

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/5/2018-19]

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

In respect of

Priyesh Ramanlal Patel

(Address – No. 3, Ghanshyam Park Society,
Ashwamegh Bungalows, 132 Feet Ring Road,
Satellite Road, Ahmedabad-380015)
(PAN: AGRPP8045K)

In the matter of Popular Estate Management Limited
(CIN - L65910GJ1994PLC023287)

BACKGROUND

1. Investigating Authority (hereinafter referred to as **IA**), of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an investigation in the matter of trading activities of certain entities in the scrip of Popular Estate Management Limited (hereinafter referred to as **Popular/Company**), which is listed at Bombay Stock Exchange (**BSE**). The period of investigation was from January 01, 2012 to November 16, 2012 (hereinafter referred to as **Investigation Period**). The entire investigation period was divided into two (2) patches i.e. Patch-I and Patch-II. Patch-I was taken as January 01, 2012 to June 28, 2012 wherein the price of the scrip accounted a rise and Patch-II was taken as June 29, 2012 to November 16, 2012 wherein the price of the scrip accounted a fall. Further, on the basis of trading pattern, off-market transfers and common KYC details, three Groups were made by IA i.e. Group-I having 11 entities i.e. Asha Rajendrabhai Patel, Vikram Farms Pvt Ltd, Krinesh Farms Pvt Ltd, Sholay Farms Pvt Ltd, Saranga Farms Pvt Ltd, Priyesh Ramanlal Patel (hereinafter referred to as **Noticee**), Runali Vikram Patel, Bhumi Prathmesh Patel, Fizu M Patel, Komal Priyesh Patel and Rajendra Jayantilal Patel, Group-II having three (3) entities and Group-III having five (5) entities. IA observed that Noticee was one of the suspected entities in Group-I. It was observed by IA that

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the Noticee along with other eight (8) entities in Group-I viz. (1) Komal Priyesh Patel, (2) Fizu M Patel, (3) Asha Rajendrabhai Patel, (4) Krinesh Farms Pvt Ltd, (5) Vikram Farms Pvt Ltd, (6) Saranga Farms Pvt Ltd, (7) Bhumi Prathmesh Patel and (8) Runali Vikram Patel (hereinafter collectively referred to as **Priyesh Group**) had traded in the shares of Popular during the period of investigation and contributed to Last Traded Price (LTP), New Low Price (NLP) and First trades and as a result created artificial volume in the said scrip of Popular and therefore violated the provisions of regulations 3(a), 3(b), 3(c) and 3(d), 4(1), 4(2)(a) and 4(2)(e) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities market) Regulations, 2003 (hereinafter referred to as **PFUTP Regulations, 2003**). Further, Noticee became a promoter on August 01, 2012 and he was holding 4,500 shares of Popular at that point of time. IA observed that, being a promoter of the Company, the Noticee was required to make disclosure to the Company as prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). However, the Noticee, failed to make relevant disclosures as prescribed under PIT Regulations, 1992. IA also observed that during the period of investigation, there was a change in shareholding of the Noticee in the Company (Popular) during the quarter ending December, 2012. However, the Noticee, as a promoter of the Company failed to make relevant disclosures pursuant to the change in his shareholding to the Company and BSE as prescribed under PIT Regulations, 1992. It was observed by IA that the Noticee has violated the regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) read with (r/w) 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

2. In view of the said findings of IA, a department of SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15HA of the Securities and Exchange Board of India, 1992 (hereinafter referred to as the **SEBI Act, 1992**), the alleged violations of provisions of regulations 3(a), 3(b), 3(c) and 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003 and under section 15A(b) of the SEBI Act, 1992 for the alleged violations of regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. Shri Nagendraa Parakh was appointed as the Adjudicating Officer (**AO**) under Section 15-I of the SEBI Act, 1992

