BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

In respect of –

S. No.	Name of noticee	PAN
1.	Mr. Kanaiyalal Baldevbhai Patel	AEWPP1442H
2.	Mr. Anandkumar Baldevbhai Patel	AKOPP0221G
3.	Mr. Dipak Patel	-
4.	M/s. Bhoomi Industries	AACFB8866B

Date of personal hearing: February 18, 2016

Appearance

Mr. Yogesh Jagia, Advocate appeared on behalf of all four noticees.

For SEBI: Dr. Anitha Anoop, General Manager, Mr. T. Vinay Rajneesh, Assistant General Manager and Ms. Aishee Sengupta, Assistant General Manager.

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1. The National Stock Exchange of India Limited ("NSE") in its routine market surveillance activities observed that a client named **Mr. Kanaiyalal Baldevbhai Patel** ("KB Patel") dealing through certain stock brokers had placed orders ahead of orders placed by **Passport India Investment (Mauritius) Limited** (hereinafter referred to as Passport India), sub-account of Passport Capital LLC, a Foreign Institution Investor (hereinafter referred to as FII) registered with the Securities and Exchange Board of India ("SEBI"). In view of the above, SEBI conducted an

investigation in the matter for the period - January 1, 2007 toMarch 31, 2009 ("the investigation period").

2. The preliminary findings of the investigation suggested that KB Patel had placed and executed orders before the orders of Passport India and subsequently squared off his positions when the orders of Passport India were placed in the market. The activity was conducted in such a manner that KB Patel had managed to generate ill-gotten profits for him by the price movement of scrips on account of the large buy/sell orders of Passport India. The trading pattern of KB Patel indicated that he was aware of the scrip, time of order by Passport India and also the quantity of such orders as most orders of KB Patel had matched with significant part of the orders placed by Passport India even though the orders were placed in the anonymous screen-based trading mechanism of the stock exchange. It was noticed from the details submitted by the stock brokers (who had placed orders for Passport India) that Mr. Dipak Patel was the Portfolio Manager for India of Passport India and had served as the point of contact between the stock brokers and Passport India. Mr. Dipak Patel used to convey the orders of Passport India through Bloomberg/phone for the purchases and sale to be carried out. It was also noticed that Mr. Dipak Patel managed the investment research process and took investment decisions for Passport India.

It was also noticed from the trading pattern of KB Patel that he was *prima facie* 'front running' the trades of Passport India. It was also *prima facie* observed that Dipak Patel was in touch with KB Patel and Mr. Anand Baldevbhai Patel (AB Patel) {*a relative of KB Patel and in whose name the telephone used for the conversation between KB Patel and Dipak Patel was registered*} and that Dipak Patel had made many phone calls before/during/after placing of sell/buy orders on the dates of the trades. Dipak Patel had also transferred money to his NRE account from where the funds were transferred to the account/s of KB Patel. KB Patel had also transferred funds to the account of M/s. Bhoomi Industries (*a partnership firm comprising of partners KB Patel and AB Patel*).

In the process, KB Patel was alleged to have made unlawful gains to the tune of Rs.1,12,68,659.35/- during the period – January 01, 2007 to March 31, 2009.

3. Pending investigations, based on the *prima facie* findings, SEBI, vide an ad interim ex-parte order dated May 28, 2009 ("interim order)", inter alia, restrained Mr. Dipak Patel, portfolio manager of Passport India, KB Patel, AB Patel and Bhoomi Industries from buying, selling or dealing in any securities, directly or indirectly, till further directions, for the reasons stated therein. Mr. Dipak Patelwas also directednot to associate himself with anyFII, sub-account or any registered entity of SEBI, till further orders. KB Patel and AB Patel were directed to deposit the profits amounting to 1,12,68,659.35/- with the NSEwithin fifteen days from the date of the said order. Further, the interim order also directed Passport India LLC and its sub-account, Passport India to conduct an internal enquiry and initiate appropriate action against their employee, Mr. Dipak Patel and to submit an 'action taken report' within thirty days. Further, they were also directed to take steps to ensure that their trading information and other trade related details are not misused to the detriment of market integrity.

4. Pursuant to the interim order, KB Patel deposited an amount of 1,12,68,659.35 with NSE. Thereafter, considering their replies and after giving an opportunity of hearing, SEBI, vide an order dated February 9, 2010 ("confirmatory order") confirmed the directions issued vide ad interim ex-parte Order dated May 28, 2009 against Mr. Dipak Patel, KB Patel, AB Patel and Bhoomi Industries.

