BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/AA/2021-22/12063-12069]

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

In respect of

1. **Maheshbhai Himatlal Sheth (PAN: BOIPS2529R)**
2. **Deepak Thakkar (PAN: AAAPT5512C)**
3. **Raju G. Shah (PAN: AZHPS2985G)**
4. **Sharda Pujara (PAN: ALOPP8823F)**
5. **Meet Shares and Stocks Services Ltd. (PAN: AAECM7242H)**
6. **Mukesh Jain (PAN: ACBPJ9682J)**
7. **Sanjay Gupta (PAN: AAFHS6939H)**

In the matter of Pyramid Saimira Theatre Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation to ascertain the violations, if any, of the provisions of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the '**SEBI Act**') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the '**PFUTP Regulations, 2003**') by certain entities while trading in the scrip of Pyramid Saimira Theatre Limited (hereinafter referred to as "**PSTL / the company**") during the period from June, 2008 to December, 2008 (hereinafter referred to as '**investigation period**').

2. It was observed that, there were several media reports on December 21 and 22, 2008 that SEBI had directed Mr. P. S. Saminathan, one of the promoters of PSTL, to make an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**") for an additional 20% stake at a price not less than Rs. 250/- within 14 days, for allegedly violating creeping acquisition norms. With the reports in the media appearing about the impending offer at Rs. 250/-, the price of the shares of PSTL increased on December 22, 2008, when the stock markets opened for the day. On December 22, 2008, PSTL first informed BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") that the company had not received any communication from SEBI regarding the media reports on Open Offer. BSE disseminated the said disclosure made by PSTL at 10:28:04 AM on December 22, 2008 on its website, while NSE disseminated the same at 10:30:00 AM on the same day.

3. Subsequently, on the same day, i.e., on December 22, 2008, at around 10:30 AM, PSTL received the alleged SEBI order directing Mr. P. S. Saminathan to make an open offer. Mr. P.S. Saminathan informed BSE and NSE on December 23, 2008 about receipt of the aforesaid letter from SEBI. In this regard, on December 23, 2008, SEBI issued a Press Release clarifying that SEBI had neither issued a letter nor an order to Shri P.S. Saminathan for the said open offer and that the said letter was apparently circulated with ulterior motives. SEBI lodged an FIR with regard to forgery of the SEBI letter at Bandra Kurla Police Station, Mumbai and also initiated an investigation into the matter.

4. The investigation by SEBI, *prima facie*, revealed that the forgery was done to manipulate the stock price of PSTL and that Mr. Nirmal Kotecha, one of the promoters and the then largest shareholder of PSTL, was one of the major beneficiaries of the said manipulation and appeared to have masterminded the

forgery. It was further observed that several persons/ entities directly and indirectly related to Mr. Nirmal Kotecha had purchased shares of PSTL on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008, i.e., after the price rise in the PSTL shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. It was also found that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price rise which occurred due to publication of the forged SEBI letter as well as the price fall which occurred due to a clarification on media reports on Open Offer provided by Mr. P.S. Saminathan to the stock exchanges (BSE and NSE) that the company had not received any communication directing Mr. P. S. Saminathan to make open offer.

5. Pending investigation, SEBI vide an *ad interim ex parte* order dated April 23, 2009 (hereinafter referred to as "**the interim order**") issued under Sections 11, 11B and 11(4) of the SEBI Act *inter alia* directed 257 entities and their proprietors/ partners/ directors who *prima facie* appeared to have played a role in the forgery of the SEBI letter, dissemination of the information contained in the forged letter to the media, misleading the media to believe in the authenticity of the information that was circulated to them, carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining advantage from the forgery and to have channelled funds either directly or indirectly in the stock markets for manipulating the scrip of PSTL, to not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions.

6. Investigation revealed that there were several entities that were involved in the manipulation in the scrip of PSTL and associated with Mr. Nirmal Kotecha. It was observed that Maheshbhai Himatlal Sheth, Deepak Thakkar, Raju G. Shah, Sharda Pujara, Meet Shares and Stocks Services Pvt. Ltd., Mukesh Jain

and Sanjay Gupta (hereinafter collectively referred to as '**Noticees**') were among the said entities who were involved in the manipulation in the scrip of PSTL. In view of all of the above, Adjudication Proceedings were initiated against the Noticees and it was alleged that Maheshbhai Himatlal Sheth, Deepak Thakkar, Raju G. Shah, Sharda Pujara, Meet Shares and Stocks Services Pvt. Ltd., and Sanjay Gupta had violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003, while Mukesh Jain was alleged to have violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003.

APPOINTMENT OF ADJUDICATING OFFICER

7. Ms. Barnali Mukherjee was appointed as the Adjudicating Officer under Section 15I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under Section 15HA of the SEBI Act for the alleged violation of the provisions of Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003 by the Noticees. Pursuant to the transfer of the case to different Adjudicating Officers, the undersigned has been appointed as the Adjudicating Officer in the present matter vide order dated August 09, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. A Show Cause Notice (hereinafter referred to as "**SCN**") dated January 20, 2012 was issued to the Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HA of the SEBI Act for the alleged violations specified in the SCN.

9. The following was *inter alia* alleged in the SCN:

(i) The Noticees were having financial / business dealings with Mr. Nirmal Kotecha.

(ii) The Noticees have allegedly created artificial interest in the scrip of PSTL by placing large orders during the month of December 2008 and had taken advantage of the price rise in PSTL shares on December 22, 2008 which occurred consequent to the publication of the forged SEBI letter;

(iii) During the period from December 15, 2008 to December 19, 2008, Nirmal Kotecha sold 4,85,276 shares of PSTL on BSE and NSE out of which he had sold more than 4,20,000 shares to persons / entities related / associated with him including the Noticees;

(iv) The Noticees had collectively contributed to influence the price of the scrip during the period immediately prior to the circulation of the SEBI forged letter.

(v) The Noticees had accumulated PSTL shares between December 16 to 19, 2008 and off-loaded most of their holdings on December 22, 2008 and were amongst the net sellers in PSTL scrip;

(vi) The Noticees had made undue profit from the publication of the purportedly alleged forged SEBI letter and the consequent trading interest which got generated enabling them to off-load PSTL shares.

(vii) In view of the above, Maheshbhai Himatlal Sheth, Deepak Thakkar, Raju G. Shah, Sharda Pujara, Meet Shares and Stocks Services Pvt. Ltd., and Sanjay Gupta had violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003, while Mukesh Jain was alleged to have violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003.

10. I note from available records that the SCN has been duly delivered to the Noticees. I note that Maheshbhai Himatlal Sheth had filed a consent application with SEBI after receipt of the SCN. I also note that SEBI had rejected the said

consent application filed by Maheshbhai Himatlal Sheth, which was intimated to him vide letter dated October 07, 2014. I note that Maheshbhai Himatlal Sheth has made written submissions in the matter vide letter dated August 20, 2018. I also note that Maheshbhai Himatlal Sheth has availed of a hearing opportunity before the undersigned on December 18, 2020 and before the erstwhile Adjudicating Officer on September 05, 2018, wherein the Authorised Representative ('AR') of the Noticee made oral submissions, while reiterating the written submissions submitted by Maheshbhai Himatlal Sheth. I note that Maheshbhai Himatlal Sheth in his aforesaid letter has *inter alia* made the following submissions:

(i) I am a frequent trader in the securities market and PSTL was not the only scrip I was trading in during the investigation period.

(ii) My entire KYC was filled by someone else and is not in my handwriting since I do not know how to read and write in English. At the time of filing the KYC form, I did not possess a personal mobile number. However, the KYC form mandatorily required me to supply the same. I was, then, an employee of Tejas Cotton Co., a company owned by the Shah Group family, and therefore, decided to incorporate a mobile number available in our office. The number incorporated in the KYC does not belong to me and therefore the same cannot be relied upon to allege violations of the SEBI Regulations.

(iii) Even if it is presumed that the mobile number of Mr. Rohitkumar Shah which was being used by Mr. Nirmal Rohitbhai Shah had anything to do with me, it merely shows that I was connected with Mr. Nirmal Rohitbhai Shah. It does not, however, show that I had anything to do with any Nirmal Kotecha or the alleged forgery carried out by him.

(iv) The only alleged fact that has been relied upon to create a liaison between me and Nirmal Kotecha is the said mobile number, which was allegedly incorporated in the KYC by me.

(v) I have been regularly trading in the scrip of PSTL since May, 2008. The transaction undertaken by me between December 17, 2008 and December 22, 2008 in the scrip of PSTL is in the normal course of my regular dealings in the securities market. The alleged fraud which was being perpetrated on the

investors by Nirmal Kotecha did not influence my dealings during the period of December 17 to December 22, 2008, as I had absolutely no knowledge about the same.

(vi) *On December 22, 2008, I offloaded 10,000 shares at the average price of Rs. 80/- per share. The above transaction enabled me to earn a profit to the tune of Rs. 1,84,200/-.*

(vii) *In the present case, no money earned by me as a result of the profit that I made by trading in the scrip of PSTL during the relevant time, was deployed to any member of the Shah family so as to establish any relation or tip off in the matter of the alleged fraud.*

(viii) *If I had the prior knowledge of the fraud that was perpetrated by Mr. Nirmal Kotecha on the investors, I would have offloaded the entire shareholding in the scrip of so as to benefit the most out of the alleged fraud and capitalize on the profit. However, on December 22, 2008, I offloaded only 10,000 shares. I sold another 1089 shares on January 23, 2009. Kindly note that I had offloaded these shares on January 23, 2009 at a price of Rs. 23.12/- per share, which is far less than the price at which I had sold the shares on December 22, 2008. Had it been known to me that the increase in price was due to the alleged forgery, I would have sold all the quantity by me on December 22, 2008 itself.*

11. I note that Deepak Thakkar, vide letters dated July 1, 2020 and January 13, 2021, has made written submissions in the matter. I also note that Deepak Thakkar has availed of a hearing opportunity before the undersigned on January 13, 2021, wherein his AR made oral submissions, while reiterating the written submissions submitted by Deepak Thakkar. I note that Deepak Thakkar in his aforesaid letters has *inter alia* made the following submissions:

(i) *The fact that I am the maternal uncle of Mr. Nirmal Kotecha, is not sufficient to establish any connection or wrongdoing on the part of me. My investment decisions were my own and were executed off of my own volition and direction. These investment decisions cannot be, in any manner, either direct or circumstantial evidence of any alleged participation in the purported fraud or forgery.*

(ii) *The allegations contained in the SCN qua me are bald, sweeping, unfounded, and are completely contrary to the factual position and records. It is submitted that the SCN does not provide a single piece of credible evidence which justify the allegations leveled in the SCN against me.*

(iii) *It has been alleged that I had never dealt in PSTL shares during the period June 01, 2008 to December 15, 2008 and thereafter, on December 16 & 17, 2008 I had bought 19,758 shares and 80,000 shares respectively at an average cost of Rs. 60.50 per shares. However, I have traded in the scrip of PSTL 2 years prior to the investigation period being June to December 2008. I had purchased 65,000 shares of PSTL in the Pre-IPO process in December 2006 and sold them in December from 20 to 28, 2007.*

(iv) *The allegation in para 49 of the Notice is that at 10:27:04 am Nirmal Kotecha placed a sell order for 40,000 shares at a price of Rs. 60/- per share. Subsequently, at 10:49:26 am I placed a buy order of 5000 shares at the price of Rs. 60/- which got matched vide trade no. 785 at 10:49:26 am. The allegation itself does not make out a case of synchronized trading. Firstly, there is difference of approximately 22 minutes in the distinct orders placed Nirmal Kotecha and me. It is settled law that trading can be considered synchronized only in the event that trades match in under 60 seconds of them being placed on the terminal. It is a fact that the trades matched only after a duration of 22 minutes.*

(v) *In fact, it is clear from my submissions that the transactions in my account were executed by Mr. Nirmal Kotecha on my instructions. Had there been any meeting of minds between me and him and the objective would have been to synchronize trades there would not have been gap of 22 minutes in the trades and that Mr. Kotecha could have either simultaneously or one after another placed order so as to match each other. The same is missing and hence the trades cannot be said to be synchronized.*

(vi) *I had opened a trading account with Kotak sometime in or around March 2005. At the time of opening my trading account, I was routinely required to travel for my shipping and clearing related work.*

(vii) *I gave an authority letter to Kotak in favor of my nephew Mr. Nirmal Kotecha to issue directions to Kotak.*

(viii) Subsequent to issue of this Letter of Authority, all instructions relating to trades were to be routed through Nirmal Kotecha.

