00	795	795	100.00	6,876.75
47.	10-Sep-	GNFC	13,663	1,45,000	13,663	12,036	88.09	34,569.60
48.	01-Oct-	INDORAMA	10,000	2,75,000	10,000	5,000	50.00	43,510.65
49.	06-Oct-	INDORAMA	6,480	2,55,000	6,480	6,362	98.18	29,160.00
50.	15-Oct-	BANKBARO	8,936	10,10,00	8,936	902	10.09	55,247.60
51.	15-Oct-	VIJAYABANK	70,000	10,00,00	48,228	25,000	51.84	2,943.12
52.	24-Oct-	INDORAMA	25,044	1,58,192	25,044	10,604	42.34	1,05,848.2
53.	28-Nov-	DIVISLAB	2,500	20,500	2,500	344	13.76	1,37,128.8
54.	20-Feb-	ASHOKLEY	45,557	2,60,000	45,557	42,620	93.55	2,15,255.8
55.	17-Mar-	FEDERALBN	50,268	3,50,000	50,268	17,767	35.34	5,33,243.3
56.	18-Mar-	FEDERALBN	22,510	1,82,589	22,510	16,475	73.19	2,00,362.2
57.	19-Mar-	TVTODAY	17,115	1,90,000	17,115	5,000	29.21	2,40,995.9
58.	22-Mar-	IOB	1,16,46	5,59,333	1,16,467	54,427	46.73	2,52,580.6
Total								38,20,527.

xxviii) Further, it was observed that there were 35 instances of front running in the pattern of Sell-Sell-Buy at NSE, by Kalpana Group and the profit made (calculated on actual rate on squared-off quantity) is given below:

S.N .	Date	Scrip Name	FR Sell Qty	HDFC Sell Qty	Buy Qty (Square d-off)	Matched Qty	Matched %	Profit IN ₹
1	09-Nov-	CIPLA	2,000	7,000	2,000	1,467	73.35	4,647.65
2	18-Jan-	SHREECEM	3,265	39,100	3,265	2,765	84.69	5,470.00
3	21-Jan-	SHREECEM	17,50	97,053	17,500	17,244	98.54	21,412.15
4	25-Feb-	UNICHEMLAB	4,964	6,600	4,964	3,645	73.43	12,996.75
5	26-Feb-	GUJRATGAS	9,618	18,565	9,618	9,518	98.96	77,791.60
6	26-Feb-	UNICHEMLAB	2,500	9,000	2,500	2,500	100.00	9,796.50
7	04-Mar-	NAVNETPUB	1,896	8,347	1,896	1,896	100.00	11,305.00
8	08-Mar-	BEL	35,00	75,000	35,000	17,324	49.50	98,031.00
9	08-Mar-	GUJRATGAS	3,000	3,815	3,000	3,000	100.00	23,982.00

S.N	Date	Scrip Name	FR Sell Qty	HDFC Sell Qty	Buy Qty (Square d-off)	Matched Qty	Matched %	Profit IN ₹
10	14-Mar-	ASHOKLEY	50,00	90,000	50,000	49,950	99.90	19,987.50
11	19-Mar-	NAVNETPUB	1,105	2,115	1,105	1,105	100.00	4,420.50
12	17-Apr-	TATAPOWER	32,17	1,11,48	32,170	31,915	99.21	38,768.45
13	30-Apr-	SWARAJENG	1,464	1,616	1,464	1,464	100.00	7,321.80
14	06-May-	BEL	5,000	26,000	5,000	4,644	92.88	3,332.75
15	22-May-	L&T	6,077	13,006	5,984	4,069	68.00	4,488.00
16	07-Jun-	SWARAJENG	784	793	784	784	100.00	3,339.20
17	11-Jun-	SWARAJENG	3,282	3,938	3,282	3,282	100.00	15,147.05
18	12-Jun-	SWARAJENG	1,184	2,600	1,184	1,184	100.00	8,185.00
19	13-Jun-	CIPLA	1,667	5,752	1,667	1,645	98.68	11,914.00
20	13-Jun-	SWARAJENG	790	2,549	790	790	100.00	5,622.50
21	14-Jun-	SWARAJENG	2,187	3,147	2,187	2,187	100.00	11,132.60
22	17-Jun-	SWARAJENG	1,637	4,232	1,637	1,637	100.00	9,122.75
23	18-Jun-	SWARAJENG	5,537	11,186	5,537	5,537	100.00	30,242.50
24	05-Jul-02	CENTENKA	14,24	15,046	14,240	2,527	17.75	15,315.00
25	21-Aug-	BHEL	18,99	50,000	18,995	18,281	96.24	31,194.30
26	30-Dec-	COSMOFILM	10,00	41,202	10,000	10,000	100.00	24,561.50
27	22-Jan-	SHASUNCHE	6,340	77,487	6,340	6,093	96.10	27,722.50
28	05-May-	JBCHEPHAR	4,517	17,167	4,517	4,517	100.00	10,100.90
29	06-May-	JBCHEPHAR	10,44	31,153	10,445	10,445	100.00	31,420.10
30	30-May-	MRO-TEK	17,25	80,756	17,254	17,254	100.00	17,126.30
31	03-Jun-	IPCL	32,77	1,54,70	32,779	32,279	98.47	32,942.65
32	10-Jun-	BEML	43,15	65,000	43,156	37,803	87.60	85,238.80
33	12-Jun-	BEML	38,08	1,68,64	48,089	46,564	96.83	56,608.14
34	28-Aug-	IOC	10,93	4,30,00	10,930	8,910	81.52	80,803.80
35	23-Jan-	ITC	2,201	1,05,06	2,201	511	23.22	52,273.75
Total								9,03,764.9

xxix) Therefore, it was observed that Kalpana had front run HDFC on 93 instances through Buy-Buy-Sell and Sell-Sell-Buy pattern and made a profit of ₹47,24,293. It was observed that Kalpana had traded ahead of HDFC's trades and reversed the majority of the trades with HDFC on 93 instances which cannot be a mere coincidence. The repeated pattern clearly confirms that Kalpana and Nilesh had together front run HDFC's trades. Further, Kalpana's husband Nilesh was the dealer of HDFC who executed the trades for HDFC. These trades were not the routine trades of Kalpana. These trades were executed only with an intention to square-off by matching with HDFC's forthcoming trades, at profit. As stated earlier, most of the square-off trades matched with HDFC's trades. Given the direction and frequency of trading by Kalpana, these trades could not have been executed without communication between Nilesh and Kalpana. In the absence of trades of Kalpana, HDFC and the other investors could have obtained the better price. These trades had disturbed the market equilibrium and normal price discovery mechanism of stock exchanges.

xxx) In view of the above, Sanghvi Group and Kalpana Group, through front running the trades of HDFC AMC, had made an unlawful profit of ₹1,05,02,417 and ₹47,24,293, respectively.

xxxi) Since Kalpana Group had front run HDFC's trades, HDFC had lost the price advantage in these trades and the profit made in the trading accounts of Kalpana, is the loss of price advantage to the HDFC and other investors. These trades were executed in fraudulent manner by Nilesh and Kalpana who had acted in concert. These trades had created false or misleading appearance of the trading in the securities market

xxxii) In view of the above, the Noticees are alleged to have violated sections 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992 and regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of the PFUTP Regulations.

Hearing and replies of the Noticees

6. In response to the SCN, the Advocates on behalf of the Sanghvi group (except Ms. Dipti Mehta) and the Kapadia group, vide letter(s) dated March 9, 2017, denied all the allegations levelled therein. They also sought inspection of originals of the documents relied upon by SEBI in the SCN. Further, they also sought copies of the annexures to the SCN and investigation committee report referred in the SCN. It was also requested in the said letter that subsequent to the said inspection, they should be given further time of 4 weeks to submit detailed reply in the matter. The inspection of documents was provided to the entities on June 9, 2017, which was availed by them.
7. Pursuant to the inspection of documents, vide letters dated July 7, 2017, the Advocates on behalf of the Sanghvi group (except Ms. Dipti Mehta) and the Kapadia group submitted the following:
 - a) It is clear that the proceedings under consideration are consequent to the *ad-interim* order of SEBI dated June 17, 2010 whereby SEBI for the first time had alleged that the said entities had committed the offence of front running the trades of HDFC Mutual Fund. Thereafter, SEBI issued a SCN dated February 11, 2011 which was disposed of by WTM's order dated July 24, 2014. Then in September 2014, Mr. Rajiv Sanghvi and Mr. Nilesh Kapadia had filed their respective appeals against the order of SEBI dated July 24, 2014.
 - b) During the pendency of the said appeal, SEBI passed another *ad-interim* order dated January 15, 2016, which was separately appealed and was disposed of by Hon'ble SAT vide order dated March 4, 2016.
 - c) Thereafter, in February 2017, SEBI issued the SCN for the present proceedings.