read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under sections 15HA and 15A(b) of the SEBI Act, 1992 for the said alleged violation of PFUTP Regulations, 2003 and PIT Regulations, 1992 by the Noticee. Subsequently, I was appointed as Adjudicating Officer vide order dated July 10, 2017 by the competent authority of SEBI.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD/AO-NP/VVK/29699/1/2016 dated October 27, 2016 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against his for the alleged violations of provisions of regulations 3(a), 3(b), 3(c) and 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003, regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992.
4. It was alleged in the SCN that the Noticee became a promoter of the Company on July 01, 2012 and also the Noticee held 4,500 shares of Popular constituting 0.03% of the total share capital of the Company as of quarter ended 31st September, 2012. As per regulation 13(2A) of PIT Regulations, 1992, the Noticee was required to make disclosures to the company regarding the number of shares or voting rights held within two working days of becoming such promoter or person belonging to promoter group. It is alleged in the SCN that being a promoter, Noticee was under obligation to disclose the number of shares or voting rights held by the Noticee, within two days of becoming a promoter or part of the promoter group to the Company under the provision of regulation 13(2A) of PIT Regulations, 1992. However, the Noticee failed to make disclosures to the Company under 13(2A) of PIT Regulations, 1992 within the prescribed time.
5. Further, it was alleged in the SCN that there was a change in Noticee's shareholding in the Company during the quarters ending September and December, 2012. The details of change in shareholding of the Noticee are tabulated below:-

Table - 1

Quarter End	No. of shares	% of Shareholding
September 30, 2012	4,500	0.03
December 31, 2012	56,300	0.40

It was observed that shareholding of the Noticee changed from 4,500 shares to 56,300 shares of Popular, which exceeded 25,000 shares on October 22, 2012. It is alleged in the SCN that the change in shareholding casts an obligation on the Noticee as a promoter or part of the promoter group to disclose the change in number of shares or voting rights held by the Noticee, if the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights whichever is lower, within two days of such acquisition of shares to the Company and BSE under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. However, the Noticee failed to make disclosures to the Company and BSE under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 within the prescribed time.

6. Further it was alleged in the SCN that Priyesh Group (which includes Noticee) had indulged in price manipulation by contributing significant negative Last Traded Price (LTP) variation, contribution to New Low Price (NLP) and contribution to negative LTP variation through first trades by trading among themselves. It was observed by IA that the Noticee shared the same address/e-mail ID with other Group I entities viz. (1) Bhumi Prathmesh Patel and (2) Dashrathbhai Bholidas Patel, Promoter-Director of the Company. The details of allegation w.r.t. LTP and NLP are summarized below:

a) **LTP:** It was alleged that, in 40 trades, counterparties were Priyesh Group entities which contributed a negative LTP of Rs. 26.95 (i.e. 26.34% of total market negative LTP during Patch-II). Those 40 trades and orders were analysed and the following was alleged in the SCN:

- i. In 35 trades Asha Patel was seller and contributed a negative LTP of Rs.19.85 with other Priyesh Group entities namely Krinesh Farms Pvt Ltd (contributed negative LTP of Rs.5.95 in six (6) trades), Saranga Farms Pvt Ltd (contributed negative LTP of Rs.4.45 in four (4) trades), Runali Patel (contributed negative LTP of Rs.3.95 in 12 trades), Fizu M Patel (contributed negative LTP of Rs.2.55 in five (5) trades), Priyesh Ramanlal Patel (Noticee) (contributed negative LTP

of Rs.1.80 in three (3) trades), Vikram Farms Pvt Ltd (contributed negative LTP of Rs.1.00 in three (3) trades), and Bhumi Prathmesh Patel (contributed negative LTP of Rs.0.15 in two (2) trades).

- ii. In three (3) trades Komal Priyesh Patel was seller and contributed a negative LTP of Rs.3.55 with other Priyesh Group entities namely Krinesh Farms Pvt Ltd (contributed negative LTP of Rs.1.85 in one (1) trade) and Vikram Farms Private Ltd. (contributed negative LTP of Rs.1.70 in two (2) trades).
- iii. In one (1) trade Fizu M Patel was seller and contributed a negative LTP of Rs.2.15 with other Priyesh Group entities namely Krinesh Farms Pvt Ltd.
- iv. In one (1) trade Runali Vikram Patel was seller and contributed a negative LTP of Rs.1.40 with other Priyesh Group entities namely Saranga Farms Pvt Ltd.

It was alleged that out of 82 trading days, the Priyesh Group entities executed first trades by trading among themselves at negative LTP on 23 days and contributed negative LTP of Rs.23.30 (i.e. 22.78% of market negative LTP). On all these occasions, Group-I entities namely Asha Patel (19 days), Komal Priyesh Patel (2 days), Fizu M Patel (1 day) and Runali Vikram Patel (1 day) placed first order at lower circuit filter rate which was subsequently matched with Priyesh Group entities. Out of 23 such trades, 17 trades established new low price also. Significant contribution to negative LTP and the repetitive instances of executing first trades at lower circuit rate by the Priyesh Group entities by trading among themselves indicate that these entities manipulated the price of the scrip. Therefore, it was alleged that Priyesh Group entities by trading among themselves, contributed a significant negative LTP of Rs. 26.95/- and hence decreased the price of the scrip during Patch-II.