(ix) I had bought and sold the shares in the normal course of business. The trading decisions taken on December 16, 17 and 22, 2008 as well as all other trade related decisions calls in various securities have always been my independent calls. These were merely routed through Nirmal Kotecha for the sake of convenience and cannot in any manner be considered as his own investment or investments made on his advice.

(x) The money put in to buy the shares were my own funds, arranged from my personal resources.

(xi) With regard to the financial dealing of me and Nirmal Kotecha's grandfather, it is submitted that I have stated in my statement dated July 21, 2010, that Mr. Manilal Kotecha is father-in-law of my sister and the said loan would have been given to my sister for some time and the same has been returned back to her.

(xii) With regard to the transaction between DKG Securities Pvt. Ltd, it is submitted that I had issued a cheque to DKG Securities Pvt. Ltd. worth Rs. 2,00,00,000/- but since the interest rate was high for them, they had subsequently returned the money to me. No adverse inference of any kind should be drawn based on this transaction, since it was a normal business transaction dehors of any manipulative intent.

(xiii) With regard to the allegations of call to Ms. Meera Venugopal Shah by me, it is submitted that for the first time in the Notice, a case has been made that I had made a solitary call to the number 9847298213 belonging to one Ms. Meera Venugopal from the number 9820041135 belonging to me at 21:11 on December 20, 2008 for a duration of approximately 245 seconds. It is further submitted that the said alleged call was made by me 4 years ago it is impractical for me to recall as to why the call was made and what communications were exchanged between us. I vaguely remember that the call might have been made to enquire about travel packages because Mrs. Meera Venugopal Shah is a travel agent and there is a high probability that a call was made to her to examine the available travel packages since I was planning a holiday at the same time period.

(xiv) Thus, it is humbly submitted that, no information was ever exchanged between Mr. Nirmal Kotecha and me, which in turn ever influenced my decision to invest in the shares of any scrips including in the scrip of PSTL. Pertinently, the SCN altogether

fails to take into consideration the fact that I bought shares of PSTL several weeks before the events detailed in the SCN took place. This totally belies the allegation I traded in PSTL shares on the basis of information provided by Mr. Nirmal Kotecha and/or with a view to assist Mr. Nirmal Kotecha in his allegedly fraudulent endeavours.

12. I note that Raju G. Shah, vide letter dated February 22, 2012, has made written submissions in the matter. I note that Raju G. Shah had filed a consent application with SEBI. I also note that SEBI had rejected the said consent application filed by Raju G. Shah, which was intimated to him vide letter dated August 11, 2014. I further note that Raju G. Shah was also granted hearing opportunity in the matter, but he failed to avail of the said opportunity. I note that Raju G. Shah in the aforesaid letter has *inter alia* made the following submissions:

    (i) The Noticee has no relationship with the promoters of PSTL or any person or entities who brought PSTL shares on BSE and NSE during the period December 15-19, 2008. The Noticee submits that Noticee has carried out dealing on 19th December, 2008 as indicated in the SCN, which dealing are jobbing/arbitrage in nature.

    (ii) The Noticee further, clarifies that the dealing in the market of the Noticee are basically day trading/jobbing or availing arbitrage opportunities between two Exchanges i.e., NSE and BSE.

    (iii) The Noticee had suffered net loss of Rs. 9,946.39 for the dealing in NSE and BSE on December 19, 2008. Therefore, the allegations of being associated with promoter or any other person or entities is an incorrect observation on the part of the Learned Officer and also denies the averments that of alleged prior knowledge of the fraud being perpetrated by the promoters is denied in toto by the Noticee.

    (iv) The Noticee submits that the observation in the SCN on page 8 of the SCN by the Learned Adjudicating Officer is based on hearsay evidence of a third party Mr. Yatin Shah who had given a statement to SEBI during the period of Investigation and based on the said alleged statement of Mr. Yatin Shah, the Noticee has been drawn into the alleged trap of relationship with Mr. Nirmal

Kotecha indirectly through Mr. Yatin Shah, only on the premise that the Noticee is the cousin brother of Mr. Yatin Shah. This is a natural fact and based on such natural fact of Noticee being cousin brother of Mr. Yatin Shah it cannot be concluded negatively against the Noticee that, the Noticee was aware of the alleged conversations and alleged friendly relationship of Mr. Yatin Shah with Mr. Nirmal Kotecha and other persons/entities.

(v) Merely carrying on dealing on 19th December 2008, which are jobbing or arbitrage in nature in NSE and BSE cannot be concluded that the Noticee was part of the alleged activities of Mr. Nirmal Kotecha and also no adverse inference can be drawn by the Learned Adjudicating Officer of having indirect relationship with one Mr. Nirmal Kotecha though Mr. Yatin Shah.

(vi) The Noticee further submits that the Learned Adjudicating Officer has erred and drawn an incorrect adverse inference based on certain alleged financial dealings in the form of certain loan between Mr. Nirmal Kotecha and Mr. Yatin Shah, which dealings appear to be some time in 2007 more than a year before the dealings in the Stock Market by Noticee in the scrip PSTL, as indicated in the present para.

(vii) The Noticee is not aware of the said transactions have matched with some other persons/entities as indicated. It is obvious that the order of buy or sell would match with some order of buy and sell with the counter party broker/client. However, on the trading screen of the terminal, the counter party broker is not reflected/revealed and the same fact had come to the knowledge of the Noticee upon receipt of this SCN.

(viii) Further, the Noticee submits that on examining the orders of the Noticee post transactions and drawing inference of connection/association with other persons/entities is incorrect and bad in law and also the fact remains that the SCN clearly indicates about the dealings on December 19, 2008 of the Noticee and there is no reference to dealings on any other day in the SCN. Merely based on a single day dealing on NSE and BSE the charge of violating the provisions of the PFUTP regulations 2003 is grossly incorrect.

(ix) The alleged matching/synchronized trades of 12000 buy shares and 25000 sell shares out of the total 71,805 shares during the day each side is in isolation and in the normal course of business in the stock market. Further, just for a meagre profit of Rs 928.63 paise, why the Noticee would have any sought of adverse

relationship with the Promoters or any other person/or entity who are allegedly associated with the Promoters.

(x) There is no statement on oath of the Noticee recorded by the Investigation officer at the time of investigation to corroborate the evidence and also no opportunity is given to cross examine the other persons/entities who had referred to the name of the Noticee in their respective statements. Further, on perusal of the other statements on oath of other persons/entity, it can be observed that those persons/entities have not given any adverse statements against the Noticee nor there is any comment against the Noticee. Save and except of Mr. Yatin Shah who had only stated that the Noticee is his cousin brother and there are no other comments against the Noticee.

(xi) It is not the case that the Noticee had spoken to either Mr. Nirmal Kotecha or Mr. Amol Kokane or Mr. Yatin Shah on December 19, 2008, in the absence of any call made by the Noticee and in the absence of any evidence in the form of call records number, adverse inference cannot be drawn against the Noticee merely on the pretext that the Noticee is a cousin brother of Mr. Yatin Shah. Hence the allegation on call records is obviously to drag the Noticee into the ambit of certain relationship with the promoter PSTL based on conjuncture and surmises and third-party evidences, which are not directly or indirectly connected to the Noticee or have been proved beyond doubts by showing the elements of nexus between the promoters and Noticee.

13. I note that Sharda Pujara, vide letter dated May 14, 2012, has made written submissions in the matter. I also note that Sharda Pujara has availed of hearing opportunity before the undersigned on January 11, 2021 and before the erstwhile Adjudicating Officer on June 01, 2018, wherein her AR made oral submissions, while reiterating the written submissions submitted by Sharda Pujara. I note that Sharda Pujara in her aforesaid letter has *inter alia* made the following submissions:

(i) I am an investor in the stock market and based on my view on the market, I used to trade (intra- day as well as delivery based) in various scrips at the relevant time. I am wrongly connected, bunched, lumped, included and tied to Mr. Nirmal

Kotecha. The basis for making me a part of the said Nirmal Kotecha Group is erroneous and flawed.

(ii) *I deny that I or my volume of trading created artificial volume and enabled Mr. Nirmal Kotecha to off-load his significant holdings in PSTL shares on December 8, 2008. As per point 8 a), page 4 and table in point 12, page 9, Shri Nirmal Kotecha sold 1,02,007 shares of PSTL during the period December 1-12, 2008.*

(iii) *Mr. Kotecha offloaded total 1,02,007 shares out of which alleged 98,071 (96.14%) shares were sold on 1.12.2008 and 5.12.2008 and sold only 3,936 (3.85%) shares on 08.12.2008 (2 shares on BSE and 3934 shares on NSE). I carried out trades only on 08.12.2008 in the first period and that too my trades were of intra- day nature and Mr. Kotecha hardly offloaded alleged shares on 08.12.2008 (Mr. Kotecha's volume was insignificant on that day). Mr. Kotecha's sale trades during the first period were prior to 08.12.2008 (on 1.12.2008 & 5.12.2008) when I didn't carry out trades in the PSTL scrip at all. Hence it is out of question that I created artificial volume in PSTL shares on 08.12.2008 in order to enable Mr. Kotecha to off-load his significant holdings in PSTL scrip. The said allegation has therefore no substance.*

(iv) *The Noticee's trades in the PSTL scrip were of intraday nature throughout the investigation period. The Noticee had no prior knowledge of the alleged fraud which was being perpetrated on investors by Mr. Kotecha- otherwise the Noticee would have traded in the PSTL scrip during December 16-19, 2008 also. Moreover, the Noticee's buy as well as sale trade on 22.12.2008 is not found objectionable by the Adjudicating Officer.*

(v) *My son, Mr. Chirag Pujara had nothing to do with my trades. Further I did not give any power of attorney nor was he my agent in any manner. My trades were separate, independent and standalone and belonged to me. I did not consult Mr. Mahesh Pujara to take my business I commercial decisions. My trading in the PSTL scrip was independent and in my name / code and I only met my obligations. Had I been associated with Mr. Nirmal Kotecha as alleged, then I would have traded throughout the month of December 2008 and not on 2 days only. Further my trades on 22.12.2008 have not considered objectionable. The connection sought to be established with Mr. Nirmal Kotecha through Mr. Yatin Shah who was*

introduced by Mahesh Pujara who is the uncle of my son, Chirag Pujara, is incorrect, irrelevant and far-fetched.

(vi) The investigating officer has given a colour of reversal/synchronized trades to my intra trades on both the Exchanges on 8.12.2008. In other words, normal matching of orders too has been treated as synchronized trades. Moreover, there is no connection established between me, Mr. Hardik Mithani, Inventure Growth & Securities Ltd. either inter se or with Mr. Nirmal Kotecha. There is a complete disconnect between/among these parties in the SCN. The group of 20 people has no relationship with each other inter se or intra se in terms of reversal or synchronized trades.

(vii) The investigating officer has grossly failed to establish the connection or any sort whatsoever between me and Mr. Kotecha. It is pertinent to mention that not a single order/trade of mine matched with SPJ Stock Brokers Pvt. Ltd. and M/s Meet Shares and Stock Services Ltd and only 500 shares got matched with Inventure Growth and Securities Ltd. If the orders were predecided between me and Mr. Hardik Mithani as alleged then there has to be prior meeting of minds, prior collaboration and the minds ought to have been on same wavelength which is not the case here. The Noticee doesn't even know who Mr. Hardik Mithani is. Hon'ble Investigating Officer has not even whispered about any connection between me and Mr. Mithani in the SCN.