- d) It is clear from the record that all the proceedings initiated by SEBI against Sanghvi group and the Kapadia group from 2010 till the SCN in February 2017 were based on one and only one allegation that the entities had front run the trades of HDFC Mutual Fund.
 - e) It is a matter of record that the Hon'ble SAT in the matter of *Dipak Patel v. SEBI* has observed that the prohibition against front running under the PFUTP Regulations applies only to "intermediaries" and not to "non-intermediaries". It is not SEBI's case that the entities were "intermediaries".
 - f) Further, the PFUTP Regulations 1995 prohibited "any person" and the amended Regulations of 2003 specifically replaced the word "any person" with the word "intermediary".
 - g) Also, the above mentioned appeals against the order dated July 24, 2014 were pending before Hon'ble SAT (as the hearing was scheduled on July 12, 2017).
 - h) In view of the above, it was requested that the proceedings be kept in abeyance till the disposal of the appeals by Hon'ble SAT.
8. Then, vide letters dated July 13, 2017, it was informed by the Advocates for the aforesaid entities that the hearing in the matter is part heard and is next scheduled on August 28, 2017. The submissions made earlier vide letters dated July 7, 2017 were also reiterated in the said letters.
9. Thereafter, vide separate letters dated August 8, 2017, all the Noticees were informed that a hearing has been scheduled in the matter on September 26, 2017. In response to the hearing notice, on behalf of Ms. Dipti Mehta it was informed that her authorized representatives namely, Advocate Ajay Khandhar and Mr. Chandrakant Mehta would be attending the hearing scheduled on September 26, 2017. On behalf of the other Noticees, vide letters dated September 7, 2017, it was informed that the appeals filed by them against SEBI's order dated July 24, 2014 before Hon'ble SAT came up for hearing on August 28, 2017 wherein it was learnt that the appeals filed in the matters of *Dipak Patel*, *Sujit Karkera* and *Vibha Sharma* (all relating to the issue of front running) before the Hon'ble Supreme Court had already been heard by the Hon'ble Court and the decision was likely to come shortly. For the said reason, hearing was adjourned by Hon'ble SAT to October 11, 2017. In view thereof, the entities again requested that proceedings be kept in abeyance till the final disposal of their appeals. Acceding to the said request, hearing in respect of all the Noticees was adjourned except for Ms. Dipti Mehta who had confirmed attendance through her authorized representative.
10. Thereafter, on behalf of Ms. Dipti Mehta her authorized representative, Ajay Khandhar & Co. wrote a letter to SEBI on September 23, 2017 stating that Ms. Dipti Mehta does not have a copy of the SCN dated February 14, 2017 in her

records and requested for a copy of the same. Vide the said letter, it was also informed that an appeal has been filed by Ms. Dipti Mehta against the order dated July 24, 2014 and the said appeal is pending before Hon'ble SAT. In view thereof, it was requested that the hearing in respect of the SCN dated February 14, 2017 be kept in abeyance till the disposal of the said appeal.

11. Acceding to the aforesaid request on behalf of Ms. Dipti Mehta, vide email dated October 12, 2017 a copy of the SCN was mailed to the email ID of Mr. Ajay Khandhar. Subsequently, a physical copy of the SCN was also sent to Ms. Dipti Mehta on her address on record (i.e. 11/193, Vijay Building, Station Road, Wadala, Mumbai 400031) and the same was delivered. Vide a separate mail addressed to the Advocate of Ms. Dipti Mehta, she was also advised to file her written submission in the matter, if any.
12. The appeals filed by the Noticees (i.e. Mr. Nilesh Kapadia, Mr. Rajiv Sanghvi, Mr. Chandrakant P. Mehta and Ms. Dipti Mehta) against the order of SEBI dated July 24, 2014 were disposed of by Hon'ble SAT vide its order dated December 21, 2017. Thereafter, hearing was scheduled in respect of the Noticees and vide letters dated January 11, 2018, the Noticees were informed about the date of hearing i.e. February 8, 2018. The said communication letters were delivered to all the Noticees except Ms. Dipti Mehta. In respect of Dipti Mehta the communication letter was sent on her address on record (i.e. 11/193, Vijay Building, Station Road, Wadala, Mumbai 400031) to which a copy of the SCN sent in October 2017 was delivered, however, the same returned undelivered. Thereafter, the communication letter was sent to the authorized representative of Dipti Mehta, Mr. Ajay Khandhar on his e-mail ID through which he had corresponded with SEBI earlier.
13. Vide letter dated February 2, 2018, the Advocates on behalf of Sanghvi group (except Ms. Dipti Mehta) and Kapadia group informed that Mr. Rajiv Sanghvi and Mr. Nilesh Kapadia had filed their respective appeals against the order of SEBI dated July 24, 2014. The said appeals were dismissed by Hon'ble SAT vide order dated December 21, 2017. It was informed that Mr. Rajiv Sanghvi and Mr. Nilesh Kapadia had gone to Delhi to consult their lawyers and to seek legal advice in relation to challenging the order of Hon'ble SAT before Hon'ble Supreme Court of India. In view thereof, it was requested that the hearing scheduled on February 8, 2018 be adjourned as Mr. Rajiv Sanghvi and Mr. Nilesh Kapadia wanted to remain personally present for the personal hearing. Considering that several adjournments at the request of the entities had already been given, and there was no stay on the operation of the order of Hon'ble SAT dated December 21, 2017, the adjournment request was denied and the Advocate appearing on behalf of the

Sanghvi Group (except Ms. Dipti Mehta) and Kapadia Group were advised to make their submissions.

14. Accordingly, the Advocates on behalf of the Sanghvi Group (except Ms. Dipti Mehta) and Kapadia Group made submissions on merits of the case. The Advocates also sought time to file written submissions in the matter, which were filed by them vide letter dated February 28, 2018, *inter alia*, denying all the allegations levelled in the SCN.
15. On behalf of Ms. Dipti Mehta, no one appeared for the hearing nor was any communication received on her behalf. After the hearing, the Advocate on behalf of Ms. Dipti Mehta (i.e. Mr. Ajay Khandhar) was telephonically asked whether Ms. Dipti Mehta has any submissions to file in the matter. In response thereto, the Advocate stated that Ms. Dipti Mehta does not have any submission to make in the matter.
16. The submissions of the Noticees made during the hearing and in their written submissions are summarized as under:

MR. NILESH KAPADIA AND MS. KALPANA KAPADIA

Preliminary objections

- A. Hon'ble Supreme Court vide its Judgment dated September 20, 2017 in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* laid down certain principles/guidelines/criteria's for establishing a charge of front running. Same are as under:-
 - i) one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence,
 - ii) such breach of duty was known to the tippee.
 - iii) tippee still trades thereby defrauding the person, whose orders were front run,
 - iv) by inducing him to deal at the price he did.
- B. It is matter of record that the captioned show cause notice in no manner makes any allegation(s) in line with the above principles /ingredients as mentioned by the Hon'ble Supreme Court and the ingredients of any such charge are missing in the present Show Cause notice. In the absence of the specific charge in line with the aforesaid principles laid down by the Hon'ble Supreme Court, the captioned Show Cause notice is not maintainable and is bad in law.

No Admissible Evidence

C. It is submitted that the captioned Show Cause notice heavily relies on the call records provided by HDFC vide its letter dated June 26 and July 11, 2012 and the SCN relies upon the said call recordings without any verification as to correctness, completeness and genuineness of the said records, before relying upon the same against the Noticees,

D. It is well settled by the Hon'ble Supreme Court that the following safeguards must necessarily be met before such evidence can be considered as admissible and/or considered by relevant authorities.

- That same must be shown to be reliable, that is free of errors and contradictions;
- That the evidence should have been prepared and preserved in such a manner to ensure that there was no possibility of any tampering/manipulation;
- That the voice/voices on such recordings must be clearly identified by persons who are capable of identifying the same;
- That in the event of a party denying that it is his voice on such a recording, the standard of proof on the person relying upon such evidence is extremely high and it is strict to prove that denial is false.
- That a transcript of the conversation must be filed and proved by the person who made it or in whose presence it was proved. (Please refer to *State of Maharashtra vs. Prakash Vishnurao Mane* - (1977) 79 BOM LR 217).

These principles have been set out in *R.M.Malkani vs. State of Maharashtra* (1973 AIR 157), *Ziyouddin Burhanuddin Bukhari vs. Brijmohan Ramdass Mehra* (1975 AIR 1778) and *State of Maharashtra vs. Prakash Vishnurao Mane* (1977) 79 BOMLR 217

E. Whereas it is true that Indian Evidence Act does not strictly apply to quasi-judicial proceedings in general and in particular to these proceedings, it is equally well settled that the principles of natural justice and the principles of the Indian Evidence Act will apply. In this regard, noticees place reliance upon the following extract of the Judgment of the Hon'ble Securities Appellate Tribunal in ***Sterlite Industries (India) Limited vs. SEBI***:

101. *The Hon'ble Supreme Court in yet another case with reference to adjudication under the Sea Customs Act and Land Customs Act relating to imposition of penalty on the person concerned had held:*

“ .. To such a situation, though the provisions of Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal

jurisprudence and of natural justice must necessarily apply. If so the burden of proof is on the Customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence... ." (p.266) - Amba Lal vs. Union of India AIR 1961 SC 264."

102. On application of the standard of evidence required to hold a person guilty of an offence, as set out by the Hon'ble Supreme Court cited above, it is seen that the evidence produced by the respondent is not sufficient to hold the charge against the Appellant. From the case law referred to above it is clear that in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjecture or suspicion cannot sustain the finding of guilt. I have very carefully examined the impugned order and find that the conclusion drawn by the respondent holding the appellant guilty of indulging in market manipulation in contravention of regulation 4 (a) and 4 (d) is not substantiated by sufficient evidence."

F. It is a matter of record that HDFC vide its letter dated July 11, 2012 had inter alia stated as under:-

- i) that the assignment for transcribing the Equity Dealing rooms Voice recording CD was given to Chorus Call Conferencing Services India Pvt. Ltd., Mumbai (Chorus) and they have independently transcribed the recordings at their premises.
- ii) that the quality of the transcription may be affected on account of the quality/ audibility of the voice recordings.
- iii) that the transcription is carried out to best of translators skill and ability but may not be as accurate.
- iv) that HDFC AMC cannot vouch for the contents of the PDF file, its correctness, there may be errors as the same has not been validated/ audited by the AMC personnel.

From the aforesaid, it is clear that HDFC itself who has provided the material/ purported evidences to SEBI are not in a position to state that the said evidences are correct or accurate. In fact they expressly state that the said evidences may contain errors. Further, HDFC specifically states that the transcription of calls was made by Chorus, a third party and Chorus has independently done the transcription. It also appears that even HDFC has not verified the correctness, accuracy etc. of the said call records and transcription before providing the same to SEBI. Therefore, we submit that SEBI in order to

rely upon the said evidences ought to have verified and ensured the correctness of the evidences before relying the same against the noticees. In the absence of same, SEBI ought not to have relied upon the said call records.

- G. It is clear that there is no evidence whatsoever that HDFC and/or Chorus and/or SEBI have taken any measures whatsoever to ensure that the said recordings are not tampered with and/or manipulated. Therefore, no value can be attached to the said call records and/or transcript and the same ought to be rejected and not to be treated as part of the record.