5. On completion of investigation, SEBI, vide order datedMarch 17, 2011 ("revocation order") revoked the directions issued against the aforesaid entities, under the interim orders. The order further directed that the proceedings initiated against the said entities would continue.

6. Thereafter, SEBI vide an Adjudication Order dated September 30, 2011 passed in respect of Dipak Patelfound him guilty of contravening the provisions of regulation 3(a)-(d) of the SEBI Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("the PFUTP Regulations") as he had revealed sensitive information pertaining to the trades of Passport India to KB Patel and enabled him to make ill-gotten profit. Adjudication Orders against KB Patel and AB Patelwere also passed. These adjudication orders were challenged before the Hon'ble SAT in Appeals Nos. 216/2011 (Dipak Patel vs. Adjudicating Officer, SEBI), 74/2012 (KB Patel vs. SEBI) and 78/2012 (AB Patel vs. SEBI). Hon'ble SAT, vide Order dated November 09,

2012, set-aside the said orders for reasons made therein. SEBI has preferred appeals against the Orders of Hon'ble SAT before the Hon'ble Supreme Court and such appeals are pending.

7. Thereafter, SEBI issued a show cause notice dated November 13, 2015 (SCN) to KB Patel, AB Patel, Mr. Dipak Patel (*referred to as 'DP Patel' in the SCN*) and Bhoomi Industries {collectively referred to as "noticees"} alleging the following:

"20. ……DP Patel was in regular touch with KB Patel and AB Patel during the period of investigation and had passed on confidential information about the dealings of Passport India in the securities market, to KB Patel and AB Patel. It is alleged that after receipt of the said information, KB Patel had placed orders and executed trades before the buy-sell orders of Passport India, thereby, generating unlawful gain for himself from the price movement caused by such large buy/sell orders of Passport India. From the proceeds of the sale of securities, prima facie, KB Patel was found to have transferred majority of funds to the account of Bhoomi Industries. Some of those funds were in turn transferred to AB Patel by Bhoomi Industries".

21. In view of the above, it is alleged that you have violated regulations 3 (a) to 3 (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003".

8. The SCN advised the noticees to show cause as to why suitable directions under section 11(4) read with sections 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 should not be issued against you, including:

(a) directions restraining you from accessing the securities market and prohibiting from buying, selling or dealing in securities, in any manner, for a suitable period of time;

(b) directions to KB Patel to disgorge an amount of 1,56,32,364.36- [1,12,68,659.35 (NSE) and 43,63,705.01 (BSE)] with interest @ 12% p.a. from the date of transactions till date, to the applicable amount.

9. The SCN advised the noticees to file their replies and informed them that an opportunity of personal hearing was afforded on December 28, 2015.

10. In response, **KB Patel** vide letter dated December 21, 2015 *inter alia* made the following submissions:

(a) After completion of the investigation, SEBI vide the revocation order had revoked the confirmatory order with the reasons that ""*investigation in the matter has been completed and appropriate proceedings have been initiated or being continued and also since circumstances which led to the issuance of directions in the Order no longer exists".* The noticee stated that he had already deposited the sum of Rs.1,12,68,659/- as directed by SEBI.

(b) Subsequently, on completion of investigation detailed SCN dated February 28, 2011 was issued by the Adjudicating Officer under rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 which culminated into passing of the adjudication Order dated September 30, 2011 levying penalty under section 15HA of the SEBI Act.

(c) Being aggrieved by adjudication Order, the noticee had preferred and appeal before the Hon'ble SAT in Appeal No. 74/2012 which was disposed of by the Hon'ble SAT vide Order dated November 09, 2012 whereby Hon'ble SAT allowed the appeal and held that SEBI erred in holding appellant guilty of violating regulation 3 of the PFUTP regulations and set aside adjudication Order. Copy of the Order of Hon'ble SAT was annexed.

(d) SEBI, being aggrieved by the SAT order, filed statutory appeal before the Hon'ble Supreme Court and the same is pending adjudication.

(e) The noticee submitted that the allegations leveled against him in the present SCN were part of the SCN issued by the adjudication officer. As the adjudication Order, based on SCN dated February 28, 2011 which is para-materia to the instant SCN, have been set aside by Hon'ble SAT, the instant SCN also became infructuous and liable to be withdrawn. He further stated that accordingly the amount deposited by him in compliance with the directions of SEBI dated May 28, 2009 would be liable to be refunded to him along with interest as applicable.