14. Meet Shares and Stock Services Ltd. (MSSSL), vide letter dated June 13, 2012, has made written submissions in the matter. I also note that MSSSL has availed of hearing opportunity before the undersigned on January 11, 2021 and before the erstwhile Adjudicating Officer on June 13, 2018, wherein the AR made oral submissions, while reiterating the written submissions submitted by MSSSL. I note that MSSSL in the aforesaid letter has *inter alia* made the following submissions:

(i) At the outset we clarify that we were not directly or indirectly connected with Shri Nirmal Kotecha nor our trading volume of 22.12.2008 - not a single trade has been considered as objectionable.

(ii) We deny that our volume of trading created artificial volume and enabled Mr. Nirmal Kotecha to off-load his significant holdings in PSTL shares on December 8, 2008. Mr. Kotecha offloaded total 1,02,007 shares out of which alleged 98,071 (96.14%) shares were sold on 1.12.2008 and 5.12.2008 and sold only 3,936 (3.85%) shares on 08.12.2008 (2 shares on BSE and 3934 shares on NSE). We carried out trades only on 08.12.2008 on BSE and NSE and on 10.12.2008 at BSE in the first period and that too our trades were of intra- day nature and Mr. Kotecha hardly offloaded PSTL shares on 08.12.2008 (Mr. Kotecha's volume was insignificant on that day). Mr. Kotecha's sale trades during the first period were prior to 08.12.2008 (on 1.12.2008 & 5.12.2008) on which day we did not carry out trades in the PSTL scrip at all. Hence it is out of question that we created artificial volume in PSTL shares on 08.12.2008 in order to enable Mr. Kotecha to off-load his significant holdings in PSTL scrip. The said allegation has therefore no substance and denied.

(iii) We were an investor/trader in the stock market. We used to trade (intraday as well as delivery based) in the various scrips at the relevant time. We are wrongly connected, bunched, lumped, included and tied to Mr. Nirmal Kotecha. The very basis for making us a part of the said Nirmal Kotecha group is erroneous and flawed. We therefore deny and do not accept that we belonged to the Nirmal Kotecha Group as alleged or otherwise, or to any group for that matter.

(iv) It is pertinent to mention that we were neither asked to furnish any information nor were we called for recording our statement etc. in the course of investigation proceedings. It appears that we are included in the group only on the basis of some bald statements made by one Mr. Yatin Shah. Moreover, we were not even given an opportunity to cross examine Mr. Yatin Shah. I do not accept any of the statements of Mr. Shah, made qua us and it appears that his statements have been twisted to rope us in the matter.

(v) It is pertinent to mention that the investigation in the scrip of PSTL is divided into three periods, viz. December 1-12, 2008, December 15-19, 2008 and December 22, 2008. We traded only on one day (i.e. 08.12.2008) during the first period (December 1-12, 2008), we did not carry out a single transaction during the second period (December 15-19, 2008) and our trades in the third period i.e. of December 22, 2008 is not considered objectionable.

(vi) We clarify that, we were not aware about counter party Inventure Growth & Securities Pvt. Ltd. - its name of client (end client) is not even furnished nor any nexus established between us and Inventure Growth & Securities Pvt. Ltd. and / or its end client in the matter of 18,233 shares sold to us and 8,156 shares allegedly bought from us. We deny the charge of 'reversal transactions' between us and Inventure Growth & Securities Limited. No relationship is established without any evidence. We did trades in our name through our broker while Inventure Growth & Securities Pvt. Ltd. is a broker itself (who may have traded for themselves or for their client and no particulars have been furnished.)

(vii) Similarly, our selling of 12,367shares to Mr. Hardik M. Mithani and buying back 15,800 shares from him on BSE and NSE cannot be considered objectionable inter alia for the reasons given the above paragraph. This charge of reversal transactions is denied. We have no connection with the said Mr. Mithani and none is established.

(viii) We did not consult Mr. CN Pujara while taking our business/commercial decisions. The tri-partite agreement dated 18.12.2006 was a SEBI prescribed legal requirement. Further, Mr. Chirag Pujara had no role, involvement and participation into our business affairs. We take strong objection to the family relationship being bought in the matter of business dealing in a circuitous manner. Such extraneous and irrelevant manner to ultimately connect us to Mr. Nirmal Kotecha is wrong and absurd and perverse. Had we been associated with Mr. Nirmal Kotecha as alleged, then we would have traded throughout the month of December 2008 and not on few days only and our pattern of trading would have been different and would have been similar to those who were directly connected with him and who made profits through such pattern. Further our trades of 22.12.2008 have not been considered objectionable. The connection sought to be established with Mr. Nirmal Kotecha on the basis of some loose, vague, irrelevant, non-germane statements of Mr. Yatin Shah, is farfetched substance -less, a far cry and misconceived.

(ix) The Noticee states that the trade data furnished on the SCN was that part of order which got converted into trades. The said data log did not include unexecuted orders, modified orders and cancelled orders. On account of not making available these orders data, the analysis of data furnished would remain one sided, incomplete, incorrect and hence the answers to the charges could not be proper,

complete thus resulting into violations of principles of natural justice. Executed/unexecuted/modified/cancelled orders would throw light on the total number of orders keyed into the system and the history of each order that got eventually fully executed into trades, partly executed and not executed at all. In order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders and executed within the group and executed outside the group.

(x) We submit that our alleged synchronized/reversal trades of one day cannot be considered as fraudulent/fictitious and the said charge is as vague as it could be. Normal intraday trading cannot be regarded as fraudulent/fictitious and was not in violation of any trading guideline. Our volume and nature of trading cannot have facilitated Mr. Nirmal Kotecha to off load his stake in the scrip of PSTL in the market. Mr. Nirmal Kotecha's offloading of PSTL shares was his plan (or strategy) with which we were not concerned and we did not play any role therein. Our some stray, partial market orders that got converted into trades with some parties who may have been associated with Mr. Nirmal Kotecha cannot related to him or make us liable for anything or we cannot be roped in on account of such a few and far between trades, that were the outcome of price order matching process of the stock exchanges.

15. The AR of Mukesh Jain, vide letters dated October 29, 2012; August 7, 2019 and January 6, 2021, has made written submissions in the matter. I also note that Mukesh Jain has availed of hearing opportunity before the undersigned on January 06, 2021 and December 12, 2019, wherein the AR made oral submissions, while reiterating the written submissions submitted by Mukesh Jain. I note that Mukesh Jain in the aforesaid letters has *inter alia* made the following submissions:

(i) It has specifically been clarified by my client that he is no way related to the entire issue raised qua one 'Mukesh Jain' in the present case. In the show cause notice dated 20.01.2012 served upon my client, reference has been made of one Mr. Mukesh Jain who was a director of Bihar Tubes Ltd. It is clarified that my client Mr. Mukesh Jain, PAN: ACBPJ9682J was never a director of Bihar Tubes Ltd. From an

inspection of the records of Ministry of Corporate Affairs, my client has already placed on record that fact that the Mukesh Jain referred to in your notice is a completely different and independent person from my client.

(ii) The 'Mukesh Jain' who was a director in Bihar Tubes had the following parentage & address (as inspected from MCA records.):Mukesh Jain S/o Hari Chand Jain, R/o 5/103, Gajju Katha, Shahdara, Delhi-110032.

(iii) My name, parentage, address & PAN are as under: Mukesh Jain S/o Jai Prakash Jain, R/o D-213, Vivek Vihar, New Delhi- 1100095, PAN: ACBPJ9682J

(iv) My client did not purchase any shares of PSTL on 22.12.2008, which is the date alleged in the show cause notice. Rather, my client had purchased shares of PSTL on 16.12.2008 and 17.12.2008 from the open market and sold the shares in the market at a heavy loss of Rs. 15,42,451/- on account of his trading in the PSTL scrip.

(v) It is evident from the above that my client has actually suffered a loss in his dealing in the PSTL scrip. Moreover, as already indicated my client as no cause or connection with PSTL and is different 'Mukesh Jain' from the Mukesh Jain referred by you in your notice.

(vi) That the allegations of synchronized trading made in Paras 46 and 47 of the show cause notice are false and frivolous on face of it. My client had purchased the shares on 16.12.2008 though its broker and was unaware as to the seller of the said shares. It is submitted that the shares in the market are usually between the strangers as per the demand and supply in the market. It is submitted that a buy order placed is matched with the best sale offer subject to the minimum of the buy order and the sale order and the transactions are finalized on the basis of the matched prices. The transactions are merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business.

(vii) My client as per SEBI's own case had placed a purchase order of 90,000 shares on 16.12.2008 out of which, as per the said show cause notice itself, 48,991 got matched with the sale order of Shri Nirmal Kotecha and the balance 41,009 got matched with the sale orders of various third parties through 81 trades. By no stretch of fact or law can the said transaction be treated as synchronized transactions. The said transactions are merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business. It is pertinent to mention here that my client was unaware of the seller of the said

shares and only through the notice under reply came to know that the seller of certain shares purchased by him was on Mr. Nirmal Kotecha.

(viii) My client had traded in the said scrip bonafidely in the hope that he shall reap benefits from the same and as such had placed order in the said scrip at prices higher than LTP. It is a normal practice of the market to buy place orders at process higher than LTP in case any person is interest in buying a scrip so as there are more chances of the said transaction being completed. A bare perusal of the transactions stated in para 69(3) reveals that the order for 25,000 shares was placed at the price lower than LTP.

16. Sanjay Gupta, vide letters dated February 22, 2012; January 4, 2013; July 5, 2018, July 23, 2018, December 26, 2019; January 20, 2021 and January 29, 2021, has made written submissions in the matter. I also note that Sanjay Gupta has availed of hearing opportunity before the undersigned on January 06, 2021 and on December 13, 2019, wherein the AR made oral submissions, while reiterating the written submissions submitted by Sanjay Gupta. I note that Sanjay Gupta in the aforesaid letters has *inter alia* made the following submissions:

(i) I had not traded a single share in the scrip of PSTL and there was no allegation against me in my individual capacity. The only allegation in the present SCN was pertaining to trades executed by APL Infra in which I hold the position as the director of the company. That APL Infra has already been served by the SCN for the alleged transaction and APL Infra has further submitted its replies to the SCN for the alleged transactions.

(ii) In APL Infra also, as a managing director in the company, I am responsible for major decisions relating to business growth and development and not deal with day-to-day affairs. I am also associated with other 10 companies and it is practically impossible for me to get indulge in day-to-day affairs of each company.

(iii) The same had been explained in the statement recorded before your good office wherein I had stated that such investment decisions were taken by the experts on their own understanding of market which were Mr. Pankaj Gupta was the head of accounts department and Mr. Ajay Garg was the General Manager for Purchase and Accounts department of the Company. Further, Mr. Pankaj Gupta used to generally

place the order with the broker and I was not involved in placing the order with the broker.

(iv) *In this regard it is utmost pertinent to bring out that Mr. Mukesh Jain who has traded in the scrip of PSTL is not the Mukesh Jain who was appointed as the director of Bihar Tubes Limited herein referred as 'BTL' in April 2009. This can further be substantiated from the PAN no. of Mr. Mukesh Jain, i.e., AAQPJ3637G. I do not possess the PAN details of Mr. Jain who had traded in the scrip although your good office can verify the same from your records. That Mr. Mukesh Jain was appointed as the director in BTL on 30.04.2009 and due to his death ceased from holding directorship of BTL w.e.f. 02.07.2010. That as submitted above Mukesh Jain who was the Director in BTL is now deceased, and to my knowledge had never traded in the scrip of PSTL.*

(v) *Further, as to the alleged list of phone calls and SMS between me and Nirmal Kotecha, it is herein submitted that your good office had not provided the call recordings and content of SMS and hence reliance cannot be made on merely the logs as available. Moreover, it is also pertinent to note herein that the call log record is only available for the period from November 2008 to December 2008. Wherein I was in touch with Mr. Kotecha on and off on various occasions during the period prior and after.*

(vi) *It is also put forth herein that it is undisputed that Bihar Tubes is an entity associated with APL Infra and that there are no allegations made against Bihar Tubes Limited in the SCN and the trading by Bihar Tubes had been even much lesser than that by APL Infra. It is hence submitted herein that it is unfair to make any erroneous allegations of association against Bihar Tubes which is not a party to the SCN.*

(vii) *Time difference between buy and sell orders placed: It is pertinent to note here that one of the very important factors to call any trade synchronized is that must be perfect matching of time between the orders placed by the two parties. Herein as explained above, there is as much as more than 13 minutes time gap between the two orders in each of the alleged case.*

(viii) *It is pertinent to state that it is not the case herein that the order so placed by APL Infra completely got transacted with Mr. Kotecha; on the contrary only the part of APL Infra orders have transacted with Mr. Kotecha and remaining parts have been transacted with other counter parties. This again is substantiating the contention that the trades under question cannot be said to be "structured" or "synchronized". All the above facts show that market forces were in play and not tampered in any manner.*

17. I note from above that the Noticees have filed their written submissions in the matter and have also been granted hearing opportunities in the matter. In view of the same, I now proceed further in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

18. I have carefully perused the charges levelled against the Noticees, their reply and the documents / material available on record. The issues that arise for consideration in the present case are:

    (a) Whether the Noticees have violated Section 12A of the SEBI Act read with regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003?