No fraud on HDFC or investors in securities market

- H. It is SEBI's case in the SCN that on account of trades by Sanghvi Group and Kalpana Group, HDFC had lost the price advantage in the subject trades or trades under question and the profit made by Sanghvi Group and Kalpana Group is the loss of price advantage to HDFC and other investors.
- I. The SCN does not in any manner explain or narrate on what basis SEBI states that HDFC or other investors lost price advantage. Nowhere does the SCN say that HDFC or any investor(s) has ever claimed that they incurred loss or lost any such price advantage on account of subject trades. Also it is neither SEBI's case nor HDFC's case that Nilesh had executed orders on behalf of HDFC at his prices. In the absence of such specific case, the said averment/allegation that HDFC or any investor incurred any loss is unfair, unwarranted and in any event incorrect.
- J. The SCN also does not in any manner aver/allege that HDFC or investors in securities market were defrauded by execution of subject trades. Therefore, if SEBI itself has not alleged/ established that there was any fraud on account of the subject trades, it is impossible to understand and ascertain that how and in what manner SEBI has alleged that the provisions of PFUTP Regulations, are violated by the Noticees.

Charge of front running is not sustainable

- K. It is submitted that the charge of front running in any manner is not sustainable, since the SCN does not in any manner show any basis for alleging that the Sanghvi Group and Kalpana Group had front run trades of HDFC. In order to allege front running, the SCN ought to have shown an analysis of the timings at which orders were placed by Sanghvi Group and Kalpana Group and orders were placed by HDFC and also an analysis of actual time at which their-

respective trades were executed. However, the SCN does not mention any such time analysis for the orders and/or trades and in the absence of the same, it is vague and incorrect to allege that Sanghvi Group and Kalpana Group had front run trades of HDFC. In order to allege front running, SEBI ought to show that Sanghvi Group's and Kalpana Group's first order was placed before HDFC's order(s) came on to the trading screen and only thereafter Sanghvi Group and Kalpana Group placed their counter order(s) with an intention to match their trades with HDFC. In the event if HDFC's order(s) was/were placed prior in time, in that case the charge of front running would be factually incorrect.

- L. Without prejudice to the aforesaid, the Hon'ble Supreme Court in Para 19 of the aforesaid judgment (in *SEBI v. Kanaiyalal Baldevbhai Patel*) noticed 3 kinds of front running 1) Trading by third parties who are tipped on an impending block trade ("tippee" trading); 2) Transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running") and 3) transactions where an intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead"). It was further observed that "trading ahead" has been explicitly been recognized under Regulations 4(2)(q) of PFUTP Regulations. This being the fact, the "tippee trading" not being included in Regulation 3 and 4 should not be embraced within its scope especially because penal provisions should be strictly interpreted and there should be no scope of expansion of the provisions which will be detrimental to the Noticee. The Hon'ble Supreme Court in the aforesaid judgment held that front running by non-intermediary is prohibited under Regulations 3 and 4 of the PFUTP Regulations. However, it is observed in **para 19 of** the said Judgment that "trading ahead" has been explicitly been recognized under Regulations 4(2)(q) of PFUTP Regulations and not "tippee trading".
- M. Further without prejudice, it is important to note that Regulation 2(1)(c) of the PFUTP Regulations defines "fraud". It further delineates exceptions to fraud. From a perusal of the definition of "fraud" and exceptions to fraud, it is evident that all information or tips would not amount to Tippee Trading. Any information or comment based on trends in securities market or any other matter of like nature would not amount to fraudulent act or fraud. Since the 9 instances mentioned in definition does not cover any information provided or any tips provided, the Noticee's acts would only fall within the exceptions (c) and (d) of the exceptions to fraud and the Noticee's should be granted benefit of the same.

N. That the present SCN has failed to establish the requirement of front running, which is that the person trading in stocks or other investments has to have knowledge of the upcoming transaction by a third party which is likely to affect the market price of the investment. SEBI has failed to note/consider that the Nilesh never shared the details of the proposed trades of HDFC Mutual Fund with Mr. Rajiv Sanghvi. At the most (without admitting), the call records and transcripts would show that the tips provided by Nilesh, if any, would fall within the 4 exceptions of fraud defined in Regulation 2(1)(c).

O. Assuming (without admitting) trades were front run

- a) It is a matter of record that SEBI for the first time defined "front-running" only on May 25, 2012 vide its Circular CIR/EFD/I/2012. Therefore, for the first time there was an attempt by SEBI to bring some clarity to the concept of front-running.
- b) It is pertinent to note that on November 9, 2012 the Hon'ble SAT passed an Order in the matter of Appeal No. 216 of 2011 by *Dipak Patel vs. SEBI*, whereby the Tribunal at para 12 of its said Order recorded that *"It is an admitted position on both sides that the aforesaid clause applies only to intermediaries and not to other persons trading in securities market"*. Also at para 13 of the said Order the Tribunal held that in the absence of any specific provision in the Act, rules and regulations prohibiting front running by a person other than an intermediary, Dipak Patel cannot be held guilty of front running. Thereafter, the said order was relied upon by the Hon'ble SAT while deciding another Appeal No. 167 of 2012 in the matter of *Sujit Karkera vs. SEBI*, and concluded that the *"Appellants before us are traders and not intermediaries. So following our decision in the case of Dipak Patel supra we hold that the Appellant cannot be held guilty "*.
- c) It is also important to note that SEBI challenged both the abovementioned Orders of the Hon'ble SAT vide Civil Appeal Nos. 2596 and 2666 of 2013 before the Hon'ble Supreme Court and in the matter of Sujit Karkera, SEBI expressly sought stay of the Tribunal's order and same was rejected by the Hon'ble Court by its order on April 22, 2013.
- d) On September 4, 2013 the Hon'ble SAT, passed an order in a matter of Vibha Sharma vs. SEBI, wherein for the first time, the Hon'ble SAT recorded that *"... . 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 fraudulent market practices..."*. The said Order was challenged by Vibha Sharma before the Hon'ble Supreme Court vide Civil Appeal No. 11195--11196 of 2014.
- e) In the meanwhile, on September 6, 2013 an amendment was introduced to Regulation 4(2) of PFUTP Regulations w.e.f. September 6, 2013 whereby

an "Explanation" was added to Regulation 4(2) of the PFUTP Regulations and thereby expanding the scope of Regulations 3 and 4 of PFUTP Regulations:-

"Explanation: - For the purpose of this sub-regulation, for removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3, notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulations."

- f) Thereafter, on September 20, 2017 the Hon'ble Supreme Court disposed of several Appeals (including the above 3 Appeals, in the matter of Dipak Patel, Sujit Karkra and Vibha Sharma), wherein it was held that front running by non-intermediary is prohibited under Regulations 3 and 4 of the PFUTP Regulations. However, amendment made to Regulation 4(2) of PFUTP Regulations w.e.f. September 6, 2013 whereby an "Explanation" was added to Regulation 4 (2) of the PFUTP Regulations and thereby expanding the scope of Regulations 3 and 4 of PFUTP Regulations was probably not an issue in that case and it appears from the record that same was never argued and brought to the notice of the Hon'ble Supreme Court and also therefore not considered by the Hon'ble Supreme Court. The said issue is important in the present case since the trades in question are during the period, much prior to 2013 and the law punitive in nature cannot be applied retrospectively.
- g) Without prejudice to the above, it is submitted that prior to the said amendment in 2013, the exhaustive illustrations or details (a) to (t) provided in Regulation 4(2) which deals with "Prohibition of manipulative, fraudulent and unfair trade practices" were exhaustive and not inclusive as it reads "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". The words used are "may include all or any" which goes to show that the illustrations/ details of acts are exhaustive. The said illustrations/ examples were expanded only by an amendment w.e.f. September 6, 2013 by incorporating an "explanation". This explanation was added as a clarification in 2013, and the earlier provision as it, stands/stood i.e. sub-regulation (i), (j), (1), (m), (p), (o), and (q) of Regulations 4 (2) was relatable only in case of intermediaries and not individuals, no person who have allegedly committed "front running" prior to the amendment can be held liable and guilty under Regulation 3 and 4 of PFUTP Regulations. Therefore, the provisions could have been given extended/ expanded meaning only post 2013 for the offences committed after the amendment. The Noticee having allegedly committed front running' several years prior to 2013 cannot be held

liable and guilty for the alleged acts which in any event falls within the exception of fraud.

- h) Further, without prejudice, the words "fraudulent manner", "fraud in connection with dealings in or issue of securities" etc. used in Regulation 3 prior to 2013 should be understood to only include illustrations (a) to (t) delineated in Sub-Regulations 2 of Regulation 4. Further the other acts which do not strictly fall within the ambit and scope of Regulation 4(2) (minus explanation) should be read in conjunction with the definition of fraud (Regulation 2(1)(c)) which also includes exceptions such as passing comments made in private or public with respect to trends in the securities market and any other matter of like nature.
- i) Any ambiguity or incongruity should be decided in favour of the Noticee, is the settled principle of law.

Incorrect Computation of alleged un-lawful gains

P. Without prejudice to all the above submissions. It is submitted that the alleged unlawful gains/profits computed by SEBI are on the square off quantities and not matched quantities. If the charge is front running HDFC's trades then the alleged profits/ unlawful gains can be only for the quantities which had allegedly matched with HDFC's quantities as a counter party.

Q. Further without prejudice, the SCN levies interest on the alleged disgorgement amount from the date of subject transactions. There is no basis for levying such interest. Even as per the Judgment of the Hon'ble SAT in the matter of the matter of *Shailesh Jhaveri vs. SEBI* in Appeal No. 79 of 2012 dated October 4, 2012, it is held as under:-

"10. we find merit in the argument of learned counsel for the appellants 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 crystallized 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.

11. For the reasons stated above, we find no merit in the appeal. However, on the issue of interest, we are inclined to modify the order to the extent that the interest shall be payable @ 12% per annum on expiry of 45 days from the date of ' the impugned order. "

The present SCN has levied interest on the alleged unlawful gain from the date of transaction, which is unfair and illegal in view of the aforesaid Judgment of the Hon'ble SAT and even otherwise.