(f) SEBI by a detailed Order dated March 17, 2011 vacated the restraint Order dated May 28, 2009 which was confirmed by Order dated February 09, 2010 passed under sections 11B and 11(4) of the SEBI Act. Since May 28, 2009, he had not carried out any activity of any nature

connected with the securities market save receipt of dividend, if any, on long term investments which were made prior thereto.

(g) Since then, his demat account maintained with Kotak Securities Limited is inactive because of which statements have not been provided. Therefore, according to the noticee there is no justification to impose any directions as proposed in para 22(a) of the instant SCN. The noticee requested SEBI to withdraw the said SCN.

(h) The noticee submitted that in continuation of his previous business activity, he continued to work as a partner in Bhoomi Industries, a family partnership firm engaged in ginning of cotton.

(i) The noticee submitted that the legislature by inserting sections 11B and 11(4) empowered SEBI to issue directions if SEBI finds that any person associated with the securities market has committed some serious wrong, by restraining them from accessing the securities market and prohibit any person associated with the market from buying, selling or dealing in securities if that were necessary for investor protection or for preserving the integrity of the securities market. The directions that are issued under these provisions necessarily ought to be preventive or regulatory in nature and these provisions cannot be resorted for punishing. According to the noticee, he had not committed any act contrary to the provisions of the SEBI Act.

(j) The noticee stated that as all the allegations in the instant SCN have already been adjudicated and decided by Hon'ble SAT by order dated November 09, .2012, he wished to rely on the reply dated May 19, 2011 filed in response to SCN dated February 28, 2011 and other submission made before Hon'ble SAT, requested that such submissions may be deemed to be part of this reply.

(k) Taking countenance of the facts stated hereinabove, there was no ground on which amount deposited by the noticee in compliance with the Order dated May 28, 2009 be disgorged.

As regards the personal hearing fixed on December 28, 2015, this noticee requested for another date on the ground that a family function was fixed around that period.

11. **AB Patel**filed a reply dated December 21, 2015, stating that the same was for himself and **Bhoomi Industries**. In his reply, he has reiterated the submissions made by KB Patel and additionally stated the following:

(a) During the investigation period i.e. from January 01, 2007 to March 31, 2009, he was a director of Marvel Tradex Pvt. Ltd and was holding90% equity shareholding and was continuing with the same even until October 05, 2010. The said company was engaged in the business of buying scrap from other parts of the world and selling the same in India. Beside this, he is a partner in Bhoomi Industries, a family partnership firm engaged in the business of ginning of cotton. Further, Bhoomi Industries is a family partnership firm controlled and managed by all the family members.

(b) Bhoomi Industries has not traded or invested in securities during period of investigation and no allegations were leveled in the SCN dated May 28, 2009 issued under sections 11B and 11 of the SEBI Act. The allegations were limited to the effect that AB Patel assisted his brother KB Patel and Dipak Patel.

(c) AB Patel had filed common objections to the interim order dated May 28, 2009 for himself and Bhoomi Industries requested that such reply be deemed as part of this reply.

(d) The instant SCN also does not make any allegations/or brought out material against Bhoomi Industries. Therefore, the noticee submitted that SCN is liable to be withdrawn.

(e) His demat account maintained with Shree Kanha Stock Broking Pvt. Ltd. is inactive and so is the broker account, because of which statements are not available for which he has filed an application. He requested SEBI to either call for records of his demat account from Shree Kanha Stock Broking Pvt. Ltd. or alternatively he undertook to provide the same on receipt.

(f) The noticee submitted that in continuation of his previous business activity, he continues to work as apartner in Bhoomi Industries and Bhoomi Pressing Factory, family partnership firms engaged in ginning of cotton.

These noticees have also requested for adjournment on the ground of a family function.

12. **Dipak Patel**filed his reply vide letter dated December 28, 2015. He has *inter alia* submitted the following:

(a) He has referred to the Order dated of Hon'ble SAT November 09, 2012, whereby the SEBI adjudication making him liable for the violations was set-aside.

(b) Because of the action of SEBI, he had resigned from Passport Capital w.e.f. June 29, 2009. Since the passing of the interim order by SEBI, he is not associated with the Indian capital market in any manner. Therefore, he does not have any broking or demat account.

(c) He was operated upon for a problem in the spinal cord and has remained inactive and concentrated in improving his health. As on date, he is concentrating in the coffee business in USA.

(d) He also contended that as the adjudication order based on the SCN dated February 28, 2011 which is *pari-materia*with the instant proceedings becomes infructous and liable to be withdrawn.

(e) SEBI vide Order dated March 17, 2011 vacated the interim order and also as he has not carried out any activity since May 28, 2009 in the securities market, there is no justification to impose any directions as proposed in the SCN.