    (b) Do the violations, if any, attract monetary penalty, as applicable, under Sections 15HA of the SEBI Act?

    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

19. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations as below:

Section 12A of SEBI Act

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

12A. No person shall directly or indirectly

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

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

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

PFUTP Regulations, 2003

Regulation 3: - Prohibition of certain dealings in securities

3. 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 thereunder;

(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 thereunder.

Regulation 4: - Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

…….

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

……..

20. I note from the SCN that Nirmal Kotecha, one of the promoters and the then largest shareholder of PSTL, was one of the major beneficiaries of the manipulation in the scrip of PSTL and was found to have masterminded the forgery. Investigation observed that several persons/ entities directly and indirectly related to Nirmal Kotecha including the Noticees had bought PSTL shares on BSE and NSE during December 15- 19, 2008 and sold these shares on December 22, 2008, i.e., after the price rise in the shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. I note that SEBI passed an order dated March 22, 2018 against Nirmal Kotecha for violating provisions of the SEBI Act and PFUTP Regulations, 2003. The same was upheld by the Hon'ble SAT vide its order dated March 02, 2020. In view of the same, it would be appropriate to discuss the role of Nirmal Kotecha in the manipulation of scrip of PSTL. Investigation observed that Nirmal Kotecha had caused to publish a false media report on December 20 and 21, 2008 that, on December 19, 2008, SEBI had issued a letter to P. S. Saminathan, one of the promoters of PSTL to make an open offer under the SAST Regulations, for an additional 20% state at a price not less than Rs. 250/-, for violating creeping acquisition norms. It was observed that during the period June 2008 to December 2008, persons/ entities directly and indirectly related to Nirmal Kotecha were found to have had significant market presence in the scrip of PSTL in BSE and NSE. Further, several persons/ entities directly and indirectly related to Nirmal Kotecha had bought PSTL shares on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008, i.e., after the price rise in the shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. It was also found that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price rise which occurred due to

the publication of the forged SEBI letter as well as the price fall which occurred due to a clarification on media reports on Open Offer provided by P.S. Saminathan to the stock exchanges that he had not received any communication from SEBI directing him to make open offer. In view of this SEBI had passed a final order against Nirmal Kotecha on March 22, 2018, which was upheld by Hon'ble SAT vide its order dated March 02, 2020. Therefore, the role of Nirmal Kotecha in devising a scheme to manipulate the scrip of PSTL stands established.

21. I note that the alleged connection of the Noticees with Nirmal Kotecha in the SCN has been made through certain entities who were close conduits and associates of Nirmal Kotecha but are not Noticees in this SCN. I note that Yatin B. Shah is one such entity against whom separate proceedings have been initiated. I note that in his statement recorded on July 27, 2010, Yatin B. Shah has stated that Nirmal Kotecha is his friend and that he has known him for the past 5 to 6 years. He has stated that he knew Nirmal Kotecha as he was trading through ILF&S, and, at that point of time, he was introduced to Nirmal Kotecha by his friend Mahesh Pujara. He has also stated that he was previously in touch with Nirmal Kotecha for market information since he was an HNI trader. As per the Schedule of Loans and Advances as on March 31, 2007 made available by Nirmal Kotecha, it is seen that Nirmal Kotecha had given a loan of Rs. 20 lacs to Yatin B. Shah. I note that vide SEBI Order dated March 22, 2018 against Nirmal Kotecha, it was held that Yatin Shah is the connecting link between Nirmal Kotecha and Hardik Milanbhai Mithani, SPJ Stock Brokers Pvt. Limited etc. The said SEBI order was upheld by the Hon'ble SAT vide its order dated March 02, 2020. Hence, it is an established fact that Yatin B. Shah was a close conduit and associate of Nirmal Kotecha.

22. I note that during the period from December 1, 2008 to December 12, 2008, Nirmal Kotecha sold 1,02,007 shares of PSTL on BSE and NSE. Thereafter, during the period from December 15, 2008 to December 19, 2008, Nirmal

Kotecha sold 4,85,276 shares of PSTL on BSE and NSE out of which he sold more than 4,20,000 shares to persons / entities related / associated with him including the Noticees. Subsequently, on December 22, 2008, Nirmal Kotecha off-loaded a total of 15,05,862 shares of PSTL on BSE and NSE.

23. I note that the SCN refers to the examination of the trading in PSTL shares for the following time periods:

a) December 1-12, 2008: The gross market traded quantity in PSTL shares on BSE and NSE during the period from December 1, 2008 to December 12, 2008 was 32,87,655 shares out of which as many as 1,407,799 shares were traded on December 8, 2008 and 5,11,989 shares were traded on December 5, 2008. The traded quantity in PSTL shares on the aforesaid two trading dates viz. December 5 and 8, 2008 constituted as much as 58.39% of the traded quantity during period from December 1, 2008 to December 12, 2008. The following six trading clients were identified as the major trading clients in the shares of PSTL on BSE and NSE on December 08, 2008:

S. No	Name of Entity	Gross Traded Quantity on BSE	Gross Traded Quantity on NSE	Gross Traded Quantity of the entity on BSE and NSE	Market Gross Traded Quantity on BSE and NSE	% contribution to the market
1	Hardik M. Mithani	90,000	1,59,096	2,49,096	28,15,598	8.85%
2	SPJ Stock Broker Pvt Ltd	1,15,368	0	1,15,368	28,15,598	4.10%
3	Inventure Growth & Securities Ltd.	1,37,384	1,30,974	2,68,358	28,15,598	9.53%
4	Skyes & Ray Equities (I) Ltd	42,806	46,136	88,942	28,15,598	3.16%
5	Sharda Pujara	35,000	30,000	65,000	28,15,598	2.31%

6	Meet Shares and Stocks Services P. Ltd.	0	1,12,410	1,12,410	28,15,598	3.99%
	Total	4,20,558	4,78,616	8,99,174	28,15,598	31.94%

From the above table, it is noted that Meet Shares and Stocks Services Pvt. Ltd. and Sharda C. Pujara were part of the top six trading clients on December 08, 2008 along with Nirmal Kotecha associated entities like Hardik Mithani, SPJ Stock Broker Pvt. Ltd. and Inventure Growth & Securities Ltd.

b) December 15-19, 2008: The gross market traded quantity during the period from December 15, 2008 to December 19, 2008 was 68,12,966 shares. The top three trading dates during the above period were December 16, 2008, December 17, 2008 and December 19, 2008. The traded quantity in PSTL shares on the aforesaid three trading dates viz. December 16, 17 and 19, 2008 constituted as much as 78.02% of the traded quantity during period from December 15, 2008 to December 19, 2008. Therefore, trading in the scrip of PSTL on December 16, 2008, December 17, 2008 and December 19, 2008 were examined. It was observed that Mukesh Jain and Bihar Tubes Ltd, along with Nirmal Kotecha entities such as APL Infrastructure Pvt. Ltd and Inventure Growth and Securities Ltd were the top five buyers of PSTL shares on BSE and NSE on December 16, 2008.

c) December 22, 2008: On December 22, 2008, the price of PSTL shares on BSE and NSE opened higher at Rs. 82.90 when compared to the closing price of Rs.75.40 on December 19, 2008, i.e., the scrip price opened at a price of 10% more than the previous trading day's close price on account of the news that SEBI had issued a direction to P.S. Saminathan allegedly directing him to make an open offer at Rs.250.00 per share. There was significant increase in the trading volume in the scrip with 32,02,228 shares

being traded on BSE and 40,29,254 shares being traded on NSE. The price of scrip witnessed significant intra - day fall and the scrip closed at Rs.67.90 on BSE. For identifying such clients who had traded on December 22, 2008 the criteria of 15,000 shares or more sold on December 22, 2008 on net basis on BSE & NSE taken together before 10:30 a.m. was considered and it was revealed that 11 major net sellers (other than Nirmal Kotecha) who had accumulated PSTL shares in huge quantities on December 16, 17, 18 and 19, 2008 and off-loaded most of the accumulated shares on December 22, 2008 before 10:30 am. Deepak Thakkar was amongst the 11 major net sellers who had off-loaded shares of PSTL on December 22, 2008 and were found to be associated/related to Nirmal Kotecha.

24. I note that the SCN dated January 20, 2012 was issued to 20 entities including the 11 Shah Group entities. Adjudication orders have already been passed against 13 entities in the SCN including the Shah Group entities. I now proceed further to analyse the individual role of each of the Noticees in the present order as below.

Maheshbhai Himatlal Sheth

25. I note that Maheshbhai Himatlal Sheth (hereinafter referred to as "**Maheshbhai**") in his letter dated August 20, 2018 has submitted that he was an employee of Tejas Cotton Co., which is a firm owned by the Shah Group family. Maheshbhai has denied that the phone number mentioned in his KYC documents belongs to him. He further contended that even if it is presumed that the mobile number of Rohitkumar Shah was being used by Nirmal Rohitbhai Shah had anything to do with him, it merely shows that he was connected with Nirmal Rohitbhai Shah and that it does not show that he had anything to do with any Nirmal Kotecha or the alleged forgery carried out by him. Therefore, the same cannot be relied upon to allege violations of the SEBI Regulations.

26. In this regard, I note that Maheshbhai was admittedly an employee of a company owned by the Shah Group family and the mobile number on his KYC with J.M Financial Services Pvt. Ltd. was used by Nirmal Rohitbhai Shah, one of the Shah Group entities. I observed that the Shah group was associated with Nirmal Kotecha who was a registered client of JM Financials through its sub-broker Shailesh Jayantilal Shah, who is a Shah Group entity. The Call Data Records of Nirmal Shah revealed that Nirmal Kotecha (through his mobile number 9819988816) was in close touch with Nirmal Shah's mobile number 9879018555, registered in the name of Rohitkumar Jayantilal Shah. Further, the Call Data Records during the period December 15-19 and for the morning of December 22, 2008, revealed that Nirmal Kotecha was in close touch with Nirmal Shah.

27. I further note that Shailesh Jayantilal Shah, in his statement dated July 02, 2009, has stated that Nirmal Kotecha had given him a loan of Rs. 10 lacs as a friendly loan without interest for a period of 3 months. Further, it has been brought out in the SCN that the Shah group had several financial transactions with Nirmal Kotecha. I also note that in the order dated March 22, 2018 passed by SEBI against the Shah group entities the relationship of the Shah group with Nirmal Kotecha has been established and the Shah group was found to have violated the provisions of the SEBI Act and Regulations for colluding with Nirmal Kotecha in manipulating the scrip of PSTL. The said order passed by SEBI has also been upheld by Hon'ble SAT vide its order dated March 17, 2020. Hence, given the association of the Shah group with Nirmal Kotecha and the fact that Maheshbhai was an employee under the Shah group and his number was being used by a Shah Group entity, I find that the relationship of Maheshbhai is established with Nirmal Kotecha.