- R. It is submitted that the call records and transcript relied upon by SEBI, cannot be treated as part of evidence in view of the preliminary submissions made hereinabove. Further, in view of the said submissions it is inappropriate on part of the SEBI to state that HDFC's Executive director & Chief investment officer and three senior fund managers had identified the voice of Nilesh. **In the** absence of verification of said records by SEBI independently in accordance with the various guidelines mentioned hereinabove, the said alleged identification of voice by the representatives of HDFC, cannot also be treated as an evidence and therefore cannot be treated as part of the records and cannot be relied upon by SEBI against the noticees.
- S. It may be matter of record that trades were entered into trading accounts of Rajiv, Rajiv-HUF, Sanjay, Dipti and Sonal, however, it is vague and incorrect on part of SEBI to allege that the said trades were on the instructions of Nilesh. Neither the trade logs nor the mobile call records indicate in any manner that the said trades are instructed by Nilesh.
- T. It is denied that as a dealer of HDFC, Nilesh had the information of HDFC's order details viz. scrip, quantity and price range and has the discretion of time. It is denied that based on this alleged information, Nilesh had given instructions from the dealer room telephone to Rajiv's mobile phone to buy/sell shares of the same scrip which HDFC was going to buy/ sell. It is denied that the shares were bought/ sold in any of trading accounts of Sanghvi group immediately, before HDFC started buying/selling in the same scrip. It is also denied that subsequently Nilesh started buying/ selling the shares in the same scrip through various brokers. It is further denied that Sanghvi group entities bought/sold shares in their same trading accounts, to square off the trades. It is denied that most of the Sanghvi group buy/sell was matched with HDFC's buy/ sell and the details of executed trades and average traded price were informed by Rajiv to Nilesh in coded words.

- U. In order to allege front running, SEBI ought to show that first order by Sanghvi Group was placed before HDFC's order(s) came on to the trading screen and only thereafter Sanghvi Group placed its counter order(s) with an intention to match their trades with HDFC. In the event if HDFC's order(s) was/were placed prior to Sanghvi Group's order(s), in that case the charge of front running would be factually incorrect.
- V. It is denied that matching of trades cannot be co-incidence and it is denied that Rajiv, Nilesh, Sonal, Rajiv HUF, Sanjay and Dipti had acted together as a group. It is denied that the subject trades were not natural trades and same were executed with an intention to square off by matching with HDFC. It is incorrect on part of SEBI to allege that these trades could not have been executed if Nilesh had not instructed to trade. With regard to SEBI's averment that in the absence of these trades other investors could have obtained the better price, is vague and baseless and the SCN does not in any manner narrate or specify on what basis SEBI makes this observation. It is also denied that these trades had disturbed the market equilibrium and normal price discovery mechanism of stock exchanges.
- W. It is denied that the investigation committee had identified 100 suspected front running transactions, by Kalpana, for want of knowledge. SEBI records that there are no audio conversations available for these alleged front running instances. However, merely on the basis of trade logs SEBI has arrived at a conclusion that these trades by Kalpana were front running trades, merely because some of them have matched with HDFC trades. It is submitted that the trades by Kalpana were her own trades and same had no connection or correlation with HDFC trades.
- X. The sample analysis of alleged front running by SEBI is on the basis of an assumption that merely because trades by Kalpana matched with HDFC's trades there was communication of information existed between Nilesh and Kalpana. The sample analysis shown by SEBI in the paras under reply merely shows buy/ sell start time does not actually show the exact order time and trade time. In the absence of the same it is vague and unfair on part of SEBI to allege that the said trades are front running trades.
- Y. Assuming the trades were front run by the Noticees, it is SEBI's case in the captioned SCN that HDFC had-lost the price advantage. On what basis SEBI says this? Did HDFC ever say this? HDFC 'has executed trades at their own prices and more importantly it is not even SEBI's case that Mr. Nilesh Kapadia was deciding the prices at which HDFC shall place orders which were allegedly

front run. It is SEBI's own case that 100% matching was only in few instances and not all. SCN itself shows huge quantities of HDFC's trades have matched with entities other than the noticees. It is also not SEBI's case that investors in the securities market are prejudiced because of the trades in question. Therefore, the alleged fraud is on whom, SEBI does not specify.

Z. It is pertinent to note that Mr. Nilesh Kapadia has already undergone debarment from the securities market for a period of more than 7 years under the earlier order dated June 17, 2010 passed by the WTM of SEBI. Therefore, also a lenient view may be taken.

AA. Without prejudice to all other submissions, it has been submitted by the Noticees that SEBI's order dated July 24, 2014, which was based on the same allegations of front running as in the present proceedings, was appealed by the Noticees before Hon'ble SAT. The said appeals were dismissed by Hon'ble SAT vide its order dated December 21, 2017. The Noticees have now appealed the said order before Hon'ble Supreme Court of India and have been assigned diary numbers by the registry of the Hon'ble Supreme Court. Any decision in the said appeals by the Hon'ble Supreme Court will have a direct bearing on the present proceedings. Therefore, the present proceedings may be kept on hold till the hearing and disposal of these appeals by the Hon'ble Supreme Court.

Mr. Rajiv Sanghvi, Rajiv Sanghvi-HUF, Mr. Sanjay Sanghvi, and Ms. Sonal Sanghvi

Mr. Rajiv Sanghvi, Rajiv Sanghvi-HUF, Mr. Sanjay Sanghvi, and Ms. Sonal Sanghvi made submissions in line with the submissions made on behalf of Mr. Nilesh Kapadia and Ms. Kalpana Kapadia insofar as they apply to them. They denied all the allegations levelled in the SCN and made the following distinct submissions:

- A. The averment that Rajiv dealt in through the accounts of Rajiv-HUF, Sanjay (brother of Rajiv), Sonal (wife of Rajiv), Dipti and his trading account, is denied. It is specifically denied that Rajiv traded in the account of Ms. Dipti. It is denied that Sanghvi group had front run trades of HDFC AMC in 42 transactions.
- B. It is vague and incorrect on part of SEBI to allege that the said trades were entered into trading accounts of Rajiv, Rajiv-HUF, Sanjay, Dipti and Sonal, on the instructions of Nilesh. Neither the trade logs nor the mobile call records indicate in any manner that the said trades are instructed by Nilesh.

- C. The sample analysis of alleged front running by SEBI is based on the call records which the noticees have disputed. Therefore, in order to rely upon the said call records and in order to rely upon sample analysis of alleged front running, SEBI ought to have verified the correctness and genuineness of the said records, as per the standard prescribed. Having not done so, it is unfair on part of SEBI to rely upon the said records.
- D. Upon perusal of the purported call records (without admitting), it is clear that in none of the voice recordings and transcripts, which have been relied upon in the present SCN, has Nilesh ever informed Mr. Rajiv Sanghvi that HDFC Mutual Fund was going to place an order in any scrip. Therefore, it is incorrect to even assume that the trades of Mr. Rajiv Sanghvi/Sanghvi Group were based on knowledge of impending trades by HDFC.

Ms. Dipti Mehta

On behalf of Ms. Dipti Mehta, no submissions were filed. She also did not appear for the hearings scheduled in the matter.

CONSIDERATION OF ISSUES

17. I have perused the SCN, SEBI's orders dated July 24, 2014 and January 15, 2016, Hon'ble SAT's order dated December 21, 2017, submissions made by the Noticees and other material available on record. As discussed above, all the Noticees were given sufficient opportunities to appear for hearing and file their replies/ written submissions. The hearing scheduled in the matter was attended and replies / written submissions were filed on behalf of all the Noticees except Ms. Dipti Mehta.
18. It is noted that out of the Noticees, Ms. Dipti Mehta has not filed her replies / submissions in the matter. For the sake of brevity, I shall address all the entities who have filed their replies/submissions as "Noticees". It is clarified that the findings in respect of all the issues raised by these entities shall also hold well in respect of Ms. Dipti Mehta insofar as they are applicable to her.
19. It is alleged in the SCN that the Noticees (i.e. Sanghvi Group comprising Nilesh, Rajiv, Rajiv-HUF, Sonal, Sanjay and Dipti and Kalpana Group comprising Nilesh and Kalpana) had indulged in front running the trades of HDFC MF, HDFC AMC and HDFC AMC's portfolio management client - Sudir Enterprises (collectively referred to as "HDFC Group") and thereby made profits. Two patterns of front running trades were observed in respect of the Noticees – Buy-Buy-Sell ("BBS") pattern and Sell-Sell-Buy ("SSB") pattern. These transactions were executed by the

Noticees in two legs: the *first* leg involved placement of order (buy or sell) prior to the placement of HDFC 's order and the *second leg* involved placement of trades almost simultaneously with HDFC's order so as to square off the position created by the *first leg*. By executing trades in these patterns, the Noticees made profits. It was observed that the Sanghvi group had indulged in 42 instances of front running (24 instances of BBS Pattern and 18 instances of SSB Pattern). The Kalpana group had also indulged in 93 instances of front running (35 instances of SSB pattern and 58 instances of BBS pattern). The details of the aforesaid front running activities by Sanghvi Group and Kalpana Group, the profits made as a result thereof and their sample analysis of trades of Sanghvi group and Kalpana group are discussed in detail in paragraph 5 above. In view of the above transactions, the Noticees were alleged to have violated sections 12A(a), 12A(b) and 12A(c) of SEBI Act and regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations. Thus, the Noticees were called upon to show cause as to why suitable directions under section 11B of the SEBI Act, 1992, should not be issued against them, to confirm the impounding order dated January 15, 2016, and to disgorge the amount, including the wrongful gains made and the interest earned thereon by the Noticees by indulging in transactions in contravention of the provisions of SEBI Act and PFUTP Regulations.

20. In this backdrop, the following issues arise for consideration in the present proceedings:

A. Whether the Noticees violated the provisions of sections 12A(a), 12A(b) and 12A(c) of SEBI Act and regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations on account of their transactions mentioned in the SCN?

B. If the answer to issue A is in the affirmative, whether the profit made by the Noticees on account of the transactions mentioned in the SCN, should be disgorged from them along with interest thereupon?