- b) **NLP:** It was alleged in SCN that, Priyesh Group entities contributed significant NLP of Rs.13.00 (i.e. 27.51%) out of total price fall of Rs.47.25 by trading among themselves during Patch-II. Contribution to new low price is the difference between new low price established by the trade and previously established low price of the scrip. Price of the scrip closed at Rs.62.35 on June 28, 2012 and reached a low of Rs.15.10 on October 26, 2012, recording a total price fall of Rs.47.25. The analysis of selling pattern of the Group-I (including Noticee) revealed that out of 51

instances of trades establishing new low price, the Group-I (including Noticee) entities appeared as sellers in 24 instances with a cumulative contribution to new low price of Rs.15.20 constituting 32.17% of total price fall during Patch-II.

It was alleged that, out of aforementioned 24 trades of Priyesh Group which established new low price, 17 trades were executed by Priyesh Group entities by trading among themselves, which contributed Rs.13.00 (i.e. 27.51%) out of total price fall of Rs.47.25 during Patch-II. The entity-wise summary of these trades were provided to the Noticee in the following tabular format:

Table - 2

Date	Client name	CP Client Name	Trade Time	Trade Rate	LTP	Traded Quantity
31/07/2012	Krinesh Farms Private Ltd	Asha Rajendrabhai Patel	13:38:27.152082	44.05	-2.3	1
03/08/2012	Krinesh Farms Private Ltd	Asha Rajendrabhai Patel	09:37:40.074133	43.4	-2.25	1
06/08/2012	Krinesh Farms Private Ltd	Fizu M Patel	10:00:43.751352	41.25	-2.15	1
14/08/2012	Krinesh Farms Private Ltd	Komal Priyesh Patel	09:52:22.990217	35.4	-1.85	50
17/08/2012	Vikram Farms Pvt Ltd	Komal Priyesh Patel	14:04:01.506282	32	-1.65	50
23/08/2012	Saranga Farms Pvt Ltd	Runali Vikram Patel	12:41:22.226655	27.55	-1.4	1
24/08/2012	Saranga Farms Pvt Ltd	Asha Rajendrabhai Patel	09:58:13.233784	26.4	-3.6	50
27/08/2012	Priyesh Ramanlal Patel (Noticee)	Asha Rajendrabhai Patel	09:33:33.331367	25.1	-1.3	1800
31/08/2012	Fizu M Patel	Asha Rajendrabhai Patel	09:31:31.333961	23.1	-0.45	1000
03/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:54:05.490708	22.65	-0.5	1000
13/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	10:02:55.919402	22.55	-0.45	500
17/09/2012	Krinesh Farms Private Ltd	Asha Rajendrabhai Patel	10:28:15.995682	22.45	-0.45	10
18/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:28:12.242613	22.05	-0.4	200
20/09/2012	Fizu M Patel	Asha Rajendrabhai Patel	09:20:30.272223	21.65	-0.4	5
25/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:19:34.800363	20.8	-0.65	500
28/09/2012	Priyesh Ramanlal Patel (Noticee)	Asha Rajendrabhai Patel	09:27:09.859361	20.3	-0.4	2

Date	Client name	CP Client Name	Trade Time	Trade Rate	LTP	Traded Quantity
08/10/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:33:52.399733	18.65	-0.35	5

c) **First Trade:** It was alleged that there was a negative LTP variation of Rs.68.70 through 61 first trades in Patch-II (out of total 82 trading days during Patch-II), out of which Rs.25.50 was contributed by four Priyesh Group entities as a seller in 30 first trades (out of total 38 first trades in which Priyesh Group appeared). The counterparties of these 30 first trades executed below LTP by the Group-I entities were further analyzed by IA and it was alleged that in 23 trades out of 30 such first trades counterparties were from Priyesh Group which contributed Rs.23.30 to negative LTP variation. The entity-wise details of these 23 trades were provided to the Noticee in the following tabular format:

Table - 3

Date	Client name	CP Client name	Trade Time	Trade Rate	LTP	Traded Quantity
31/07/2012	Krinesh Farms Private Limited	Asha Rajendrabhai Patel	13:38:27.152082	44.05	-2.3	1
03/08/2012	Krinesh Farms Private Limited	Asha Rajendrabhai Patel	09:37:40.074133	43.4	-2.25	1
06/08/2012	Krinesh Farms Private Limited	Fizu M Patel	10:00:43.751352	41.25	-2.15	1
14/08/2012	Krinesh Farms Private Limited	Komal Priyesh Patel	09:52:22.990217	35.4	-1.85	50
17/08/2012	Vikram Farms Pvt Ltd	Komal Priyesh Patel	14:04:01.506282	32	-1.65	50
23/08/2012	Saranga Farms Pvt Ltd	Runali Vikram Patel	12:41:22.226655	27.55	-1.4	1
24/08/2012	Saranga Farms Pvt Ltd	Asha Rajendrabhai Patel	09:58:13.233784	26.4	-3.6	50
27/08/2012	Priyesh Ramanlal Patel (Noticee)	Asha Rajendrabhai Patel	09:33:33.331367	25.1	-1.3	1800
31/08/2012	Fizu M Patel	Asha Rajendrabhai Patel	09:31:31.333961	23.1	-0.45	1000
03/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:54:05.490708	22.65	-0.5	1000
04/09/2012	Fizu M Patel	Asha Rajendrabhai Patel	09:35:53.093268	23.1	-0.35	3000
06/09/2012	Vikram Farms Pvt Ltd	Asha Rajendrabhai Patel	10:38:38.129107	23.35	-0.45	3000
10/09/2012	Fizu M Patel	Asha Rajendrabhai Patel	10:28:31.420042	23.1	-0.45	3000

Date	Client name	CP Client name	Trade Time	Trade Rate	LTP	Traded Quantity
12/09/2012	Saranga Farms Pvt Ltd	Asha Rajendrabhai Patel	09:35:35.259915	22.65	-0.45	100
13/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	10:02:55.919402	22.55	-0.45	500
14/09/2012	Vikram Farms Pvt Ltd	Asha Rajendrabhai Patel	11:20:11.708728	22.9	-0.45	14
17/09/2012	Krinesh Farms Private Limited	Asha Rajendrabhai Patel	10:28:15.995682	22.45	-0.45	10
18/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:28:12.242613	22.05	-0.4	200
20/09/2012	Fizu M Patel	Asha Rajendrabhai Patel	09:20:30.272223	21.65	-0.4	5
25/09/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:19:34.800363	20.8	-0.65	500
28/09/2012	Priyesh Ramanlal Patel (Noticee)	Asha Rajendrabhai Patel	09:27:09.859361	20.3	-0.4	2
08/10/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:33:52.399733	18.65	-0.35	5
09/11/2012	Runali Vikram Patel	Asha Rajendrabhai Patel	09:32:13.927628	16.4	-0.6	200

7. In view of the above, it was alleged in the SCN that “ *the Noticee along with other eight (8) Group I entities viz. (i) Ruali Vikram Patel, (ii) Bhumi Prathmesh Patel, (iii) Fizu M Patel, (iv) Asha Rajendrabhai Patel, (v) Komal Priyesh Patel, (vi) Vikram Farms Pvt Ltd, (vii) Krinesh Farms Pvt Ltd, (viii) Saranga Farms Pvt Ltd were allegedly responsible for manipulating the price of the scrip by significant contribution to negative LTP variation, contribution to New Low Price (NLP) and contribution to negative LTP variation through first trades by trading among themselves and violated the provisions of Regulations, 3(a),(b),(c), (d) and regulation 4(1) and 4(2)(a) and (e) of SEBI PFUTP Regulations, 2003.*”.
8. The said SCN was served to the Noticee through speed post acknowledgement due (SPAD) and the proof of delivery is on record. Noticee vide letter dated November 15, 2016 requested to provide extension of 30 days to submit the reply to the SCN. Further, earlier AO vide hearing notice dated May 23, 2017 granted an opportunity of hearing on June 14, 2017 through SPAD and the said hearing notice was delivered as seen from the records. Accordingly, one Mr. Keyoor Bakshi, the authorized representative (AR), on behalf of the Noticee attended the hearing on the scheduled date i.e. June 14, 2017 and the hearing minutes are on record. In the hearing, Noticee was advised to submit the reply to the SCN on or before June 29, 2017 and based on

the reply, another opportunity of hearing may be given to the Noticee. The Noticee vide letter dated June 27, 2017 submitted its reply to the SCN.