28. The dealings of Maheshbhai in PSTL shares during the period June - December 19, 2008 is summarized below:

Date	Buy -	Sell -	Net -	Buy -	Sell -	Net-	Net BSE and
02-Jun-08	3,000	3,000	-	-	-	-	-

09-Jun-08	-	-	-	500	-	500	500
11-Jun-08	500	500	-	-	-	-	-
13-Jun-08	-	500	-500	-	300	-300	-800
16-Jun-08	-	300	-300	100	100	-	-300
20-Jun-08	-	100	-100	-	1,100	-1,100	-1,200
15-Jul-08	-	-	-	-	27	-27	-27
11-Aug-08	1,500	-	1,500	-	-	-	1,500
28-Aug-08	-	300	-300	-	-	-	-300
30-Sep-08	381	-	381	1,000	-	1,000	1,381
01-Oct-08	-	-	-	1,500	-	1,500	1,500
19-Nov-08	-	100	-100	-	-	-	-100
28-Nov-08	-	-	-	-	3,000	-3,000	-3,000
08-Dec-08	-	981	-981	-	-	-	-981
11-Dec-08	-	-	-	10,220	-	10,220	10,220
12-Dec-08	-	3,463	-3,463	100	1,268	-1,168	-4,631
15-Dec-08	-	-	-	5,000	-	5,000	5,000
16-Dec-08	-	-	-	-	10,000	-10,000	-10,000
17-Dec-08	10,000	5,000	5,000	5,000	-	5,000	10,000
19-Dec-08	-	-	-	500	-	500	500
Grand Total	**15,381**	**14,244**	**1,137**	**23,920**	**15,795**	**8,125**	**9,262**

29. I note from above table that Maheshbhai had traded in the shares of PSTL in small quantities during the period June to December 2008. Thereafter, in December 2008, the quantity of PSTL shares traded by him increased. I note that Maheshbhai had bought 10,000 shares on December 17, 2008 and 500 shares on December 19, 2008 at an average price of Rs. 61.58 per share. Thereafter, he sold 10,000 shares on December 22, 2008 at an average rate of Rs. 80.00 per share thereby earning a profit of Rs. 1,84,200/-.

30. Maheshbhai in his letter dated August 20, 2018 has contended that he was regularly trading in the scrip of PSTL since May 2008 and the transaction undertaken by him between December 17, 2008 and December 22, 2008 in the scrip of PSTL is in the normal course of his regular dealings in the securities market. Maheshbhai has further contended that, if he had prior knowledge of the fraud that was perpetrated by Nirmal Kotecha on the investors, he would have offloaded his entire shareholding in PSTL scrip on December 22, 2008 itself to

maximize his profits. However, he sold only 10,000 shares on December 22, 2008 and sold another 1089 shares on January 23, 2009 at a price of Rs. 23.12/- per share, which is far less than the price he realized while selling PSTL shares on December 22, 2008. Maheshbhai has further submitted that no money earned by him as a result of the profit he made by trading in the scrip of PSTL during the relevant time, was deployed to any member of the Shah family so as to establish any relation or tip off in the matter of the alleged fraud.

31. In this regard, I am of the view that Maheshbhai has failed to explain the sudden increase in his trading volumes in the scrip of PSTL in the month of December, 2008. Maheshbhai has merely stated that had he been aware of the manipulation, he would have sold all his shares in PSTL on December 22, 2008 instead of selling remaining 1089 shares on January 23, 2009. However, the said submission does not explain why he decided to sell 10,000 shares of PSTL on December 22, 2008. I am of the view that the selling of 1089 shares of PSTL on a later date was a device to give an impression that he was not part of the fraudulent scheme of Nirmal Kotecha. Given that he is an employee of the Shah Group family, it is probable that he had information to the perpetrated fraud by Nirmal Kotecha.

32. Maheshbhai has submitted that SEBI has only considered those related entities which sold 15000 or more shares on December 22, 2008 before 10:30 AM. However, the said filtering criteria was not applied to Maheshbhai, whose total sale of PSTL shares on December 22, 2008 before 10:30 AM was only 10,000 shares. In this regard, I note that the threshold of sell of 15,000 or more shares of PSTL on December 22, 2008, as adopted by the investigating authority was only a parameter adopted to make a focused investigation. The same cannot be claimed to be a benefit to those with lower selling volumes on December 22, 2008, therefore, the benefit claimed by Maheshbhai on the basis of such threshold adopted by investigation is misplaced. I further note that number of shares sold on December 22, 2008 could have been one of the criteria during

the investigation for further examining the role of the sellers, however, it does not mean that SCN cannot be issued to a person who sold less than the threshold determined for further examination even when there are other evidences of involvement of such person. In the present case, as discussed above, there are other evidences of involvement of Mahesbhai. Therefore, I find that contention of Maheshbhai in this regard is misplaced and cannot be accepted.

33. I find that Maheshbhai has benefitted from the information available to him through his employers, the Shah Group, who vide SEBI Order dated March 22, 2018, were held to have violated provisions of the SEBI Act and PFUTP Regulations for having prior knowledge of the fraud perpetrated by Nirmal Kotecha and thereby accumulating PSTL shares between December 17 to 19, 2008 and off-loaded most of their holdings on December 22, 2008, solely with a view to make profits. I find that the same was upheld by the Hon'ble SAT vide its Order dated March 17, 2020.

34. In view of the above, I find that the Maheshbhai Himatlal Sheth, through his employers, the Shah Group, had prior knowledge of the fraud perpetrated by Nirmal Kotecha and thereby accumulated shares of PSTL during December and off-loaded majority of his holdings on December 22, 2008, solely with a view to make profits. Thus, I find that Maheshbhai Himatlal Sheth has violated Section 12A of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

Deepak Thakkar:

35. It is observed that Deepak Thakkar is the maternal uncle of Nirmal Kotecha. Deepak Thakkar has submitted that he had opened a trading account with Kotak sometime in or around March 2005 and he gave Letter of Authority to Kotak in favor of his nephew Nirmal Kotecha to issue directions to Kotak. Subsequent to issue of this Letter of Authority, all instructions relating to his trades were to be routed through Nirmal Kotecha. Deepak Thakkar has further submitted that the

trading decisions taken on December 16, 17 and 22, 2008 as well as all other trade related decisions calls in various securities have always been his independent calls. Deepak Thakkar has contended that these were merely routed through Nirmal Kotecha for the sake of convenience and cannot in any manner be considered as Nirmal Kotecha's own investment or investments made on his advice. In this regard, I find that the Noticee is directly related to Nirmal Kotecha.

36. I note that Deepak Thakkar never traded in the shares of PSTL during the period June 01, 2008 to December 15, 2008. However, on December 16 & 17, 2008, he bought large quantity of PSTL shares, i.e. 19,758 shares and 80,000 shares, respectively, at an average cost of Rs.60.50 per share. The said shares (99,758 shares) were sold by Deepak Thakkar on December 22, 2008 at an average rate of Rs.81.31 per share thereby earning a profit of Rs. 2,075,858.50.

37. I further note that Deepak Thakkar entered into synchronized trades with Nirmal Kotecha on December 17, 2008. On December 17, 2008, Nirmal Kotecha sold 128,262 shares to APL Infrastructure Pvt. Ltd. and 5000 shares to Deepak Thakkar on BSE. As per SCN, examination of the said trades on December 17, 2008 revealed that:

    a) At 10:25:41 AM., Nirmal Kotecha placed a sell order, through the broker Kotak Securities Ltd. for 1,00,000 shares at Rs. 60.00 per share with a disclosed quantity of 14,000 shares.
    b) At.10:27:04 AM. Nirmal Kotecha placed second sell order, through the broker Kotak Securities Ltd. for 40,000 shares at Rs. 60.00 per share
    c) At 10:38:49 AM., APL Infrastructure Pvt. Ltd placed buy order through the broker Religare Securities Ltd. for 99,000 shares at Rs. 60.00 per share.
    d) At 10:38:50 AM the first sell order of Nirmal Kotecha and the buy order of APL Infrastructure Pvt. Ltd. got matched at the common order rate (i.e., Rs. 60.00 per share) for trade quantity 93,102 shares.

e) The balance portion of buy order of APL infrastructure Pvt. Ltd. (i.e., 5,898 shares) got traded with various third parties through 25 trades.

f) Thereafter, at 10:40:21 AM, APL Infrastructure Pvt. Ltd. placed its second buy order through the broker Religare Securities Ltd. for 40,000 shares at Rs. 60.00 per share.

g) At 10:40:21 AM., the second buy order of APL Infrastructure Pvt. Ltd. got matched with the balance quantity of Nirmal Kotecha's first sell order (i.e. 6,898 shares) at a price of Rs. 60.00 per share

h) At 10:40:21 AM., out of the balance portion of the second buy order of APL Infrastructure Pvt. Ltd., 28,262 shares got matched with second sell order of Nirmal Kotecha at a price of Rs. 69.00 per share.

i) The balance portion of the second buy order of APL Infrastructure Pvt. Ltd. (i.e., 4,840 shares) got traded with various third parties through eight trades.

j) At 10:49:26 AM, Deepak Thakkar placed buy order of 5,000 shares at a price of Rs. 60.00 per share.

k) Out of the balance portion of second sell order of Nirmal Kotecha, 5,000 shares got matched with Deepak Thakkar's aforesaid buy order at a price of Rs. 60.00 per share.

l) The balance portion of the second sell order of Nirmal Kotecha (i.e., 67,387) got traded with various third parties through 13 trades.

38. I note that Deepak Thakkar in his letter dated July 1, 2020 has contended that the said trades cannot be termed as synchronized trades since Nirmal Kotecha placed a sell order for 40,000 shares at a price of Rs. 60/- per share at 10:27:04 am. Subsequently, at 10:49:26 am he had placed a buy order of 5000 shares at the price of Rs. 60/- which got matched at 10:49:26 am. Therefore, there is difference of approximately 22 minutes in the distinct orders placed by Nirmal Kotecha and him and it is settled law that trading can be considered synchronized only in the event that trades match in under 60 seconds of them being placed on

the terminal. Deepak Thakkar has further contended that had there been any meeting of minds between him and Nirmal Kotecha, and the objective would have been to synchronize trades, there would not have been gap of 22 minutes in the trades and that Nirmal Kotecha could have either simultaneously or one after another placed order so as to match each other. Hence, the trades cannot be said to be synchronized.

39. I note that there is a time gap of approximately 22 minutes between the orders placed by Nirmal Kotecha and Deepak Thakkar and in normal circumstances, transaction with such a time gap in placement of buy and sell order, would not constitute as a synchronized transaction. However, in the present case, Deepak Thakkar had admittedly authorized Nirmal Kotecha to place orders on his behalf with the broker. Therefore, it is evident that Nirmal Kotecha was placing both the sell and buy order for the trades between himself and Deepak Thakkar and hence, his contention that there was no meeting of minds between him and Nirmal Kotecha cannot be accepted. Further, in a scenario where Nirmal Kotecha was placing orders for himself and also for Deepak Thakkar, he could see that his sell order for 40000 shares of PSTL was unexecuted in the order book for 22 minutes and thus placed a buy order of 5000 shares for Deepak Thakkar. I am also of the view that Deepak Thakkar has failed to explain the sudden and noticeable change in his trading pattern in the month of December, 2008 in the shares of PSTL, as it is observed that he did not trade at all in the scrip of PSTL from June 01 to December 15, 2008 and suddenly traded in huge quantity on December 16 and 17, 2008 and offloaded the entire shareholding in PSTL on December 22, 2008 before 10:30 am, thereby making a profit of Rs. 2,075,858.50.