21. I shall now deal with the above issues in light of the submissions made by the Noticees in response to the SCN.

22. The Noticees have made a preliminary submission that *"SEBI has relied upon the call records provided by HDFC without verifying whether the said records were maintained as per the requirements of the Indian Evidence Act. Whereas, it is true that Indian Evidence Act does not strictly apply to quasi-judicial proceedings in general, it is equally well settled that the principles of natural justice will apply. From the letters written by HDFC, it is seen that HDFC itself, who has provided the*

material/ purported evidences to SEBI, is not in a position to state that the said evidences are correct or accurate. In fact, they expressly state that the said evidences may contain errors. Further, HDFC specifically states that the transcription of calls was made by Chorus, a third party and Chorus has independently done the transcription. It also appears that even HDFC has not verified the correctness, accuracy, etc. of the said call records and transcription before providing the same to SEBI.” Therefore, it has been submitted by the Noticees that SEBI in order to rely upon the said evidences ought to have verified and ensured the correctness of the evidence before relying upon the same against the Noticees.

23. With regard to the above submissions, it is noted that section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to “*all judicial proceedings in or before any Court*”. As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence SEBI is not bound to observe the provisions of the Indian Evidence Act. Though, at the same time, SEBI is required to adhere to the principles of natural justice, which shall be the subject matter of consideration in the present case. It is noted that the call recordings submitted by HDFC were extracted from the call logging server – its master voice recording (logger) system. Further, those voice recordings were done during the normal course of business, as per HDFC’s policy and in accordance with the SEBI Circular dated September 30, 2002. The officials of HDFC MF had also identified the voice of the person (calling from the dealing room) who made call to the mobile no. 9322228959 as that of Mr. Nilesh Kapadia. The Noticees have not sought to cross-examine the officials of HDFC who have identified the voice of Nilesh. It is noted from the record that Nilesh and Rajiv had communicated with each other and that Nilesh had passed on the tips / instructions / information to Rajiv. It is also noted that on the basis of these tips / instructions / information, orders were placed **by Rajiv and others**. It is also seen that Mr. Nilesh Kapadia (mobile no. 9820221553) and Mr. Rajiv Sanghvi (mobile no. 9322228959) had talked with each other 333 times during the period – August 06, 2007 to March 07, 2009. Further, they have been provided with the audio recordings and the transcripts. It is important to mention that the Noticees have raised a general question as to the accuracy, genuineness and reliability of the records without pointing out a single infirmity with it. The audio conversations and the transcripts have to be seen together with the relevant transactions of the Noticees. From the sample analysis included in the SCN also, it is seen that the number of shares mentioned in the conversations match with the actual transactions. Moreover, when the contents of the transcripts is seen against the actual conduct of the Noticees in placing trades, they match. Therefore, in view of the above discussed facts and circumstances, in particular, the present proceedings being quasi-judicial in nature,

absence of any specific contention of the Noticees to the audio conversations, trade logs and other relevant documents made available to the Noticees and audio conversation details (in respect of Sanghvi group) found to be matching with the trading of the Noticees, I find that the principles of natural justice have been complied with in the present proceedings. Thus, I do not find any merit in the aforesaid contention of the Noticees and reject the same.

24. Rajiv, Sonal, Sanjay and Rajiv-HUF denied that Rajiv had dealt in various scrips through the accounts of Rajiv – HUF, Sanjay (brother of Rajiv) and Sonal (wife of Rajiv). In this regard, I note that admittedly, Sanjay and Sonal are related to Rajiv as brother and wife, respectively. Also Rajiv is the Karta of Rajiv – HUF. The audio conversation records of Rajiv and Nilesh show that Rajiv had reported the trades executed in various scrips through the accounts of Rajiv – HUF, Sanjay and Sonal to Nilesh. The transactions carried out in these accounts also matched with the instructions given by Nilesh to Rajiv over phone. For instance, the trades in the scrip of Punj Lloyd on 05.06.2007, which were carried out in the account of Sanjay were reported by Rajiv to Nilesh. Further, the reporting of transactions carried out in the accounts of Rajiv – HUF, Sanjay and Sonal was almost on a real time basis. In my view, in absence of any prior arrangement / understanding amongst Rajiv, his HUF, his brother and his wife, Rajiv could not have reported the transactions carried out in their accounts to Nilesh. Thus, I am unable to accept the contention of Rajiv, Sonal, Sanjay and Rajiv-HUF that Rajiv did not deal, directly or indirectly, in various scrips through their accounts.
25. It has been specifically denied by Rajiv that he was connected to Dipti. In this regard as observed from the audio conversation between Rajiv and Nilesh, Rajiv had reported the trades executed in the trading account of Dipti viz., the buy traded quantity, buy average rate, sell traded quantity and sell average rate on five instances. For instance, the trades in the scrip of Punj Lloyd on 05.06.2007, which were carried out in the account of Dipti were reported by Rajiv to Nilesh as has been mentioned in the transcript of the audio conversation noted above. It could not have been possible for Rajiv to report Dipti's trading details to Nilesh on repeated instances unless they had a prior understanding among themselves. Further, it cannot be a mere coincidence that only Dipti's trade details were reported to Nilesh by Rajiv when so many entities in the market had traded in the respective scrips on the respective dates. Thus, in light of these facts and circumstances, it is evident that Dipti was connected to Rajiv and through him, to the other members of the Sanghvi group.
26. The Noticees have submitted that Hon'ble Supreme Court vide its Judgment dated September 20, 2017 in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* laid down

certain principles/guidelines/criteria for establishing a charge of front running, and SEBI in order to establish the charge of front running shall firstly allege and thereafter establish the said criteria/ingredients. It has also been submitted that in the absence of the specific charge in line with the aforesaid principles laid down by the Hon'ble Supreme Court, the SCN is not maintainable and is bad in law. It has further been submitted by the Noticees that the present SCN has failed to establish the requirement of front running, which is that the person trading in stocks or other investments has to have knowledge of the upcoming transaction by a third party which is likely to affect the market price of the investment. Furthermore, SEBI has failed to note/consider that Nilesh never shared the details of the proposed trades of HDFC Mutual Fund with Mr. Rajiv Sanghvi.

27. For the purpose of dealing with the above submissions of the Noticees, I find it relevant to list down the parameters/criteria laid down by the Hon'ble Supreme Court, which have also been highlighted by the Noticees in their submissions:

- i) one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence,
- ii) such breach of duty was known to the tippee.
- iii) tippee still trades thereby defrauding the person, whose orders were front run,
- iv) by inducing him to deal at the price he did.

28. In my view, the above submissions of the Noticees need to be dealt with on two fronts. *Firstly*, whether the Noticees' transactions in the present case are covered within the parameters laid down by the Hon'ble Supreme Court; and *secondly*, whether SEBI ought to have specifically made the allegations in the SCN in line with the above principles laid down by the Hon'ble Court.

29. To deal with the first front, I find it pertinent to mention that in the instant case, it is noted from the record that Nilesh as the equity dealer of HDFC-AMC had the information regarding the impending trades of HDFC. The record (including the audio conversation records) shows that Nilesh used to place orders on behalf of HDFC with its broker. By virtue of SEBI's Circular no MFD/CirNo. 4/216/2001 dated May 08, 2001 read with regulation 25(16) and fifth Schedule of SEBI (Mutual funds) Regulations 1996, Nilesh was required to keep the information relating to transactions of HDFC under confidence. Thus, condition (i) noted above is met. Drawing reference to the above principles laid down by the Hon'ble Court, I find that in the present case, in respect of trades by the Sanghvi Group, Nilesh acted as the *tipper* and Rajiv acted as the *tippee* as Nilesh passed on specific trading instructions to Rajiv, which had inbuilt in them, the knowledge of the forthcoming trades of HDFC. Rajiv, who was aware of Nilesh's association with HDFC AMC and

admittedly knew Nilesh for a long time (from college days), was a regular and active trader in the securities market, which is also evident from the fact that he fully understood the instructions passed on to him by Nilesh in securities market jargon. Being in that position, it can be reasonably inferred that Rajiv, being aware of Nilesh's employment with HDFC AMC, had the knowledge of the fact that Nilesh as the equities dealer of HDFC AMC was not expected to divulge confidential / price sensitive information to others. Thus, condition (ii) noted above is also met. Further, it is noted that Rajiv, despite such knowledge about the confidentiality obligation of Nilesh, upon receipt of the specific instructions / information (as evident from the call transcripts noted above), traded in his own account as well as traded through the accounts of his HUF, brother, wife and Dipti. I find that factors such as timing and frequency of the calls between Nilesh and Rajiv, the contents of the audio conversation collected in the investigation, the timing of execution of trades (i.e. trades prior to orders of HDFC and the squaring-off trades), the matching percentage of trades of the Noticees with the trades of HDFC, etc. are in my view, sufficient to show that the Noticees had front run the trades of HDFC because of which, the price advantage, which would have been available to HDFC, was grabbed by the Noticees and HDFC's trades were executed at a price (disadvantageous to it) which otherwise would not have been the case. Thus, conditions (iii) and (iv) are also met in the facts and circumstances of the present case. The argument that Nilesh never disclosed the trade details to Rajiv holds no merit since Nilesh instructed him on the exact manner, time, quantity and price of the scrips, and these instructions had inbuilt in them the knowledge of forthcoming trades of HDFC. The trading patterns of the above named entities and the above mentioned factors clearly exhibit the prior understanding amongst them under which the Sanghvi group executed trades as per the instructions of Nilesh and made profits. For the same reasons, I also do not find any merit in the argument of the Noticees that the person trading in stocks should have the knowledge of the upcoming transactions of the third party which is likely to affect the market price of the investment.