(f) As he has not committed any violations. The directions under sections 11B and 11(4) of the SEBI Act is to be passed as a preventive or regulatory measure and not for punishing.

(g) As he is in the USA, he would be represented by his attorney in the personal hearing.

13. The request for adjournment made by KB Patel, AB Patel and Bhoomi Industries was considered and the hearing was rescheduled to January 06, 2016. Thereafter, vide email dated January 05, 2016, Mr. Yogesh Jagia, Advocate on behalf of the noticees requested for adjournment of the hearing on the ground of *personal difficulty*. The personal hearing was rescheduled to January 25, 2016 and thereafter to February 18, 2016.

14. On February 18, 2016, Mr. Yogesh Jagia, Advocate represented all the noticees and made submissions on the lines of the replies filed in the matter. As requested by the counsel, liberty was afforded to submit the demat account of the noticees.

15. I have perused the SCN, the submissions made by the concerned noticees and other material available on record. SEBI, in its detailed examination, perused the trade details of the noticees in NSE and BSE, the funds transfers, telephone calls and also the internal findings of the enquiry

conducted by Passport Capital LLC in respect of Dipak Patel. The investigation had observed the following:

(a) During the relevant period, Dipak Patel was the Portfolio Manager of Passport India.

(b) He used to place orders with the stock brokers for Passport India through Bloomberg/telephone.

(c) KB Patel and AB Patel were related to Dipak Patel as they were his first cousins.

(d) Trading at NSE and BSE:

a. At NSE, there were 228 scrip days (sum of number of scrips traded each day during the period) common between KB Pateland Passport India. During the period, 17 scrips were common between KB Patel and Passport India. Out of 228 scrip days, only in 14 scrip days, KB Patel was observed to be reversing his trades before the trades of Passport India executed in the market. In the remaining 214 scrip days, KB Patel was observed to be trading ahead of Passport India. The activity of reversal of the initial buy or sell while dealing in the market apparently led to substantial positive gains for KB Patel.

Detailed trade and order level analysis of 214 scrip days, suggested that in 79 scrip days, the matched quantity between Passport India and KB Patel was greater than or equal to 90% of the quantity bought/sold by KB Patel.The total profit earned by KB Patel on account of the trades with Passport India was 1,12,68,659.

b. At BSE, during the investigation period, KB Patel had executed trades in a total of 32 scrips through certain stock brokers. Majority of the trades were executed through the stock broker, Kotak Securities Limited. Passport India had dealt in 44 scrips during the said period. During the same period, 14 scrips were common between KB Patel and Passport India. While trading ahead of Passport India on 155 scrip days, KB Patel had

bought and sold equal number of shares on 150 scrip days. The activity of reversal of the initial buy or sell while dealing in the market apparently led to a positive gain on each occasion. The trade and order level analysis of 155 scrip dayssuggested that in 70 scrip days, the matched quantity between Passport India and KB Patel was greater than or equal to 90% of the quantity bought/sold by KB Patel and that KB Patel earned a total profit (on account of the trades with Passport India) of 43,63,705.01 during the above mentioned period.

c. The details of such trades executed in NSE and BSE were enclosed with the SCN. From such data, it was also observed that there was an increase in the price of the scrip on account of the large buy order of Passport India. Similarly, there was a decrease in price of the scrip on account of large sell order of Passport India. Further, from the said data, it was observed that KB Patel was placing orders ahead of the trades of Passport India, apparently taking advantage of advance knowledge of the pending orders. Therefore, it can be concluded that KB Patel had benefited due to price movements on account of large buy/sell orders of Passport India.

d. KB Patel therefore had made a total profit of 1,56,32,364.01/- through such trades. This has not been disputed by the said noticee.

e. It becomes apparent from the trading pattern of KB Patel, that he was privy to the information regarding the trades of Passport India, which were placed/executed through its Portfolio Manager, Dipak Patel.

Execution of matched trades:

During the investigation period, at NSE, there were 557 matched trades executed across 11 scrips between KB Patel and Passport India wherein both the buy orders by Passport India and sell orders by KB Patel with identical price were placed within sixty seconds. Similarly, there were 192 matched trades executed across 8 scrips between KB Patel and Passport India wherein both the sell orders by Passport India and buy orders by KB Patel with identical price were placed within sixty seconds.

At BSE, there were 50 matched trades executed between KB India and Passport India wherein both the buy orders and sell orders with identical price were placed within 60 seconds. These matched trades were executed across 6 scrips.