40. I note that Deepak Thakkar had cross examined Amol Kokane on September 23, 2019 and though Amol Kokane had stated that he knew Deepak Thakkar, he denied that he had ever met or communicated with Deepak Thakkar and that he

has never discussed PSTL scrip with him. However, I find that statements of Amol Kokane are not relevant to establish the relationship of Deepak Thakkar with Nirmal Kotecha. Further, I note that it was Nirmal Kotecha who had traded through the account of Amol Kokane as well as from the account of Deepak Thakkar and hence, the absence of relationship of Deepak Thakkar with Amol Kokane does not bear any relevance to the allegations against Deepak Thakkar. Further, with regard to the contention on his dealings with Manilal Kotecha, the grandfather of Nirmal Kotecha and with Meera Venugopal, the wife of Dharmesh Shah, I find that it is irrelevant to deal with the same as his relationship with Nirmal Kotecha is clearly established by the fact that he is the maternal uncle of Nirmal Kotecha and he had authorized Nirmal Kotecha to place orders on his behalf, with Kotak.

41. I find that in the given circumstances of the matter where Nirmal Kotecha was the mastermind of the entire fraud as held in the SEBI Order dated March 22, 2018 and upheld by the Hon'ble SAT vide its Order dated March 02, 2020, it is difficult to accept that the trading by Deepak Thakkar in the scrip of PSTL was independent from the dealings of Nirmal Kotecha, particularly when he had authorized Nirmal Kotecha to place orders on his behalf. Therefore, it can be inferred that the trades of Deepak Thakkar were either placed by Nirmal Kotecha or placed on the advice of Nirmal Kotecha. Hence, in view of these facts and circumstances, I find that Deepak Thakkar, in connivance with Nirmal Kotecha, had in fact accumulated shares of PSTL, from December 16, 2008 to December 17, 2008 and sold all of these shares on December 22, 2008, with a view to make undue profits. Therefore, I find that Deepak Thakkar, has violated Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

Raju G. Shah:

42. I note that it is alleged in the SCN that Raju G. Shah is the cousin of Yatin B. Shah and hence, he was associated with Nirmal Kotecha through Yatin B. Shah.

I note that Yatin B. Shah was a close friend of Nirmal Kotecha and had made various calls to Nirmal Kotecha during the period when Raju G. Shah traded in the shares of PSTL. In this regard, Raju G. Shah in his letter has submitted that the fact that he was the cousin brother of Yatin B. Shah cannot be taken negatively against him without any direct evidence. Raju G. Shah submitted that he was not aware of the alleged conversations and alleged friendly relationship of Yatin B. Shah with Nirmal Kotecha and other persons/entities. Raju G. Shah has further submitted that the SCN has not indicated or relied on the evidence about there being conversation with the Noticee on 19th and 22nd December 2008 between the Yatin B. Shah and him and in the absence of this crucial nexus/evidence not on record, his relationship with Yatin B. Shah as cousin brother cannot be used for establishing his association with other entities such as Nirmal Kotecha and others as mentioned in the SCN.

43. I note that Yatin B Shah is not a Noticee in the present SCN. However, as noted in the aforesaid paras, it has been established that Yatin B. Shah is a close conduit and associate of Nirmal Kotecha vide SEBI Order dated March 22, 2018 against Nirmal Kotecha. Further, separate Adjudication proceedings vide show cause notice dated February 17, 2012, have been initiated against him in the matter as he was one of the main conduits of Nirmal Kotecha through whom various entities were connected to Nirmal Kotecha. I note that Raju G. Shah was financially dependent on Yatin B. Shah who had employed him. Vide the statement dated July 27, 2010 of Yatin B. Shah, it is observed that Yatin B. Shah was giving his cousin Raju G. Shah approx. Rs. 10,000/- p.m. to Rs. 11,000/- p.m. for the last 3-4 years. Hence, given that Raju G. Shah was employed with Yatin B. Shah and was financially dependent on him, gives rise to a reasonable inference that there was communication between the two. Therefore, I find the submissions of Raju G. Shah that there is no evidence to prove his association with Nirmal Kotecha as untenable.

44. I further note, from the trading details of Raju G. Shah as brought out in the SCN that Raju G. Shah was the top buyer and seller on gross basis on BSE and NSE on December 19, 2008. It is observed that on December 19, 2008, Raju G. Shah had entered into synchronized trades with SPJ Stock Broker Pvt. Ltd. On December 19, 2008, Raju G. Shah sold 25,000 shares to SPJ Stock Broker Pvt. Ltd. vide trade no. 2040 at 10:51:31 AM. As per SCN, examination of the order related to the said trade executed on December 19, 2008, revealed that:

    a) At 10:50:37 AM, Raju G. Shah placed a sell order, through the broker, India Capital Markets, 25,000 shares at Rs.73.25 per share.
    b) At 10:51:30 AM, SPJ Stock Broker Pvt. Ltd. placed a buy order, in its proprietary account for 30,000 shares at Rs. 73.25 per share.
    c) Thus, aforesaid sell order of Raju G. Shah got fully matched with aforesaid buy order of SPJ Stock Broker Pvt. Ltd for 25,000 shares at common order rate. Out of the balance quantity of SPJ Stock Broker Pvt. Ltd.'s buy order (i.e., 5,000), 500 shares got matched with lnventure Growth Securities Ltd and 2,500 shares got matched with various third parties through 10 trades.

45. Further, on December 19, 2008, Raju G. Shah purchased 12,000 shares from SPJ Stock Broker Pvt. Ltd. vide trade no. 2654 at 11:19:50 AM. Examination of the order related to the said trade revealed that:

    a) At 11:19:47 AM, SPJ Stock Broker Pvt. Ltd. placed a sell order, in its proprietary account for 12,000 shares at Rs. 72.00 per share.
    b) At 11:19:50 AM. Raju G. Shah placed a buy order, through the broker India Capital Markets Pvt. Ltd. for 15,000 shares at Rs. 72.00 per share
    c) Thus, aforesaid sell order of SPJ Stock Broker Pvt. Ltd. fully got matched with aforesaid buy order of Raju G. Shah for 12,000 shares at common order rate. Out of the balance quantity of Raju G. Shah's buy order (i.e., 3,000), 725 shares got matched with lnventure Growth Securities Ltd and 2,250 shares were got matched with various third parties through 21 trades.

46. I find from the above trade analysis that Raju G. Shah had entered into synchronized reversal transactions with SPJ Stock Broker Pvt. Ltd. Further, the call data records of Nirmal Kotecha show that Nirmal Kotecha was in touch with Yatin B. Shah, the cousin brother of Raju G. Shah on December 19, 2008, just prior to the execution of trades by Raju G. Shah with SPJ Stock Broker Pvt. Ltd. The details of the calls have been brought out in the SCN and it is observed that Nirmal Kotecha had *inter alia* made calls to Yatin B. Shah on December 19, 2008 at 10:18 and Yatin Shah had *inter alia* made calls to Nirmal Kotecha at 11:07. In view of the above, I find that Raju G. Shah was a front entity for Yatin B. Shah and had indulged in synchronized trades with SPJ Stock Broker Pvt. Ltd in the scrip of PSTL. Further, with regard to his contention that he had suffered a net loss of Rs. 9,946.30 on December 19, 2008, I find that the same is irrelevant to the findings that Raju G. Shah had indulged in manipulative trades as a loss per se is not a factor to prove that he was not involved in the fraudulent activity. The fraudulent intention of Raju G. Shah has been established from the relationship of the Noticee with Nirmal Kotecha and through his manipulative trading activity in the scrip of PSTL.

47. With regard to the allegations on last traded price (LTP), I note that there was significant rise in the price of the scrip of PSTL on three trading days, i.e., December 19, 2008 (price rise of Rs. 9.40), December 16, 2008 (price rise of Rs. 7.70) and December 15, 2008 (price rise of Rs. 6.30). I note that for the purpose of LTP analysis, the buy orders which resulted in the cumulative traded quantity of 5,000 shares or more along with a cumulative positive price impact of 25 paisa or more as compared to the last traded price was taken in the SCN.

48. I note that there were 19 buy orders, which caused a positive LTP impact of Rs. 11.60 and resulted in a cumulative traded quantity of 197,022 shares, on December 19, 2008 on BSE. From these 19 buy orders, it is seen that there were four trading clients who are directly or indirectly related to Nirmal Kotecha. Raju

G. Shah was one of the four trading clients who are alleged to have cumulatively traded 25,000 shares at a cumulative LTP difference of Rs. 1.65. With regard to the said allegations, Raju G. Shah has submitted that the order numbers given in the Tables in the SCN and the corresponding quantities along with LTP difference does not belong to him and even the total quantity indicated is more than the quantity traded by him. In this regard, as contended by Raju G. Shah, I find that the order numbers and corresponding quantities along with LTP difference pertaining to his trades on December 19, 2008 on BSE, as given in different tables in the SCN, do not match and appear to differ in each table. Further, I find that no trade logs or additional evidence has been provided in the SCN to verify the correct details. Hence, I find that the said allegation of LTP on December 19, 2008 on BSE in the SCN is not made out as the details pertaining to Raju G. Shah as given in the SCN appear to be incorrect and there is no further evidence in the SCN to hold the charge.

49. I further note that there were 10 buy orders, which caused a positive LTP impact of Rs. 8.10 and resulted in a cumulative traded quantity of 73,045 shares, on December 19, 2008 on NSE. Raju G. Shah was one of the trading clients who had placed buy orders for 5,000 shares at a price of Rs. 2.05 more than the last traded price and this order got fully executed. I find that Raju G. Shah had placed 12 buy orders on December 19, 2008 on NSE and only two out of the 12 orders were placed above LTP. Hence, having regard to the total number of buy orders placed by Raju G. Shah, as compared to number of buy orders placed above LTP, I find that t the charge of LTP manipulation on December 19, 2008 on NSE by Raju G. Shah as alleged in the SCN is not made out.

50. In view of my notings above, I find that Raju G. Shah had indulged in manipulative trades in the scrip of PSTL and therefore, has violated Section 12A of the SEBI Act, 1992 and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

Sharda Pujara

51. I observe that Sharda Pujara is the mother of Chirag Pujara who is known to Yatin B. Shah. Yatin B Shah, vide his statement dated July 27, 2010, stated that he knew Chirag Pujara, the nephew of Mahesh Pujara. He further stated that he was in touch with Chirag Pujara and Mahesh Pujara and that Chirag Pujara had bought a flat for his company. He further stated that he used to call Mahesh Pujara and Chirag Pujara on their respective mobile numbers 9820402025 and 9892110440. Further, I note that Yatin B. Shah has stated that he was introduced to Nirmal Kotecha by Mahesh Pujara. As noted in the aforesaid para, Yatin B. Shah was a close associate of Nirmal Kotecha and has been instrumental in the entire scheme of the fraud in the scrip of PSTL.

52. Sharda Pujara has submitted that she is wrongly connected and tied to Nirmal Kotecha and the basis for making her a part of the said Nirmal Kotecha group is erroneous and flawed. That she was neither asked to furnish any information nor was she called for recording her statement at the time of investigation. That it appears that she is included in the group only on the basis of the statements made by one Yatin B. Shah who is not even part of the alleged group in the SCN. Moreover, that she was not even given an opportunity to cross examine Yatin B. Shah. Hence, she does not accept any of the statements of Yatin Shah, made qua her and contends that his statements have been twisted to rope her in the matter.

53. In this regard, I observe that no proceedings have been initiated against Chirag Pujara and Mahesh Pujara nor have their statements been taken and provided for in the SCN. However, that Sharda Pujara's relationship with Nirmal Kotecha has been based on the statement of Yatin B. Shah on his relationship with Chirag Pujara and Mahesh Pujara. Hence, I agree with the views of Sharda Pujara that her association, as alleged in the SCN, is based solely on the statement made by Yatin Shah who is neither part of the SCN and nor are Chirag Pujara and

Mahesh Pujara through whom the relationship of the Noticee with Yatin B. Shah is alleged to be established. I also note that cross examination of Yatin Shah was not granted to Sharda Pujara. No further records to evidence her connection with Nirmal Kotecha has been brought on record. Since the connection of Sharda Pujara with Yatin Shah is not clear and not substantiated with further evidence in the SCN, her connection with Nirmal Kotecha, which is based on Yatin Shah's statement, cannot be established.