30. Similarly, in respect of the transaction by the Kalpana group, it is reasonably presumed that Kalpana (*tippee*), being the wife of Nilesh (*tipper*), was aware of Nilesh's employment and position in HDFC AMC and was also aware of the confidentiality obligation of Nilesh. It is pertinent to note that during the relevant period, on 93 instances, Kalpana had front run HDFC's trades and then squared off her trades matching them with HDFC's trades. Out of the said 93 instances, on 33 instances, Kalpana's square-off trades matched 100% with HDFC's trades. The pattern of trades followed in respect of trades by Kalpana was similar to the trading pattern of Sanghvi Group. The precise timing of execution of trades by Kalpana could not have been possible unless Nilesh had passed on the specific instructions

containing the exact manner, time, quantity and price of the scrips, which had inbuilt in them the knowledge of forthcoming trades of HDFC. I find that factors such as timing and frequency of the execution of trades (i.e. trades prior to orders of HDFC and the squaring-off trades), the matching percentage of trades of Kalpana with the trades of HDFC, etc. are in my view, sufficient to show that Kalpana had front run the trades of HDFC because of which, the price advantage, which would have been available to HDFC, was grabbed by Kalpana and HDFC's trades were executed at a price (disadvantageous to it) which otherwise would not have been the case. Thus, in respect of the transactions of the Kalpana Group also, conditions (i) to (iv) are met.

31. In this above context, I find it relevant to note that on July 24, 2014, SEBI had passed an order based on a similar set of allegations, facts and circumstances as are stated in the present SCN. Three entities out of the Noticees in the present proceedings (i.e. Nilesh, Rajiv and Dipti) were part of those proceedings which were disposed by SEBI vide order dated July 24, 2014. Vide the said order, SEBI had observed that the said entities had front run the trades of HDFC and had thereby violated the provisions of regulations 3 and 4(1) of PFUTP Regulations read with section 12A of SEBI Act. For the said violations, SEBI restrained the said entities from accessing the securities market and also prohibited them from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of 10 years from the date of the interim order dated June 17, 2010. Nilesh was also directed not to associate himself with any intermediary or any entity registered with SEBI for a period of ten 10 years. All the entities were also directed to disgorge the profits made by them along with interest.
32. The order of SEBI dated July 24, 2014, whereby SEBI had found Nilesh, Rajiv and Dipti (along with one other entity) guilty of violating the provisions of regulations 3 and 4(1) of PFUTP Regulations read with section 12A of SEBI Act, was appealed by them before Hon'ble SAT. The said appeals were dismissed by Hon'ble SAT vide order dated December 21, 2017.
33. It is important to note that the contention relating to the non-fulfilment of the conditions laid down by the Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* was also taken up by the concerned Noticees before Hon'ble SAT in their appeals filed before Hon'ble SAT. In its order dated December 21, 2017 disposing of appeals nos. 327, 329, 337 and 338 of 2014 filed by Mr. Nilesh Kapadia, Mr. Rajiv Sanghvi, Mr. Chandrakant P. Mehta and Ms. Dipti Mehta, respectively, Hon'ble SAT made the following observations:

“10. We have perused the SCN, the impugned order, submissions made by the Learned Counsel appearing on behalf of the appellants and the respondent as well as the detailed trade-logs etc. placed before us.

11. We do not find any merit in the arguments made by the Learned Counsel for the appellants. Since, the entire argument hinges heavily on the order dated September 20, 2017 of the Apex Court in Civil Appeals No. 2595 of 2013, 2596 of 2013 etc. cited above, we reproduce the relevant paragraphs of both the concurring orders but recorded independently by the Learned Justices:-

...

It is not in dispute that appellants indulged in large quantities of trading in various scrips from 13.04.2007 to 31.07.2007, the quantities in many instances were more than 50% of the total volume of trade of HDFC AMC. The matching of trade between the appellants and HDFC AMC in several instances was 100% or near 100% though it is also noted that in a few cases matching was negligible. It is also on record that the prices of ICRA moved from Rs. 580 in the morning at 09:56:10 on April 13, 2007 at NSE which went upto to Rs. 675 by 11:14:38 on the same day. Similarly in the case of other scrips also prices moved substantially. Undoubtedly, such a huge increase in the price happened because of the multiple orders placed by the appellants mostly before the orders of the HDFC AMC. Given the facts of the case-high volumes, multiple trading days, large number of trades, very proximate trade timing coupled with the admitted fact of receiving tips from the HDFC AMC Dealer which is also evidenced by the call records available in the impugned order-we have no doubt in concluding that the three appellants were ‘front-running’ the HDFC AMC orders. The additional arguments advanced by the Counsel for appellants in Appeal No. 337 of 2014 and 338 of 2014 that they did not receive any tips from the HDFC AMC employee has no merit since their own admission is that they traded “looking at the trading by Rajiv Sanghvi” (appellant in Appeal No. 327 of 2014). Since it is an admitted fact that Sanghvi traded based on tips trading looking at such trades is also based on such tips only. Given the magnitude of this trade it led to substantial increase in the prices of the scrips thereby affecting the securities market both in terms of its volatility and integrity. The argument that once the HDFC AMC order is placed on the trading system it becomes public information is a fallacious argument since on-line trading system is anonymous. Accordingly, Appeal Nos. 327, 337 and 338 of 2014 has no merit.

12. The argument that there was no confidentiality obligation on the part of HDFC AMC employee ... is completely devoid of truth as it is clearly stated in the SCN issued to appellant in Appeal No. 329 of 2014, dated February 11, 2011. Para 17 of the SCN reads “the noticee has violated the provisions of section 12A of SEBI Act read with Regulations 3 and 4(1) of SEBI (PFUTP) Regulations, 2003 further read with Circular no MFD/CirNo. 4/216/2001 dated May 08, 2001 and Regulations 25(16) read with para 8 & 9 of fifth schedule (Code of Conduct) of SEBI (Mutual Funds) Regulations 1996. The said Circular states that “no employee shall pass on information to anybody inducing him to buy/sell securities which are being bought / sold by the mutual fund of which the AMC is the investment manager”. Further, the same Circular at para 2.2.4.6 states that “Any transaction of front running by any employee directly or indirectly is strictly prohibited. For this purpose, ‘front running’ means any transaction of purchase/sale of a security carried by any employee whether for self or for any other person, knowing fully well that the AMC also intends to purchase/sell the same security for its mutual fund operations. For the purpose of ascertaining that the employee had no prior knowledge of the Mutual Fund’s intended transactions, the Compliance Officer may take a declaration in this regard from the employee. Such declaration may be included in the application form itself.” The very fact that as laid down in these guidelines, the employee had to give an undertaking to that effect and the fact that the employee was removed from the job of HDFC AMC subsequent to the SEBI interim order clearly establish that the appellant in Appeal No. 329 of 2014 was aware of the confidential nature of his task while working as a Dealer of HDFC AMC. As such Appeal No. 329 of 2014 also fails.

13. In the light of the above, we hold that the conditions laid down by the order dated September 20, 2017 of the Hon’ble Supreme Court in the matter of Dipak Patel etc. (supra) is fully applicable in all four appeals before us. Therefore, we do not find any reason to interfere with the impugned order of the WTM of SEBI dated July 24, 2014.”

34. It is noted that the above mentioned 4 appeals were filed by Nilesh, Rajiv, Dipti and Chandrakant Mehta against the order of SEBI dated July 24, 2014 whereby SEBI had found the said entities guilty of front running the trades of HDFC. It is noteworthy that the reference period for the said order was the same as the present SCN and the *modus operandi* adopted by the entities was also the same. Considering the various factors discussed above and the observations of the Hon’ble SAT in its order dated December 21, 2017, I find that the conditions laid down by the Hon’ble Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are met in the present case.

35. Coming to the *second* front i.e. whether SEBI ought to have specifically made the allegations in the SCN in line with the above principles laid down by the Hon'ble Court, I note that the SCN in the present matter was issued on February 14, 2017 and the Hon'ble Supreme Court passed the judgment on September 20, 2017. The parameters set out by the Hon'ble Court (noted above) have to be satisfied in respect of a charge of front running to the extent they apply to the facts and circumstances of a particular case. It is important to mention that in the present case, the Noticees were given several opportunities of hearing after the passing of the order by Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel*. In fact, the Noticees also took adjournments citing the aforesaid judgment of Hon'ble Supreme Court. The Noticees had sufficient opportunities to respond to the SCN from the viewpoint of the aforesaid parameters laid down by the Hon'ble Court and they could always have justified how their case does not meet the parameters laid down by the Hon'ble Court. I find no merit in the submission of the Noticees that the SCN, which was issued prior to the issuance of the order by the Hon'ble Court, should specifically be designed to address the parameters laid down by the Hon'ble Court. In my view, testing the facts and circumstances of the case on the parameters would be sufficient, as has been done above. As already observed, in the present case, the conditions laid down by the Hon'ble Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are met. In view of the above, I reject the submissions of the Noticees in this regard.
36. Further, with reference to the aforesaid 4 conditions noted by Hon'ble Justice N. V. Ramana in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel*, I also find it pertinent to highlight the observations made by Hon'ble Justice Ranjan Gogoi in the same case (i.e. *SEBI v. Kanaiyalal Baldevbhai Patel*). While Hon'ble Justice Ranjan Gogoi agreed with the trend of reasoning adopted by Hon'ble Justice N. V. Ramana to reach the ultimate conclusion, he was of the view that the case was capable of resolution within a very narrow spectrum of law and on an interpretation of the relevant provisions of the PFUTP Regulations. Hon'ble Justice Ranjan Gogoi considered the provisions of regulations 2(c), 3 and 4 of the PFUTP Regulations in the context of the appeal relating to one Mr. Dipak Patel, who was privy to privileged/confidential information about the proposed investments by one Passport India Investment (Mauritius) and allegedly parted the said information to his cousins Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel, who on various dates placed orders for purchase of scrips a few minutes before the bulk orders in respect of the same scrips were placed on behalf of Passport India by Dipak Patel, and made profits as a result thereof. After discussing regulations 2(c), 3 and 4 of the PFUTP Regulations, Hon'ble Justice Ranjan Gogoi observed the following:

“If the **parting of information** by Dipak Patel to Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel amounts to 'fraud' within the meaning of Regulation 2(c) of the 2003 Regulations, we do not see as to how the transactions entered into by Kanaiyalal Baldevbhai Patel and M/s Passport India through Dipak Patel both in regard to purchase and sale of the shares would not be hit by the provisions of Regulation 3(a) and Regulation 4(1) of the 2003 Regulations in question.”