The details of the aforesaid trades were also enclosed with the SCN sent to the noticees.

(e) Analysis of telephone records:

SEBI had also analyzed the telephone call records of KB Patel, AB Patel and Dipak Patel. The following was mentioned in the SCN:

"*It was noted observed from the call details of KB Patel (Vodafone No.-9825177104), AB Patel (Vodafone No.-9825322382) and DP Patel (Telephone No.14156905237) for the period from October 1, 2008 to January 31 2009, there were a total of 40 calls made to/received from DP Patel during trading hours by AB Patel. There were a total of 33 instances when calls made to/received by AB Patel were within the span of time during which Buy/Sell orders were placed by either KB Patel or Passport India. There were a total of 8 calls made to/received from DP Patel during trading hours by KB Patel. Similarly there were 4 such instances when calls made to or received by KB Patel were within the span of time during which Buy/Sell orders were placed by either KB Patel or Passport India. Further, it was observed that most of the trade orders were placed in the account of KB Patel through Internet using the land line telephone registered in the name of AB Patel".*

The high frequency of calls exchanged between Mr. Dipak Patel with KB Patel and AB Patel definitely suggests that Mr. Dipak Patel was regularly in touch with both KB Patel and AB Patel and the same coupled with the trades placed ahead of Passport India indicates that Dipak Patel had passed on crucial information about the dealings of Passport India. The higher percentage of matching trades of KB Patel with Passport India leads to an inference that KB Patel had received prior information from Mr. Dipak Patel about the forthcoming large institutional trades that would enable KB Patel to square off his initial transactions. The noticees were also provided with the details showing the call exchanged amongst Dipak Patel, KB Patel and AB Patel.

(f) Transfer of funds:

a. The sale proceeds arising out of the trades executed by KB Patel weredeposited in his account no. 08150140002879 held with Kotak Mahindra Bank Limited. Thereafter, the funds were transferred to various other accounts/connected entities.

b. Mr. Dipak Patel was found to have remitted funds from his bank account no 06639-22157 heldjointly with Sejal Patel and maintained with Bank of America in USA, to his NRE account no. 08151040000062 held in Kotak Mahindra Bank Limited.

c. The SCN vide Annexures C and D had mentioned the manner in which the(i) funds were moved from Dipak Patel to KB Patel and Bhoomi Industries and(ii) from Kotak Securities (after trade settlement) to KB Patel and thereafter from his account to that of Bhoomi Industries, then to AB Patel, then to Marvel Tradex Private Limited and thereafter to Australia Metal Scrap.

d. Fund transfers were seen from the NRE account of Mr. Dipak Patel to KB Patel's bank account No. 08150140002879 in Kotak Mahindra Bank Limited. The amounts received by KB Patel from Mr. Dipak Patel were found to be transferred to Bhoomi Industries.

e. The mailing address as given to Kotak Mahindra Bank Limited by Mr. Dipak Patel is Shivnagar Society, Bhavpura, Kadi-382715, Gujarat, which is same as that of the address of KB Patel.

f. KB Patel had been authorized by Mr. Dipak Patel to operate the aforesaid bank account as a 'mandate holder' in the account opening form.

g. KB Patel was found to have transferred majority of funds from account no. 08150140002879 held with Kotak Mahindra Bank Limited to the account of Bhoomi Industries (Account No. 08152120000844) held with Kotak Mahindra Bank Limited, Kadi Gujarat.

h. Bhoomi Industries is a partnership firm having partners as KB Patel and AB Patel. Bhoomi Industries was found to have transferred funds from its bank accounts held in Kotak Mahindra Bank Limited, Kadi, Gujarat to the Bank account (Account No.-08150140024723) of AB Patel maintained with Kotak Mahindra Bank Limited, Kadi, Gujarat.

i. Bhoomi Industries also has two accounts: 1) Current account No.-2292 with Shree Kadi Sahakari Bank Limited, Kadi Gujarat and2) Hypothecation account (already closed during 2008) with Shree Kadi Sahakari Bank Limited, Kadi Gujarat. In the current account of Bhoomi Industries, high cash transactions were observed e.g. Cash withdrawal of 4190000/- on February 20, 2009 and Cash withdrawalof 1400000/-on February 25, 2009.