54. However, the trading pattern of Sharda Pujara reveals she has entered into various trades with entities who are associated with Nirmal Kotecha. I note that on December 08, 2008, Sharda Pujara was on one of the top five trading clients on BSE and NSE and had grossly traded 35,000 shares constituting 3.13% of the market traded quantity on BSE and grossly traded 30,000 shares constituting 1.77% of the market traded quantity on NSE. In this regard, it is observed that Sharda Pujara entered into reversal trades with entities who were associated with Nirmal Kotecha. As per SCN, the details of the reversal trades are as under:

    (i) On December 8, 2008, Sharda Pujara sold 10,000 shares of PSTL to Hardik M Mithani and Sharda Pujara bought back 20,074 shares from Hardik.M. Mithani on BSE and NSE taken together.

    (ii) On December 8, 2008, Sharda Pujara sold 1,588 shares of PSTL to SPJ Stock Broker Ltd. and Sharda Pujara bought back 1,000 shares from SPJ Stock broker Pvt. Ltd. on BSE and NSE taken together.

    (iii) On December 8, 2008, Sharda Pujara sold 3,726 shares of PSTL to lnventure Growth & Securities Ltd. and Sharda Pujara bought back 2,423 shares from lnventure Growth & Securities Ltd. on BSE and NSE taken together.

55. I note that the SCN alleges that Sharda Pujara entered into synchronized trades with entities associated with Nirmal Kotecha. The details of the trades are as under:

a) On December 08, 2008, Sharda Pujara purchased 7,900 shares vide trade no. 4422 from Hardik M. Mithani on BSE. Examination of the orders relating to the aforesaid trade revealed that

(i) At.,1:27:35 P.M., Sharda Pujara placed a buy order through the broker SPS Share Brokers Pvt. Ltd. for 10,000 shares at Rs. 51.35 per share.

(ii) At 1:33:22 P.M., Hardik M. Mithani placed a sell order through the broker Arcadia Shares and Stock for 8,000 shares at Rs. 51.80 per share

(iii) At 1:33:55 P.M., (i.e., 33 seconds later) Sharda Pujara revised her buy order rate at Rs. 52.00 per share

(iv) At 1:33:56 P.M., the aforesaid buy and sell orders got matched at the passive order rate (i.e., 51.80 per share) for 7,900 shares vide trade no. 4422.

(v) The balance portion of Sharda Purjara's sell order (i.e., 2,100 shares) got traded as under

a) At 1:34:07 P.M., lnventure growth and Securities Ltd. placed a sell order of 500 shares at a price of Rs. 52.00 per share. This order was got matched with sell order of Sharda Pujara for 500 shares at a price of Rs. 52.00 per share vide trade no. 4436

b) At 1:34:13 P.M., lnventure Growth and Securities Ltd. placed another sell order of 500 shares at a price of Rs. 52.00 per share. This order was got matched with sell order of Sharda Pujara for 212 shares at a price of Rs. 52.00 per share vide trade no. 4438. Out of the balance sell order of lnventure Growth and Securities Ltd., 2 shares got traded with two third parties. At 1:19 P.M., lnventure Growth and Securities Ltd. deleted unexecuted portion of his sell order (i.e. 286 shares = 500 - 214)

c) The balance portion of sell order of Sharda Pujara (i.e., 1,388 shares) got matched with various third parties through 18 trades.

(vi) The balance portion of buy order of Hardik M. Mithani, i.e., 100 shares (8,000 minus 7900), got traded with third parties which had revised it sell order price to Rs. 52.00 at 1:33:55 P.M. (the same time when Sharda Pujara revised her buy order rate).

(vii) SCN alleges that the sell order was placed earlier than the buy order. Therefore, the sell order became the passive order in the order book of the stock exchange and the buy order which was placed later was the active order. I note that as per the order matching mechanism of BSE (as well as NSE), if the active order is placed at a better rate than the passive order, the orders get matched and the trade gets executed at the passive order rate. Thus, in the instant case, though the buy order was placed at a rate higher than the sell order, the trade allegedly got executed at the passive order rate. Therefore, it was observed that the parties Sharda Pujara and Hardik Mithani tried to hoodwink the surveillance mechanism of the stock exchange by placing the buy order and sell order at different rates and at the same time attempted to ensure that their orders got matched with each other by using the order matching logic of the stock exchange to their advantage.

b) On December 8, 2008, Sharda Pujara purchased 12,126 shares vide trade no. 2008120834005307 and another 48 shares vide trade no. 20081208005303 from Hardik M Mithani on NSE. Examination of the orders relating to the aforesaid trades revealed that

(i) At 12:11:24 P.M., Hardik M Mithani placed a sell order through the broker Arcadia Share & Stock Broker Pvt. Ltd., for 13,474 shares at Rs. 51.50 per share.

(ii) At 12:12:15 P.M. (after 51 seconds) Sharda Pujara placed a buy order through the broker SP Share Brokers Pvt. Ltd. for 15,000 shares at Rs. 51.50 per share.

(iii) At. 12:12:5 P.M., the aforesaid buy and sell orders got matched at the common order rate (i.e., 51.50 per share) for trade quantity of 12,174 shares.

(iv) The balance portion of Sharda Pujara's buy order got executed as under:

a) At 12:12:45 P.M., Inventure Growth & Securities Ltd. placed a sell order through the broker Inventure Growth & Securities Ltd., for 500 shares at Rs. 51.65 per share. At 12:13:24 P.M Inventure Growth & Securities Ltd. revised the price of the sell order to Rs. 51.50 per share.

b) At 12:13:24 P.M., this sell order got matched with by order of Sharda Pujara for 500 shares at the common order rate of Rs.51.50 per share.

c) The balance portion of Sharda Pujara's buy order (i.e. 2326 shares) got matched with various third parties through 10 trades.

(v) The balance portion of Hardik Mithani's sell order (i.e, 1,300 shares) got matched with various third parties through 19 trades.

c) On December 08. 2008, Hardik M. Mithani purchased 10,000 shares vide trade no. 3545 from Sharda Pujara on BSE. Examination of the orders relating to the aforesaid trade revealed that:

(i) At 12:20:42 P.M. Sharda Pujara placed a sell order through the broker SPJ Share Brokers Pvt. Ltd. for 10,000 shares at Rs. 51.70 per share.

(ii) At 12:21:06 P.M., (after 24 Seconds) Hardik M. Mithani placed a buy order through the broker Arcadia Shares and Stock for 12,000 shares at Rs. 52.00 per share

(iii) At 12:21:07 P.M., the foresaid buy and sell orders got matched at the passive order rate (i.e. Rs. 51.70 per share) for trade quantity of

10,000 shares.

(iv) The balance portion of Hardik M. Mithani's buy order (i.e. 2,000 shares) got executed as under:

a) At 12:20:28 P.M., SPJ Stock Broker Pvt. Ltd. placed a sell order through the broker Arcadia Shares and Stock for 500 shares at Rs. 51.80 per share. The aforesaid sell order got matched with the buy order of Hardik M. Mithani's for 500 shares at the passive order rate (i.e., Rs. 51.80 per share).

b) At 12:08:29 P.M., Inventure Growth & Securities Ltd. placed a sell order in its proprietary account for 1,000 shares at Rs. 52:00 per share. At 12:18:21 P.M., Inventure Growth & Securities Ltd. revised the price to Rs. 51.85 per share. At 12:18:24 P.M., Inventure Growth & Securities Ltd. increased the sell order quantity by 200 shares. At 12:20:50 P.M. Inventure Growth & Securities Ltd. revised the price to 51.95 per share. At 12:21:07 the aforesaid sell order of lnventure Growth & Securities Ltd. got matched with the buy order of Hardik M. Mithani's for 1,191 shares at the passive order rate (i.e 51.95 per share). Thereafter, at 12:30:51 pm., Inventure Growth & Securities Ltd. deleted the unexecuted portion of its sell order.

c) The balance portion of Hardik M. Mithani's buy order (i.e., 309 shares) got matched with various third parties through 12 trades.

(v) It is observed that that the parties again tried to hoodwink the surveillance mechanism of the stock exchange by placing the buy order and sell order at different rates and at the same time attempted to ensure that their orders got matched with each other by using the order matching logic of the stock exchange to their advantage.

56. With regard to the above allegations of reversal trades and synchronized trades, Sharda Pujara has submitted that if the orders were pre-decided between her

and Hardik Mithani as alleged then there has to be prior meeting of minds and collaboration. However, she doesn't even know who Hardik Mithani is and there is no connection alleged between her and Hardik Mithani in the SCN. Sharda Pujara has further contended that normal matching of orders through price time matching algorithm too has been treated as synchronized trades.

57. In this regard, I find from the transactions entered into between her and entities associated with Nirmal Kotecha, it is evident that she was connected with the counter party as she had executed multiple number of synchronized trades. As noted above, she was one of the top five trading clients on BSE and NSE and had grossly traded 35,000 shares 35,000 shares on BSE and 30,000 shares on NSE on December 08, 2008. I further note that the execution of trades by Sharda Pujara was not an isolated instance but multiple number of such transactions were carried out with multiple entities associated with Nirmal Kotecha, which clearly establishes the malafide intent of Sharda Pujara and her association with Nirmal Kotecha group. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL, which establishes the malafide intention of Sharda Pujara. In view of the same, I find that the submissions of Sharda Pujara are untenable.

58. I note that the Hon'ble SAT in Ketan Parekh vs. SEBI (Order dated July 14, 2006 in Appeal No. 2 of 2004) had held that:

"….in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."

59. I note that direct evidence is rarely forthcoming in cases of synchronized trades and the evidence must be based on the facts and circumstances of each case. In this regard, I place reference on the Order of the Hon'ble Supreme Court, in

the matter SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368 wherein, it had held that:

"…..While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt."

60. In view of the above, I find that Sharda Pujara has violated Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

Meet Shares and Stock Service Pvt. Ltd.

61. I note from the SCN that Meet Shares and Stocks Services Pvt. Ltd. (hereinafter referred to as "MSSSPL") had given trading authorization on December 18, 2006 to C.N. Pujara to place orders on behalf of the MSSSPL. MSSSPL had entered into a tripartite agreement on December 18, 2006 with SPS Share Brokers Pvt. Ltd. (broker) and C.N Pujara (sub broker) for the same. I note that C.N. Pujara is the husband of Sharda Pujara and the father of Chirag Pujara, who is connected to Nirmal Kotecha through Yatin B. Shah. MSSSPL in its reply has submitted that they were neither asked to furnish any information nor were they called for recording their statement in the course of investigation. That they are included in the group only on the basis of some bald statements made by one Yatin Shah and that they were not given an opportunity to cross examine Yatin Shah and hence, do not accept any of the statements of Yatin Shah, made qua them as it appears that his statements have been twisted to rope them in the matter. They also submitted that they did not consult CN Pujara while taking their business/commercial decisions. That the tri-partite agreement dated December

18, 2006 was a SEBI prescribed legal requirement and Chirag Pujara had no role, involvement and participation into their business affairs.

62. In this regard, I note that the connection of MSSSPL with Nirmal Kotecha is sought to be established through its sub-broker CN Pujara who is the husband of Sharda Pujara and father of Chirag Pujara, and through Mahesh Pujara who is the uncle of Chirag Pujara. However, I note that no proceedings have been initiated against C.N. Pujara, Chirag Pujara and Mahesh Pujara nor have their statements been taken and provided for in the SCN. However, MSSSPL's relationship is based on the statement of Yatin B. Shah on his relationship with Chirag Pujara and Mahesh Pujara. I also note that cross examination of Yatin Shah was not granted to MSSSPL. No further records to evidence its connection with Nirmal Kotecha has been brought on record. Since the connection of MSSSPL with Yatin Shah is not clear and not substantiated with further evidence in the SCN, MSSSPL's connection with Nirmal Kotecha, which is based on Yatin Shah's statement, cannot be established.