37. Applying the above line of reasoning to the present case, when the passing of information by Nilesh to Rajiv is fraudulent, all the trades executed by Rajiv (for himself and through other accounts) and Kalpana are also fraudulent and are therefore, covered under the provisions of regulations 3 and 4 of the PFUTP Regulations read with regulation 2(c) thereof.
38. Another submission of the Noticees is that prior to the order of Hon'ble Supreme Court, there was ambiguity over the subject matter of non-intermediary front running since there were conflicting judgments of Hon'ble SAT in the matters of *Dipak Patel*, *Sujit Karkera* and *Vibha Sharma*, and also in view of the fact that SEBI defined “front running” for the first time vide Circular dated May 25, 2012. Further, by way of an amendment in 2013, an explanation was also added to regulation 4(2) of PFUTP Regulations making it inclusive in nature.
39. With regard to the above submissions of the Noticees, in my view, there was no ambiguity in law at the time when the subject transactions were carried out by the Noticees. The SCN alleges violation of regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act against the Noticee. There is no allegation against the Noticees that they had violated regulation 4(2)(q) of the PFUTP Regulations which relates to “trading ahead” by intermediaries. The Hon'ble Supreme Court also in its judgment in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* has made it clear that conduct such as Noticees' conduct in the present case shall be covered under regulations 3 and 4(1) of the PFUTP Regulations. It has to be borne in mind that the Hon'ble Court in the aforesaid case has only thrown light on the correct interpretation of the provisions of regulations 3 and 4(1) of the PFUTP Regulations. It cannot be said that Hon'ble Supreme Court in the aforesaid case, has pronounced a new law, which shall apply only prospectively. The Noticees' conduct in the present case would have, at all times, been in violation of regulations 3 and 4(1) of the PFUTP Regulations read with section 12A of the SEBI Act. For the sake of argument, even if it is assumed that the conflicting decisions by the Hon'ble SAT in the years 2012 and 2013 created some doubt, the same will be of no avail to the Noticees since the subject

transactions were carried out by them during the period 2000-2010. Considering the above, I reject the submissions of the Noticees in this regard.

40. It has also been submitted that "tippee trading" has not been explicitly recognized in Regulation 3 and 4 of PFUTP Regulations and should not be embraced within its scope especially because penal provisions should be strictly interpreted and there should be no scope of expansion of the provisions which will be detrimental to the Noticees. Without prejudice to other arguments, it is submitted by the Noticees that prior to the amendment in 2013, the exhaustive illustrations or details (a) to (t) provided in Regulation 4(2) which deals with "Prohibition of manipulative, fraudulent and unfair trade practices" were exhaustive and not inclusive. For the purpose of dealing with these submissions, I find that following observations of the Hon'ble Supreme Court in the matter of *SEBI v. Kanaiyalal Baldevbhai Patel* are noteworthy:

"An argument has been introduced by the Mr. K.T.S. Tulsi, learned senior counsel, that sub-clause (q) of regulation 4(2) includes only front-running by the intermediaries, by implication it means that any persons other than intermediaries are excluded from the rigors of law. In our opinion such submission cannot be sustained in the eyes of law as the intention of the legislation was to provide for a catchall provision and the deeming provision under sub-clause (q) of regulation 4(2) was specifically provided as the intermediary are in fiduciary relationship with the clients. There is no dispute as to the fact that a fiduciary must act in utmost good faith; he should not act for his own benefit or benefit of any third party without the informed consent of his client. The essential irreducible core of fiduciary duty is the duty of loyalty. Such heightened standard demanded a deeming provision under the FUTP 2003.

... The reliance on 'expressio unius est exclusio alterius' may not be appropriate in this case instant as the intention of the regulation is apparent in this case. Moreover, it has been well established that 'expressio unius est exclusio alterius' is not a rule of law but a tool of interpretation which must be cautiously applied. In light of the above discussion, this rule of interpretation does not help the case of the violators."

41. As has been clarified by the Hon'ble Supreme Court, regulations 3 and 4 of the PFUTP Regulations are catch-all provisions, which cover within their ambit fraudulent conduct such as "tippee trading" as identified by the Hon'ble Court. It is clear from a reading of the above observations of the Hon'ble Court that an express deeming provision such as regulation 4(2)(q) is not required for regulation 3 and 4 to cover conduct such as that of the Noticees in the present case. Further, in my view, regulation 4(2) which provides that "*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...” by no rule of interpretation can be read as being exhaustive in nature. The provision itself appears in the PFUTP Regulations as a deeming and illustrative provision and uses the words “may include” which are followed by the illustrations. The usage of the discretionary word “may” and the extensive word “include” clearly signify the inclusive nature of the provision. I am therefore unable to accept the submissions of Noticees in this regard.

42. The Noticees have further submitted that “from a perusal of the definition of *“fraud” under regulation 2(1)(c) and exceptions to fraud, it is evident that all information or tips would not amount to tippee trading. At the most (without admitting), the call records and transcripts would show that the tips provided by Nilesh, if any, would fall within the 4 exceptions of fraud defined in Regulation 2(1)(c). Any information or comment based on trends in securities market or any other matter of like nature would not amount to fraudulent act or fraud. Since the 9 instances mentioned in definition under regulation 2(1)(c) do not cover any information provided or any tips provided, the Noticee's acts would only fall within the exceptions (c) and (d) of the exceptions to fraud and the Noticees should be granted benefit of the same.*” In this regard, I note that regulation 2(1)(c) defines “fraud” by providing an inclusive list of acts, expressions, omissions or concealments which shall be treated as fraudulent, by first identifying the features of “fraud” and then by providing an inclusive list of identifiable conducts/acts/omissions, which amount to “fraud”. Thus, for a conduct to be “fraudulent” it has to meet the essential features mentioned in regulation 2(1)(c) and does not have to necessarily fall in any of the 9 instances stipulated therein. Further, the exceptions that have been carved out from the definition of “fraud” are only limited to general comments made in good faith with regard to the 4 subject matters i.e. *the economic policy of the government, the economic situation of the country, trends in the securities market and any other matter of a like nature*. Clearly, in the present case, the passing of information/instructions by Nilesh (and the transactions of other Noticees on the basis thereof) do not relate to any of the said 4 subject matters and therefore do not qualify for the exceptions to regulation 2(1)(c). In view thereof, I find that the conduct of the Noticees in the present case would be covered under regulation 2(1)(c) of the PFUTP Regulations. The arguments of the Noticees in this regard are therefore devoid of any merit.

43. It has also been submitted by the Noticees that *“in order to allege front running, the SCN ought to have shown an analysis of the timings at which orders were placed by Noticees and HDFC and also an analysis of actual time at which their respective trades were executed. They have also submitted that in order to allege front running, SEBI ought to show that Sanghvi Group's and Kalpana Group's first order*

was placed before HDFC's order(s) came on to the trading screen, and only thereafter Sanghvi Group and Kalpana Group placed their counter order(s) with an intention to match their trades with HDFC. In the event if HDFC's order(s) was/were placed prior in time, in that case the charge of front running would be factually incorrect." With regard to the above submissions of the Noticees, reference is drawn to paragraph 12 of the SCN which states that the Sanghvi group indulged in 42 instances of front running (24 BBS Pattern and 18 SSB Pattern). Similarly, paragraph 28 of the SCN relating to Kalpana's trades states that in total, 35 instances of SSB and 58 instances of BBS front running pattern were observed. As observed above, the transactions were executed by the Noticees in two legs: the *first leg* involved placement of order (buy or sell) prior to the placement of HDFC's order and the *second leg* involved placement of trades almost simultaneously with HDFC's order so as to square off the position created by the *first leg*. In respect of all the trades tabulated in the SCN, the *first leg* (shown as FR quantity) was executed prior to HDFC's trades and the *second leg* was executed almost simultaneously with or immediately after HDFC's trades. As noted above in paragraph 5 above, the sample analysis contains the time analysis of trades of entities of Sanghvi group (Sanjay and Dipti) in the scrip of Punj Lloyd on 05.06.2007 and the trades of Kalpana in the scrip of BEML on 10.06.2003. The SCN under the above mentioned paragraphs also tabulates all the trades clearly highlighting the quantity of the trades in the front running leg, HDFC's order quantity, squared off quantity, matching quantity and matching percentage (which was as high as 100% on several instances). Further, in respect of the Sanghvi Group, the sample analysis of their trades relatable with the audio conversations between Nilesh and Rajiv was also provided. From the above, it is evident that the SCN, for the purpose of levelling allegations against the Noticees, does rely upon the analysis of the trades of the Noticees. It is also pertinent to note that along with the SCN, the relevant trade logs / order logs were also provided to the Noticees. Thus, the Noticees at all times had the details of their trades and the relevant analysis of their trades but they did not dispute the details of the trades mentioned in the trade logs. In view thereof, the above submissions of the Noticees do not hold merit and are therefore rejected.

44. It has been argued by the Noticees that *"the SCN nowhere says that HDFC or any investor(s) have ever claimed that they incurred loss or lost any price advantage on account of subject trades. Further, the SCN also does not in any manner aver/allege that HDFC or investors in securities market were defrauded by execution of subject trades and therefore, if SEBI itself has not alleged/ established that there was any fraud on account of the subject trades, it is impossible to understand and ascertain that how and in what manner SEBI has alleged that the provisions of PFUTP Regulations, are violated by the Noticees."* In this regard, I note that the power of SEBI to investigate any matter is not contingent upon the receipt of any complaint

by an aggrieved person. Investigation can be taken up by SEBI in any case where there is a suspected violation of any rule, regulation, direction or any other provision of law being administered by SEBI. Thus, the contention that HDFC or other investors have not claimed that they incurred loss or lost any price advantage on account of subject trades, holds no merit. Further, the submission of the Noticees that the SCN does not allege that HDFC or investors in securities market were defrauded by execution of subject trades, is also incorrect. The SCN dated February 14, 2017 at paragraph 14 stated “...*Therefore, these trades were executed in fraudulent manner by Nilesh, Sonal, Rajiv, Rajiv-HUF, Sanjay and Dipti who had acted in concert, to defraud HDFC.*”. Paragraph 32 of the SCN also stated “...*These trades were executed in fraudulent manner by Nilesh and Kalpana who had acted in concert, to defraud HDFC.*” Thus, I find that the submission of the Noticees in this regard is fallacious and devoid of merit.