(g) SEBI, had during the investigation recorded the statements of Mr. Dipak Patel, KB Patel and AB Patel. It was observed from the statements that Mr. Dipak Patel used to take decision with regard to the dealing of shares on behalf of Passport India in consultation with Mr. John Burbank, CIO of Passport. Mr. Dipak Patel used to place the orders with the stock brokers who in turn would execute the same on the trading terminals. Though, the investment decisions of Passport India were taken in consultation with Mr. John Burbank, CIO, Mr. Dipak Patel was the person who decides the stocks based on research, mostly carried out by him with the help from sector specificanalystemployed by Passport India. It can therefore be seen that Dipak Patel had full control over the dealing in the type of shares and also the timing of execution of orders of Passport India. Both KB Patel and AB Patel stated that both of them were aware that Mr. Dipak Patel was working as Portfolio Manager of Passport India and looking after India related investments.

(h) Findings of the internal enquiry conducted in respect of Dipak Patel:

a. SEBI, vide ad-interim order dated May 28, 2009, had *inter alia*directed Passport Capital, LLC and its Sub-account Passport India to conduct an internal enquiry into the matter and initiate appropriate actions against their employee Mr. Dipak Patel and submit an action taken report within thirty days of the said order, to SEBI. Further, they were also directed to take steps to ensure that their trading information and other trade related details are not misused to the detriment of market integrity.Passport Capital LLC, vide letter dated September17, 2009, has made the following submissions to SEBI:

i. They employed the law firm Paul, Hastings, Janofsky and Walker LLP (Paul Hastings) to conduct an internal inquiry in the matter. The investigations of Paul Hastings found that Mr. Dipak Patel participated in a trading arrangement substantially similar to that alleged in the SEBI's interim order with KB Patel and violated written policies and procedures.

ii. The investigation determined that sometime during 2007, Mr. Dipak Patel set up an arrangement with KB Patel where KB Patel would "warehouse" shares. The term in this context is used to describe a situation in which a broker collects small lots of shares for a potential buyer who is looking to purchase a large position. Once the full order is reached, the broker will then make those shares available to the buyer. Under Mr. Dipak Patel's warehousing arrangement, KB Patel was filling the role of the broker by acquiring the shares prior to upcoming trades by Passport India.

iii. The ostensible purpose of Mr. Dipak Patel's warehousing arrangement with KB Patel, as described by Mr. Dipak Patel, was to obtain the best execution price for Passport India, by both avoiding "front running" by brokers and reducing the impact that information relating to Passport's trades might otherwise have on the price of the securities.

iv. Paul Hastings and Passport India concluded that Mr. Dipak Patel's actions violated Passport India's written policies and procedures. Accordingly, Mr. Dipak Patel was disciplined and Passport India provided Mr. Dipak Patel, the option of resigning from the firm. Subsequently, on June 26, 2009, Mr. Dipak Patel resigned from Passport India.

v. Based on the interviews conducted and extensive review of documents, Paul Hastings found no evidence that any other Passport India employee or principal authorized, was aware of, or was otherwise involved in the trading arrangement that Mr. Dipak Patel had with KB Patel.

vi. Passport has revised its internal policies to further ensure that trading information is not misused and to ensure more centralized operations and supervisions.

16. From the above observations, it can be noticed that Mr. Dipak Patel had passed on the information pertaining to the proposed/impending trade orders of Passport India to his brother KB Patel. On the basis of such information, KB Patel has placed orders through the internet. Thereafter, when Passport India had placed its orders through Mr. Dipak Patel, KB Patel's orders were squared off. Further, KB Patel had made profits caused due to the price fluctuation because of the large orders of Passport India. The SCN has alleged as follows:

> "*19. It is alleged that due to the said arrangement, when KB Patel was building up his position, he was also taking away the liquidity that would have gone to Passport India in the process, affecting the price of the shares and that such an activity has increased the cost of acquisition of shares or has reduced the realizations from the sale of shares for Passport India.*
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> *20. It is alleged that DP Patel was in regular touch with KB Patel and AB Patel during the period of investigation and had passed on confidential information about the dealings of Passport India in the securities market, to KB Patel and AB Patel. It is alleged that after receipt of the said information, KB Patel had placed orders and executed trades before the buy-sell orders of Passport India, thereby, generating unlawful gain for himself from the price movement caused by such large buy/sell orders of Passport India. From the proceeds of the sale of securities,*

prima facie, KB Patel was found to have transferred majority of funds to the account of Bhoomi Industries. Some of those funds were in turn transferred to AB Patel by Bhoomi Industries".

17. The SCN had therefore alleged that the noticees had violated regulation 3(a)-(d) of the PFUTP Regulations. The said provision is reproduced below for reference:

"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 orproposed to be listed in a recognized stock exchange, any manipulative or deceptivedevice or contrivance in contravention of the provisions of the Act or the rules or theregulations made there under;

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

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

under."