9. After my appointment, I also granted an opportunity of personal hearing to the Noticee vide hearing notice dated September 05, 2017 for personal hearing scheduled on September 22, 2017. The said hearing notice was served to the Noticee by SPAD and the proof of delivery as per website of Department of Post (www.indiapost.gov.in) is available on records. However, the Noticee did not appear for hearing on the scheduled date. Another opportunity of hearing was granted to the Noticee vide hearing notice dated October 03, 2017 for personal hearing scheduled on October 24, 2017. The personal hearing on October 24, 2017 was postponed and same was informed to the Noticee vide e-mail dated October 23, 2017. Further, vide hearing notice dated October 30, 2017, the Noticee was granted final opportunity of personal hearing on November 09, 2017. The said hearing notice was served to the Noticee by SPAD and the proof of delivery as per website of Department of Post (www.indiapost.gov.in) is available on records. AR of the Noticee attended the hearing on the scheduled date i.e. November 09, 2017 and also submitted reply to the SCN during the hearing and requested for additional time to submit additional information. As requested by AR, the Noticee was given time to submit the additional information by November 20, 2017. Further, Noticee vide letter dated November 15, 2017, filed additional information.
10. The Noticee, vide its letter dated June 27, 2017, November 08, 2017 and November 15, 2017 submitted his reply to the SCN and the submissions of the Noticee inter-alia are summarized below:
 - a. *The Noticee admitted that he belongs to the promoter group of Popular and she had inadvertently committed violation of Regulations 13(2A) and 13(4A) of the SEBI PIT Regulations, 1992 which was just a mistake without any ill intention or bad motive. She has submitted the disclosure on December 11, 2014 on receipt of the letter from SEBI. He apologized for the delay in disclosure and provided a copy of disclosure downloaded from BSE website.*
 - b. *The Noticee further submitted that he denied the charges levelled for the alleged violations of PFUTP regulations, 2003. He had bought the shares from open market. However, he had not sold any shares in the market after the quarter as mentioned in the SCN. Therefore, he had not made any gain or advantage from such buying and not manipulated the price.*
 - c. *He opposed the theory that 9 entities stated in Paragraph 6 comprised a 'group' and that all of them were part of the same group called "Group I entities" as alleged in the*

Notice. He submitted that only 5 persons belonging to the Promoter Group of Popular - viz. (1) Runali Vikram Patel, (2) Komal Priyesh Patel, (3) Fizu M. Patel, (4) Priyesh Ramanlal Patel and (5) Bhumi Patel can be included in one group. Neither he nor any other four persons belonging to the Promoter Group of Popular can be clubbed with the rest of four other entities mentioned in the Notice just because of the fact that some of them had common address or email ID once. Whether two persons/ entities belong to one; 'group' or were acting in concert with each other is a question of fact and cannot be determined on the basis of coincidence and mere apprehension drawn out of such coincidence. He therefore challenge the basic premise of creation of the so called 'Group I' and treating all nine entities as one group based on which charges are framed against him. He submitted that the said five persons belonging to the Promoter Group of Popular have not acted in concert with other four entities. These five persons belonging to the Promoter Group of Popular have independently traded in the scrip of Popular without any knowledge whatsoever as to whether the other four entities in the so called Group I were trading in this scrip or not.

- d. He submitted that Asha Rajendrabhai Patel does not belong to the Promoter Group of Popular and is not related to any persons belonging to the Promoter Group of Popular. In fact Asha Rajendrabhai Patel was earlier wife of Mr. Rajendrabhai Patel who was an employee of Popular. Mr. Rajendrabhai Patel had acquired shares of Popular in his individual capacity and without any link with the promoters of Popular. Mr. Rajendrabhai Patel was never shown in the promoter group of Popular in any Shareholding Pattern or other documents filed by Popular. Mr. Rajendrabhai Patel died sometime around April, 2012, and Asha Patel thereafter married to some other person. After his remarriage, Asha Patel had never been in contact with any of the promoters or directors of Popular and his whereabouts are not known. He had independently traded in the shares of PEML and the promoters of PEML had no knowledge or connection in him such dealings.
- e. The Noticee provided the copies of the Master Data available on the MCA Portal of the Ministry of Corporate Affairs (MCA), Govt. of India giving details of the information of (1) Krinesh Farms Pvt. Ltd., (2) Vikram Farms Pvt. Ltd. and (3) Saranga Farms Pvt. Ltd. which showed that none of the directors of these companies belong to the Promoter Group of Popular and none of them are related to any members of the Promoter Group of Popular.
- f. Based on the above submissions and considering the fact that only five persons belonging to the Promoter Group of Popular can be considered as one group, the trading in the scrip of Popular by allegedly suspected entities on BSE indicated in Paragraph 10 of the Notice should be revised as under:

Buy Clients	No. of Shares	% Volume	Sell Clients	No. of Shares	% Volume
Promoters	184266	36.86	Promoters	846	0.17
Others	315621	63.14	Others	4,99,041	99.83

It can be seen from the above that persons belonging to the Promoter Group of Popular had purchased 1,84,266 shares constituting 36.86% of the market volume, whereas they had virtually not sold the shares as their sale position is negligible. It

can also be concluded that there was virtually no trading among the group contrary to what is stated in Paragraph 12 of the Notice, as the sale position of the persons belonging to the Promoter Group of Popular is negligible and not worth considering for serious allegations levelled in the Notice. He deny the averments made in Paragraph 13 of the Notice and submit that the persons belonging to the Promoter Group of Popular had not traded among themselves. Therefore also deny the averments made in Paragraphs 14, 15, 16, 17, 18 and 19 of the Notice as the same are made on the wrong premise and improperly including certain unrelated persons/entities in one group.

- g. He reiterated and categorically denied that four entities - viz. (1) Asha Rajendrabhai Patel, (2) Krinesh Farms Pvt. Ltd., (3) Vikram Farms Pvt. Ltd. and (4) Saranga Farms Pvt. Ltd. were part of the group together with the Promoter Group of Popular. However, even assuming that all nine entities were part of one group, and that they had traded in the scrip of Popular in concert, the allegation of price manipulation lacks any logic or reasoning as the price of the scrip of Popular went down drastically from Rs. 62.35 to Rs. 15.10 within just about four months as stated in Paragraph 15 of the Notice. She referred to the Paragraph 19 of the IR Report (Annexure 'B' enclosed with SCN) which states as under:

"During the investigation period, the price of the scrip opened at Rs. 24.50 on January 18, 2012 and touched period high of Rs. 68.85 on June 28, 2012 thereby recording a price rise of Rs. 44.35. The analysis of buying pattern revealed that no Group I entities traded during the period of rise. "

- h. He requested to appreciate that the promoters of Popular had no connection while the price increased by over 3 times as per the IR, then what would motivate the promoters to bring down the price from Rs. 62.35 to Rs. 15.10 as alleged in Paragraph 20 of IR - and that too by manipulation? What could be the reason for any promoters to do so?
- i. It must be understood that no promoter would ever wish to bring down the price by over 75% or slash the price to less than one fourth within just four months in absence of any desire to buy the shares at reduced prices. He requested to appreciate that the promoters of Popular have not taken any advantage of the reduced price. In fact the shareholding of the promoters had marginally increased from 58.74% to 60.55% from June, 2012 to March, 2013 (the period covered under investigation) as stated in Paragraph 3 of the Notice, and such shareholding is intact even today after a period of four years. I submit that there has to be a specific reason or motive behind any manipulative or fraudulent practice and there is no mention in the Notice about any such motive, intention or reason for promoters to manipulate the price and bring it down to about one-fourth within four months. In fact the Notice does not mention that how the so called Group I was benefitted or whether it received any undue advantage or put some investors to any undue loss.
- j. In view of the above submission, he was not indulged in to any manipulative or fraudulent act and that the provisions of Regulation 3 or Regulations 4(1) and 4(2)(a) or 4(2)(e) of the SEBI PFUTP, 2003 are not applicable in my case as-

- I. *He has not indulged in to any dealings in the scrip of PEML which are prohibited under sub regulation (a), (b), (c), or (d) Regulation 3 of PFUTP Regulations, 2003*
- II. *He has not indulged in to any fraudulent or unfair practice in the scrip of Popular*
- III. *He has not indulged in to creation of false or misleading appearance of trading in the scrip of Popular and*
- IV. *He has neither acted nor omitted anything which amounted to manipulation of the price in the scrip of Popular.*

11. After taking into account, the allegations levelled in the SCN, reply submitted by the Noticee to the SCN, and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

12. The issues that arise for consideration in the present case are:
- a) Whether the Noticee has violated the provisions of regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992?
 - b) Whether the Noticee has violated the provisions of regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003?
 - c) Do the violations, if any, on the part of the Noticee attract any monetary penalty under sections 15A(b) & 15HA of the SEBI Act, 1992?
 - d) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules, 1995?
13. Before proceeding further, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 and PFUTP Regulations, 2003, which read as under:-

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13(2A). *Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.*

PIT Regulations, 1992

Continual disclosure.

(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :*

- (a) the receipts of intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be.