45. It has also been argued by the Noticees that it is not SEBI's case that Nilesh had executed orders on behalf of HDFC at his own prices, and in the absence of such specific case, the averment/allegation that HDFC or any investor incurred any loss is unfair, unwarranted and in any event incorrect. In this regard, I note in the background of the present case that for the charge of front running to hold, it is not a pre-requisite that the *tipper* (Nilesh in the present case) should decide or execute the trades on behalf of the person being front run (HDFC) at his own prices. As discussed hereinabove, Nilesh, being in the position of equities dealer of HDFC, had the knowledge of the details of transactions of HDFC, and on the basis of said knowledge, he passed on the information / instructions / tips (which had inbuilt in them the knowledge of forthcoming trades of HDFC) to Rajiv, and accordingly Rajiv traded for himself and through accounts of other entities. Similarly, Kalpana also traded as per the instructions of Nilesh. It is noted that because of these transactions of the Noticees, the price advantage, which would have been available to HDFC or other investors, was grabbed by the Noticees and HDFC's trades and other investors' trades were executed at disadvantageous prices. Thus, the trades of the Noticees resulted in an opportunity loss to HDFC and other general investors. The opportunity loss to HDFC and other investors in the market was caused because of the trades which were executed as per the instructions of Nilesh prior to the placement of trades of HDFC by Nilesh. These trades grabbed the price depth in the market, which otherwise would have been available to HDFC and other investors in the market. In view of the above, I find that the above argument of the Noticees is unfounded and is therefore rejected.

46. I note that as revealed in the investigation, on account of its transactions the Sanghvi Group had made an unlawful gain of a sum of ₹1,05,02,417 (without interest) and the Kalpana group had made an unlawful gain of ₹47,24,293 (without

interest). Regarding the said unlawful gain / profit, without prejudice to other submissions, it has been contended by the Noticees that the computation of profit as mentioned in the SCN is wrong on the ground that if the charge is front running HDFC's trades then the alleged profits/unlawful gains can be only for the quantities which had allegedly matched with HDFC's quantities as a counter party. In this regard, I am of the view that front running is a fraud against the securities market as a whole and not only against the specific person, whose trades have been front run. It is noted that there is no requirement that HDFC should have a case that its trades have been front run and it has incurred loss in view of that, contrary to the claim of the Noticees. The person, who does front running, makes profit not only at the expense of the person being front run but also at the expense of other investors in the market who incidentally suffer loss because of the transactions of the front runner. Thus, the calculation of the profit has to be done from the perspective of the person who is doing front running and not from the perspective of the person who is being front run.

47. To elucidate, in the present case (in respect of front running of buy trades of HDFC), since HDFC was to buy a big quantity, its trade would have had a positive impact on the price of the scrip. Nilesh as the equity dealer of HDFC AMC had the prior knowledge of HDFC's trades, which he passed on to Rajiv, and then Rajiv bought shares through different accounts from general investors at a lesser price, which would have otherwise been available to HDFC. Thereafter, HDFC was compelled to buy at higher prices since the advantage of lesser price was already grabbed by Rajiv (and others). At the time when HDFC's order was placed, the Noticees sold their shares squaring off their positions thereby reaping the profits. In this situation, because of Noticees' front running transactions, they made profits as their squaring-off trades matched with HDFC and also with other investors in the market. Had the Noticees (possessed with the information of forthcoming trades of HDFC) not traded, the price advantage or the depth of the market would have been available to both HDFC and general investors, and therefore the general investors also lost because of the front running transactions of the Noticees.
48. In view of the above, I find that the computation of the profit taking into account all the squared-off trades of the Noticees with HDFC and other investors in the market is correct, and therefore, I reject the submissions of the Noticees in this regard.
49. Another submission of the Noticees, without prejudice to the other submissions is that SEBI cannot levy interest on the alleged disgorgement amount from the date of the transactions as has been done in the present case. According to the Noticees, interest can be levied only from the date when the amount gets crystallized / payable. In support of this contention, the Noticees have placed

reliance on the Judgment of the Hon'ble SAT in the matter of *Shailesh Jhaveri vs. SEBI*. In this regard, I find it important to mention that the issue regarding levy of interest on the ill-gotten gain has been settled by the Hon'ble Supreme Court of India in the matter of *Dushyant Dalal and another v. SEBI* (order dated October 4, 2017). The following observations of the Hon'ble Court on the point are noteworthy:

“16. 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.

...

28. We agree with the aforesaid statement of the law. 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.”

Considering the above observations of the Hon'ble Supreme Court, I do not find any merit in the submissions of the Noticees in this regard and hold that the levy of interest on the ill-gotten gains as has been mentioned in the present SCN is covered under the law laid down by the Hon'ble Supreme Court.

50. In view of the foregoing, I find that the Noticees have violated sections 12A(a), 12A(b) and 12A(c) of the SEBI Act, 1992 and regulations 3(a), 3(b), 3(c), 3(d) and 4(1) of the PFUTP Regulations. In my view, any person, who commits a fraud in the securities market and makes unlawful gains on account of such fraud, cannot be allowed to be unjustly enriched from gains made fraudulently, and therefore, he/she/it becomes liable to disgorge the unlawful / ill-gotten gains so earned. Considering the above, I find that in the present case, in the interest of justice, it becomes imperative that the ill-gotten profit so earned by the Noticees should be disgorged along with interest thereupon.

51. Without prejudice to other arguments, Nilesh and Rajiv have submitted that they have already undergone debarment from the securities market from the date of the interim order dated June 17, 2010 passed by SEBI for the very same violations, and therefore it has been prayed that a lenient view may be taken by SEBI. In this context, I find it pertinent to mention that the Noticees in the present case made ill-gotten gains on account of their fraudulent front running transactions. The disgorgement of the ill-gotten gains and the interest thereupon, is an equitable remedy and therefore cannot be treated as a penal measure. The objective of disgorgement under law is to prevent unjust enrichment of a person as a result of his fraudulent transactions. The following observations of Hon'ble SAT in the matter

of *Karvy Stock Broking Ltd. v. SEBI* (Order dated May 2, 2008) are noteworthy in this context:

“Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge.”

In view of the above, I find that the fact that the Noticees (Nilesh, Rajiv and Dipti) have undergone the debarment since 2010 has no bearing on the directions of disgorgement which are envisaged in the present proceedings. I, therefore, cannot accede to the request of the Noticees in this regard.

52. Without prejudice to the above submissions, it has also been submitted by Nilesh and Rajiv that they have appealed the order of Hon'ble SAT dated December 21, 2017 before Hon'ble Supreme Court and since any order therein will have a direct bearing on the present proceedings, these proceedings may be kept on hold till the final disposal of the said appeals. In this regard, it is noted that as on date the Hon'ble Supreme Court has not ordered any stay on the operation of the order of Hon'ble SAT dated December 21, 2017. Thus, even though the order of Hon'ble Supreme Court in the aforesaid appeals may have a bearing on the present proceedings, in absence of any stay on the operation of Hon'ble SAT's order, I find no reason to keep these proceedings on hold. The request of Nilesh and Rajiv in this regard, therefore, cannot be acceded to.

ORDER

53. In view of the foregoing, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me in terms of Section 19 read with Section 11(4) and 11B of the SEBI Act, 1992, I direct as under:
- i) The Noticees named in the table below (hereinafter referred to as “Entities”) shall disgorge the wrongful gain made by them (mentioned in the table below) along with simple interest @ 12% per annum from the respective dates of their transactions till the respective dates of deposit of the respective amounts in escrow accounts in compliance with Hon'ble SAT's order dated March 4, 2016. The entity-wise unlawful gains as ascertained are as under :

Sl. No.	Name	Gain in (₹)
1	Rajiv Sanghvi	27,09,298
2	Rajiv Sanghvi-HUF	9,72,691
3	Sanjay Sanghvi	39,85,851
4	Sonal Sanghvi	20,03,481
5	Dipti Mehta	8,31,096
6	Kalpana Kapadia	47,24,293

- ii) The amounts already deposited by the *Entities* in the escrow accounts in compliance with Hon'ble SAT's directions shall be utilized for the purpose of disgorgement directed above. The *Entities* shall pay the balance amounts i.e. the interest on the unlawful gains calculated with simple interest @ 12% from the respective dates of their transactions till the respective dates of deposit of the respective amounts in escrow accounts within 45 (forty five) days from the date of service of this order, by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.
- iii) The Banks, with whom the *Entities'* accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held by the *Entities* except for the purposes of compliance of this order.
- iv) The Depositories, with whom the *Entities'* demat accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held, by the *Entities* except for the purposes of compliance of this order. However, credits, if any, into the accounts of the *Entities* may be allowed.
- v) The *Entities* 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.
- vi) If the *Entities* fail to comply with the above directions, they shall be restrained from accessing the securities market and shall also be prohibited from buying, selling or otherwise dealing in the securities market, for a further period of 5 years, over and above the restraint / prohibition period continuing against them, if any, without prejudice to any other action including action for recovery of such amounts from the *Entities* that may be initiated by SEBI under section 28A of the SEBI Act.
- vii) If any period of restraint is already in operation against the *Entities*, the period of restraint / prohibition directed in sub-paragraph (vi) above shall start from the next day from the date when the order of restraint, which is already in

operation against the *Entities*, comes to an end or becomes non-operational either on expiry or otherwise.

54. This order shall come into force with immediate effect. Accordingly, the interim order dated January 15, 2016 and the SCN dated February 14, 2017 are disposed of.

55. A copy of this order shall also be served upon the Depositories, Stock Exchanges and Registrars and Transfer Agents for necessary action on their part.

Sd/-

DATE: July 27th, 2018

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**