18. The noticees have not disputed the observations of the investigation made in the SCN. Their only contention is that Hon'ble SAT has set-aside the adjudication orders which were based on the same cause of action and therefore this proceedings should also be disposed of without directions and the money deposited by KB Patel in compliance with the interim order should be returned. The *ratio* of the Hon'ble SAT {in Order dated November 09, 2012 (Appeal no. 216/2011 – Dipak Patel vs. Adjudicating Officer, SEBI)}for setting-aside the adjudication orders is that 'front running' was prohibited only for 'intermediaries' in the PFUTP Regulations of 2003. The relevant observations of the Hon'ble SAT are reproduced below:

"13. We are inclined to agree with learned counsel for the appellants that the 1995 Regulations prohibited front running by any person dealing in the securities market and a

departure has been made in the Regulations of 2003 whereby front running has been prohibited only by intermediaries. The cases cited by the learned senior counsel for the Board and referred to above also relate to front running by intermediaries and not by other traders in the market. In the absence of any specific provision in the Act, rules or regulations prohibiting front running by a person other than an intermediary, we are of the view that the appellants cannot be held guilty of the charges levelledagainst them. There is no denying the fact that when the appellants placed their order, these were screen based and at the prevalent market price. Admittedly Passport was the major counter party for trading in the market and was placing huge orders and hence possibility of order of traders placing orders for smaller quantities matching with orders of Passport cannot be ruled out. Therefore, it cannot be said that they have manipulated the market. The alleged fraud on the part of Dipak may be a fraud against its employer for which the employer has taken necessary action. In the absence of any specific provision in law, it cannot be said that a fraud has been played on the market or market has been manipulated by the appellants when all transactions were screen based at the prevalent market price.

We are of the considered view that in the facts and circumstances of the present case, the Board has erred in holding the appellants guilty of violating regulation 3 of the FUTP regulations……."

Though the appeals filed by SEBI challenging the above Order of the Hon'ble SAT made in the matter of Dipak Patel are pending consideration of the Hon'ble Supreme Court, the Hon'ble SAT in another Order dated September 04, 2013 (*in the matter of Vibha Sharma and another vs. SEBI – Appeal No. 27 of 2013*) has reversed its earlier findings with respect to "*front running*" and observed as follows:

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

[Emphasis supplied]

Thus, the views of SEBI have been endorsed by the Hon'ble SAT. Therefore, it becomes clear that when an offence of "front running" is committed by non-intermediaries, like the noticees in this case, the general provisions of the PFUTP Regulations would be applicable as prohibition for such acts of front running, and the applicable provisions, viz, regulations 3 and 4 would be applicable. If such violations are proved, the noticees would be liable for punishment/penalty as per law.

19. In the present case, KB Patel has traded in the securities market on the basis of information received from Dipak Patel and has 'front run' the trades of Passport India. As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:
"Front running. Buying or selling securities ahead of a large order so asto benefit from the subsequent price move.

20. AB Patel and Bhoomi Industries were involved in the offence as AB Patel had received tips/information from Dipak Patel and received funds from KB Patel from the sale proceeds, which were transferred through Bhoomi Industries. Further, Bhoomi Industries is a partnership firm comprising KB Patel and AB Patel. In view of the above said, it can be concluded that Dipak Patel, KB Patel, AB Patel and Bhoomi Industries had employed a manipulative scheme to operate as a fraud with respect to dealing in the securities thereby violating regulation 3(a)-(d) of the PFUTP Regulations.

21. In this regard, I also refer and rely on the following observations made by the Hon'ble Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") in the matter of *V. Natarajan vs. SEBI (Order dated June 29,2011 in Appeal No.104 of 2011)*:

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

upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. ……."

22. The SCN has contemplated directions under sections 11(1), 11(4) and 11B of the SEBI Act and regulation 11 of the PFUTP Regulations including directions to KB Patel to disgorge the unlawful profits made by him. From the foregoing observations, it therefore becomes clear that KB Patel made unlawful profits to the tune of Rs.1,56,32,364.36/-. The SCN had also contemplated levy of interest at 12% p.a. from the date of transactions till date on the applicable amount.In this regard, I observe the following:

(a) Rs.1,12,68,659.35/- (*unlawful gains made through trades executed in NSE*) was deposited by the noticee vide a Demand Draft on July 14, 2009 with NSE and NSE had made a Fixed Deposit on July 21, 2009. NSE shall be advised to remit Rs.1,12,68,659.35/- along with interest accrued on such amount to SEBI.