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
 - (e) any act or omission amounting to manipulation of the price of a security

EVIDENCES AND FINDINGS

- 14. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:
- 15. **Issue (a): Whether the Noticee has violated the provisions of regulations 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992?**
 - a) I have noted that the Noticee became a promoter of the company on July 01, 2012 and he held 4,500 shares of Popular constituting 0.03% of the total share capital of the Company. In this regard, I note from the regulation 13(2A) of PIT Regulations, 1992 that any person who is a promoter or part of promoter group of a listed company shall disclose to the company regarding the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group. However, as per the reply received from the Noticee, he made disclosures to the Company on December 11, 2014 under the provision of regulation 13(2A) of PIT Regulations, 1992 with a delay of approximately more than two (2) years. Further, as per the available record, it is

noted that Popular in its letter received at SEBI on December 02, 2014 informed that the company has not received the required disclosures from the Noticee under the provision of regulation 13(2A) of PIT Regulations, 1992. Therefore, I conclude that the Noticee failed to make disclosure to the Company within the required time as prescribed under PIT regulations, 1992 and has violated the provisions of regulation 13(2A) of PIT Regulations, 1992.

- b) I have also noted from the available records that the Noticee being a promoter of the company, there was a change in shareholding of the Noticee during the quarter ending December 2012. Shareholding of the Noticee as on September 30, 2012 was 4,500 shares representing 0.03% of the total share capital of the Company, whereas, on December 31, 2012, it was 56,300 shares representing 0.40% of the total share capital of the Company which shows that there was an increase in shareholding of 51,800 shares (i.e. excess of 25,000 shares) by the Noticee. In this regard, I note from the regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a promoter of the company and as the change of shareholding of the Noticee exceeds 25,000 shares of the company, the Noticee was required to make relevant disclosures to the Company and BSE within two working days of the acquisition of shares of the company. In this regard, the Noticee submitted that he made disclosures to the BSE on December 11, 2014 under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 with a delay of approximately more than two (2) years. Further, as per the available record, it is noted that Popular in its letter received at SEBI on December 02, 2014 informed that the company has not received the required disclosures from the Noticee under the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. Also, BSE in its e-mail dated November 20, 2014 informed that no disclosures received from the Noticee under the said provisions of PIT regulations, 1992. Therefore, I conclude that the Noticee failed to make disclosure to the Company and BSE within the required time as prescribed under PIT regulations, 1992 and has violated the provisions of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992.

16. Issue (b): Whether the Noticee has violated the provisions of Regulations 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003?

- a) On perusal of records available, I note the following allegations against the Noticee alongwith other entities coming under Group I:
- Contributed to negative LTP variation of Rs. 26.95 (i.e. 26.34% of total market negative LTP during patch-II) by Priyesh Group entities by trading among themselves and decreased the price of the scrip of Popular in Patch-II.
 - Contributed to NLP of Rs. 13.00 (i.e. 27.51%) out of total price fall of Rs. 47.25/- during Patch-II by Priyesh Group entities by trading among themselves.
 - Executed first trades by trading among themselves at negative LTP and contributed to negative LTP of Rs. 23.30/- (i.e. 22.78% of market negative LTP) by Priyesh Group entities during Patch-II
- b) I note from the records that a connection was established between 11 entities of Group-I based on common address, telephone number, e-mail id and off-market transfer. It is noted from the trade and order log that during Patch-II total market negative LTP was Rs. 102.30/- wherein Group I contribution was negative LTP variation of Rs. 34.05/- in 57 trades. (LTP contribution is calculated as difference between the trade price of current trade and the previous trade. For example, if the trade price of current trade is Rs. 50 and previous trade is Rs.49 then the LTP contribution is Rupee one) Priyesh Group entities executed such trades among themselves during Patch-II, which contributed to price fall.
- c) I note from the trade and order log that during Patch-II there were 51 trades establishing NLP, wherein four entities from Priyesh Group namely Asha Rajendrabhai Patel, Komal Priyesh Patel, Fizu M Patel and Runali Vikram Patel appeared as sellers in 24 instances with a cumulative contribution to new low price of Rs.15.20 constituting 32.17% of total price fall. Out of 24 trades which established new low price, 17 trades contributed Rs.13.00 (i.e. 27.51%) out of total price fall of Rs.47.25 during Patch-II by trading among themselves. Contribution to new low price (NLP) is the difference between NLP established by the trade and previously established low price of the scrip. Further, it is noted that price of Popular during Patch-II witnessed a fall and Priyesh Group entities contributed Rs.13.00 (i.e. 27.51%), out of total price fall of Rs.47.25. From trade and order logs, it is noted that these trades were executed by Priyesh Group entities as mentioned at

Table-2 among themselves which resulted in price fall and hence contributed to NLP.