The investigation period was from January 01, 2007 to March 31, 2009. Accordingly, the interest @ 12% p.a. on Rs.1,12,68,659.35/- from March 31, 2009 till July 14, 2009 (*date of deposit with NSE*) is **Rs.3,92,705.06/-.**

(b) **Rs.43,63,705.01/-** was unlawfully gained by KB Patel through trades executed in the BSE. Interest @ 12% p.a. on this amount from March 31, 2009 till June 03, 2016 is **Rs.37,61,633.27/-.**

(c) The noticee, KB Patel should therefore disgorge the following amounts:

i. Rs.43,63,705.01/- (unlawful profit made at BSE)
ii. Rs.37,61,633.27/- (interest on the above amount)
iii. Rs.3,92,705.06/- (interest on Rs.1,12,68,659.35/- from March 31, 2009 till July 14, 2009)

Total: Rs.85,18,043.34/-, liable to be disgorged by KB Patel in addition to Rs.1,12,68,659.35/- which is already deposited with NSE.

23. Mr. Dipak Patel has contended that under sections 11B and 11(4), SEBI could issue directions only as a remedial and preventive measure and not for punishing. In this regard, I find that the said argument is without merit in view of the following observations made by the Hon'ble SAT in matter of *Karvy Stock Broking Limited* (Appeal no. 92/2006 – decided on 08.01.2007):

> *"…….*
>
> *As already observed, section 11 is the very heart and soul of the Act. This provision has been periodically amended and today it is substantially different from what it was at its inception in the year 1992. The scope of the power has been considerably widened. The introduction of sub section (4) in section 11 and various other provisions like section 11B is indicative of the legislative intent. These provisions are meant to arm the Board with authority so as to be able to effectively exercise power and achieve the declared objectives of the Act. It is clear that a common thread runs through the various provisions of the Act and that is to empower the Board to take preventive as well as punitive measures so as to protect the investor and to promote the securities market. We cannot lose sight of the fact that the Board has to regulate a speculative market and in such a market varied situations may arise all of which cannot be envisaged and there may be an urgent need to pass an order even when an inquiry or investigation is pending. We cannot even entertain a thought that the Board has no power to restrain an intermediary from accessing the market who is alleged to have committed grave irregularities which may adversely affect the interests of investors or the market. On an examination of the provisions as noticed above, we find that the legislative scheme is clear. The provisions of the Act are basically intended to protect the interests of the investors and to promote the market. However, the Act as initially enacted provided primarily for taking promotional or protective measures. The power to take preventive or punitive measures was implicit. Now it has been expressly extended to taking even the preventive or punitive measures. Without doubt, these, too, are ultimately aimed at achieving the basic objectives of investor protection and promotion of the development and regulation of the securities market as contained in the preamble……..."*

24. In view of the foregoing observations and findings, I, in exercise of powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4) and 11B thereof and regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, hereby issue the following directions:

(a) The noticees, **Mr. Kanaiyalal Baldevbhai Patel**, **Mr. Dipak Patel**, **Mr. Anandkumar Baldevbhai Patel** and **M/s. Bhoomi Industries** shall be restrained from accessing the securities market and prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of 5 years.

The period of such restraint already undergone by the noticees vide the interim order dated May 28, 2009 read with Orders dated February 09, 2010 and March 17, 2011 shall be taken into consideration while computing the period of restraint as directed above.

(b) **Mr. Dipak Patel**shall not associate himself with any intermediary or any entity registered with SEBI for a period of 5 years.

(c) **Mr. Kanaiyalal Baldevbhai Patel** shall disgorge an amount of **Rs.85,18,043.34/-**within a period of 45 days from the date of this Order. The amount, as directed above, shall be paid to SEBI by way of a Demand Draft favouring "Securities and Exchange Board of India" payable at Mumbai.

In case, **Mr. Kanaiyalal Baldevbhai Patel** fails to comply with the above direction, he shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, for a further period of 3 years, over and above the period mentioned at sub-paragraph (a) above,without prejudice to any other action including action for recovery of such amounts from him that may be initiatedby SEBI.

25. The **NationalStockExchange of India Limited** shall transfer the monies deposited by Mr. Kanaiyalal Baldevbhai Patel, along with theinterest accrued on such amount, within a period of 10 days to SEBI,along with a report.

26. This Order shall come into force with immediate effect.

27. Copy of this Order shall be forwarded to recognized stock exchanges and depositories for their information and necessary action.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date:June 07, 2016
Place: Mumbai