- d) With regard to first trade, it is noted that out of 61 first trades, 30 trades were executed by Priyesh Group entities. Further, in 23 trades out of such 30 first trades, counterparties were from Priyesh Group entities, which contributed to negative LTP of Rs. 23.30/-. It is noted from trade and order logs that Priyesh Group entities executed first trades by trading among themselves at negative LTP on 23 days out of 82 trading days during Patch-II and contributed to negative LTP of Rs. 23.30/- (i.e. 22.78% of market negative LTP). From the trade and order log it is noted that Priyesh Group entities executed the trades among themselves as mentioned in Table-3 at pre-pages 7 and 8.
- e) Regulation 3 of PFUTP Regulations, 2003 prevents any person from buying, selling or dealing in securities in fraudulent manner, use or employ any manipulative or deceptive device in contravention to the provisions of the Act, employ any device, scheme or artifice to defraud in connection with dealing in securities or engage in any act, practice, course of business which operates as fraud or deceit upon any person in connection with any dealing in or issue of securities. Regulation 4(1) of PFUTP Regulations, 2003 provides that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(e) of PFUTP Regulations, 2003 inter alia, prohibits any act or omission amounting to manipulation of a price of a security.
- f) In this regard, it may be relevant to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI, wherein it was held that: *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the*
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view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations.”

- g) In light of the above and from the records available, I note that the Noticee alongwith other eight (8) entities (refer to para 2) executed trades among themselves, which contributed to negative LTP, new low price and also executed first trade during the investigation period. By executing these trades, the Noticee influenced the price of the scrip of Popular during the investigation period. Such acts of manipulative trading by the Noticee helped in creating artificial volume and thereby leading to false appearance of trading in scrip of Popular and also caused fluctuations in price of scrip of the company. Therefore, I conclude that the Noticee has violated regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations, 2003.

17. Issue (c): Do the violations, if any, on the part of the Noticee attract any monetary penalty under sections 15A(b) and 15HA of the SEBI Act, 1992?

- a) In respect of imposition of monetary penalties, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant”*.
- b) Noticee has submitted that, “there has to be a specific reason or motive behind any manipulative or fraudulent practice...there is no such motive, intention or reason for promoters to manipulate the price...”. It is relevant to mention here that said

case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.

- c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case laws, it is noted that the said violations of provisions of regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations, 2003 by the Noticee attracts the imposition of monetary penalties upon the Noticee under sections 15A(b) & 15HA of the SEBI Act, 1992, as existed at the time of commission of the alleged violations are reproduced below:

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

18. **Issue (d) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?**

While determining the quantum of penalty under sections 15A(b) and 15HA of the SEBI Act, 1992 it is important to consider the factors stipulated in section 15J Of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

The SEBI Act, 1992

Factors to be taken into account by the adjudicating officer:

15J. *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

19. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such non-disclosures under regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and the fraudulent trades which contributed to negative LTP, new low price and first trades by the Noticee. In absence of quantification of ‘profits made out of such failure’, plain reading of section 15HA of the SEBI Act, 1992 reads the penalty amount as rupees twenty five crore, however, I am inclined to take a lenient view in the matter. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014: “...*penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.*”
20. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for monetary penalty for violating the provisions of regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations, 2003.

ORDER

21. In exercise of the powers conferred under section 15-I of SEBI Act, 1992 and Rule 5 of the Adjudication Rules, 1995, I hereby impose the following penalty on the Noticee viz. Priyesh Ramanlal Patel under sections 15A(b) and 15HA of the SEBI Act, 1992 for the violation of regulation 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations, 2003:

Violation Provision	Penalty (Rs.)
Regulations 13(2A) of PIT Regulations, 1992 and regulation 13(4A) r/w 13(5) of PIT Regulations, 1992	2,00,000 (Rs. Two Lakh only)
Regulations 3(a), (b), (c) (d), 4(1), 4(2)(a) and 4(2)(e) of the PFUTP Regulations, 2003	1,00,000 (Rs. One Lakh only)
Total – Rs. 3,00,000 /- (Rs. Three Lakh Only)	

I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments

shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No
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24. In terms of the Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

Date: April 18, 2018

Place: Mumbai

**SANGEETA RATHOD
ADJUDICATING OFFICER**