63. However, I note from records that MSSSPL has entered into various trades with entities who are associated with Nirmal Kotecha. In this regard, I also note that MSSSPL was one of the top five trading clients on gross trading basis on December 08, 2008 on NSE. The percentage contribution of the Noticee was 6.62% of the market traded quantity on December 08, 2008 and it is noted that it had bought and sold the same quantity of shares and had nil position at the end of the trading day. I further note that MSSSPL had entered into reversal trades with entities who were associated with Nirmal Kotecha. The details of the reversal trades are as under:

    (i) On December 8, 2008, Inventure Growth & Securities Ltd. sold 18,233 shares of PSTL to MSSSPL and Inventure Growth & Securities Ltd. bought back 8,158 shares from MSSSPL on BSE and NSE taken together.

(ii) On December 8, 2008 MSSSPL sold 12,367 shares of PSTL to Hardik M. Mithani and MSSSPL bought back 15,800 shares from Hardik M Mithani on BSE and NSE taken together.

64. I also note that MSSSPL had entered into synchronized trades with entities associated with Nirmal Kotecha. The details of the trades are as under:

a) On December 8, 2008, MSSSPL sold 900 shares to Hardlk M. Mithani vide trade no. 2008120833773316 and 6,171 shares vide trade no. 2008720833773319 on NSE. Examination of the orders relating to the aforesaid trade revealed that

(i) At 11:07:07 A.M., MSSSPL placed a sell order through the broker SPS Share Brokers Pvt. Ltd. for 9,000 shares at Rs. 49.85 per share.

(ii) At 11:07:19 AM., Inventure Growth & Securities Ltd. placed a sell order in its proprietary account for 500 shares at Rs. 49 as per share

(iii) At 11:07:42 AM., Inventure Growth & Securities Ltd. placed another sell order for 200 shares at Rs. 49.80 per share.

(iv) At 11:08:01 A.M. (after 54 seconds) Hardik M. Mithani placed a buy order through the broker Arcadia shares and Stock Broker Pvt. Ltd. for 10,000 shares at Rs. 59.00 per share

(v) The aforesaid buy and sell orders got matched and traded as under:

a) The buy order of Hardik M Mithani and sell order of Inventure Growth & Securities Ltd. got matched for traded quantity of 200 shares at 11:07:19 A.M. and another 500 shares at 11:07:42 AM. vide trade no. 2008120833773310 and vide trade no. 2008120833773317 respectively.

b) Further, the buy order of Hardik. M Mithani and sell order of MSSSPL got matched for 6,171 shares and 900 shares vide trade no 2008120833773319 and vide trade no. 2008120833773316 respectively at 11:08:01 A.M.

(vi) Out of the balance portion of MSSSPL's sell order (i.e. 1,929 shares), 1,200 shares got matched with three third parties at a price range of Rs. 49.85 per share to Rs. 50.00 per share. The balance portion of Hardik M Mithani's buy order (i.e. 300 shares) got matched with a third party for 300 shares at a price of Rs. 49.60 per share.

b) On December 8, 2008, MSSSPL purchased 5,000 shares from Hardik M. Mithani vide trade no.2008120833804285 on NSE. Examination of the orders relating to the aforesaid trade revealed that:

(i) At 11:15:51 AM., Hardik M Mithani placed a sell order for 5,000 shares at Rs. 50.60 per share.

(ii) At 11:16:25-AM., MSSSPL placed a buy order for 10,000 shares at Rs. 50.70 per share.

(iii) At 11:16:25 AM., the aforesaid buy and sell order matched vide trade no. 2008120833804285 at the passive order rate (i.e. Rs. 50.60 per share) for trade quantity of 5,000 shares.

(iv) Out of the balance portion of MSSSPL buy order, 1,270 shares got matched with the following sell orders of Inventure Growth and Securities Ltd:

a) At 11:15:09 AM., Inventure Growth & Securities Ltd. placed a sell order for 100 shares at Rs. 50.70 per share.

b) At 11:16:29 A.M., Inventure Growth & Securities Ltd. placed another sell order for 500 shares at Rs. 50.50 per share.

c) At 11:16:29 AM., Inventure Growth & Securities Ltd placed another sell order for 500 shares at Rs. 50.70 per share.

d) At 11:16:29 AM., Inventure Growth & Securities Ltd. placed another sell order for 170 shares at Rs. 50.70 per share.

(v) The balance portion of MSSSPL's buy order (i.e. 3,730 shares) got matched with various third parties through 28 trades.

65. Further, with regard to allegations of LTP in the SCN, I observed that on December 19, 2008 on BSE, there were 19 buy orders which caused a positive LTP impact of Rs. 11.60 and resulted in a cumulative traded quantity of 197,022 shares. I observed that MSSSPL was one of the trading clients who had placed only one buy order for 7,500 shares at a price of Rs. 0.75 more than the last traded price and this order got fully executed. In this regard, I am inclined to find that there is only one instance of variance from the LTP for only 7,500 shares and hence, MSSSPL cannot be attributed with manipulative contribution to LTP.

66. With regard to the aforesaid reversal and synchronized transactions, MSSSPL has submitted that they do not know who Inventure Growth & Securities Pvt. Ltd or Hardik M. Mithani is and that no relationship has been established with these entities in the SCN. MSSSPL has also contended that the trade data furnished in the SCN did not include unexecuted orders, modified orders and cancelled orders, which would throw light on the total number of orders keyed into the system and show the history of how each order eventually got fully executed into trades. That in order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders and executed within the group and executed outside the group. Further, MSSSPL contended that the alleged synchronized/reversal trades of one day were just normal intraday trades and cannot be considered as fraudulent/fictitious trades. MSSSPL also contended that some stray, partial market orders of theirs that got converted into trades with some parties, who may have been associated with Nirmal Kotecha, cannot be used to connect them to Nirmal Kotecha.

67. In this regard, I note that no connection between MSSSPL with Inventure Growth & Securities Pvt. Ltd or Hardik M. Mithani, who are entities associated with Nirmal Kotecha, has been made out in the SCN. However, from the transactions entered into between MSSSPL and entities associated with Nirmal Kotecha, I am of the view that MSSSPL had connection with the counter party as it had executed large

number of synchronized trades. As noted above, it was one of the top five trading clients on NSE and the percentage contribution of MSSSPL was 6.62% of the market traded quantity on December 08, 2008. Further, I find that the execution of trades by MSSSPL was not an isolated instance but multiple number of such transactions were carried out with multiple entities associated with Nirmal Kotecha, which clearly establishes the malafide intent of MSSSPL and its association with the Nirmal Kotecha group. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL which leads to the malafide intention of MSSSPL. In this regard, I place reference on the Order of the Hon'ble Supreme Court, in the matter SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368 wherein, it had held that:

" While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

The conclusion has to be gathered from various circumstances like the volume of the trade affected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. ..." (emphasis supplied)

68. Further, with regard to the MSSSPL's contention that the trade data furnished in the SCN did not include unexecuted orders, modified orders and cancelled orders, I find that the same is untenable and irrelevant. MSSSPL has entered

into multiple synchronized and reversal trades with entities associated with Nirmal Kotecha and such are the attending circumstances from which it is evident that MSSSPL had colluded with associates of Nirmal Kotecha in creating artificial volume in the scrip of PSTL. Further, I find the contention of MSSSPL that the alleged synchronized/reversal trades of one day cannot be considered as fraudulent/fictitious is without substance as it is evident that these trades were not stray or partial market orders as contended, but contributed to 6.62% of the market traded quantity on December 08, 2008. Further, considering the matching of quantity, price and time and sale in the said transactions, it would be naive to hold that such transactions were by mere coincidence, as also held by the Hon'ble Supreme Court in its judgment in SEBI Vs. Kishore Ajmera (Supra).

69. Thus, from the aforesaid transactions, I find that MSSSPL had entered into reversal and synchronized transactions with Hardik M. Mithani and Inventure Growth and Securities Ltd., who were entities associated with Nirmal Kotecha. In view of the above, I find that Meet Shares and Stocks Services Pvt. Ltd. has violated Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

Mukesh Jain

70. I note that the SCN has alleged that one “Mukesh Jain”, who was a director of Bihar Tubes Limited was the top buyer of PSTL shares on December 16, 2008 on BSE and NSE. Further, it was alleged that as per the UCC database of BSE the contact no. of Mukesh Jain was 22373437, which is also the contact no. of APL Infrastructure Private Ltd, a company which is associated with Nirmal Kotecha through its director Sanjay Gupta. Sanjay Gupta, vide his statement dated April 30, 2010 has submitted that he was the Managing Director of Bihar Tubes Ltd. and Director of APL Infrastructure Ltd and that Mukesh Jain was the new director in their company Bihar Tubes Ltd. Investigation revealed that Sanjay Gupta was in constant touch with Nirmal Kotecha. Hence, Mukesh Jain was alleged to have been associated with Nirmal Kotecha through Sanjay Gupta.

71. I note that the Mukesh Jain, upon whom the SCN was served, has submitted that he is in no way related to the entire issue raised *qua* one “Mukesh Jain” in the present case. He has claimed that he is not the director of Bihar Tubes Limited as alleged in the SCN. That he has examined the records of the Ministry of Corporate Affairs and that the details of ‘Mukesh Jain' who is the director of Bihar Tubes Ltd is “Mukesh Jain S/o Hari Chand Jain, R/o 5/103, Gajju Katha, Shahdara, Delhi-110032”. However, his details are “Mukesh Jain S/o Jai Prakash Jain, R/o D-213, Vivek Vihar, New Delhi-1100095, PAN: ACBPJ9682J”. Further, that from the Form 32 of the records with the Ministry of Corporate Affairs, ‘Mukesh Jain', the director of Bihar Tubes Ltd. had ceased to be the director of the company with effect from July 02, 2010 due to his unfortunate demise. I note that Sanjay Gupta in his submissions has also stated that the Mukesh Jain who was appointed as the director of Bihar Tubes Limited is not the Mukesh Jain who has traded in the scrip of PSTL. That the Mukesh Jain, who was a director of Bihar Tubes Limited was appointed as the director on April 30, 2009 and due to his death ceased from holding directorship of Bihar Tubes Ltd. w.e.f. July 02, 2010 and his PAN no. is AAQPJ3637G.

72. Therefore, I note that the Mukesh Jain who has been issued the SCN is the person who has actually traded in the scrip of PSTL. However, that his relation to Nirmal Kotecha in the SCN has been mistaken for another Mukesh Jain, who was a director of Bihar Tubes Ltd. and is now deceased. Accordingly, I find that the SCN has been served upon the right Mukesh Jain who has traded in the scrip of PSTL, however, his relationship or connection with Nirmal Kotecha has been incorrectly made in the SCN.

73. Nonetheless, I note that on December 16, 2008, the total traded volume on BSE and NSE was 10,19,838 shares and 10,03,863 shares respectively in the scrip of PSTL. The Noticee Mukesh Jain was the top buying client in the scrip of PSTL

on December 16, 2008 and had bought 1,50,000 shares on BSE and 1,40,000 shares on NSE, which was 14.33% of the total traded quantity. I note that on December 16, 2008, Mukesh Jain had purchased 45,114 shares at 2:57:41 P.M. and further purchased 3,877 shares from Nirmal Kotecha and 2:57:52 P.M. at the rate of Rs. 60.00 per share. Examination of the orders relating to the aforesaid trade revealed that:

a) At 2:57:39 P.M., Mukesh Jain placed a buy order, through the broker Integrated Master Securities for 50,000 shares at, Rs. 60.00 per share.
b) At 2:57:41 P.M., Nirmal Kotecha placed a sell order through the broker JM Financial Services Pvt. Ltd for 50,000 shares at Rs. 60.00 per share.
c) At 2:57:41 P.M., the aforesaid buy and sell orders got matched at the Common order rate (i.e. 60.00 per share) for trade quantity of 45,114 shares.
d) The balance Mukesh Jain order (i.e. 4,886 shares) got matched with various third parties through 16 trades.
e) At 2:57:52 P.M., Mukesh Jain placed a second buy order, through the broker Integrated Master Securities for 40,000 shares at price of, Rs. 60.00 per share.
f) At 2:57:52 P.M., Mukesh Jain's second buy order got matched with balance portion of Mr. Nirmal Kotecha sell order for 3,877 shares at the common order rate at Rs. 60.00 per.
g) The balance of portion of Nirmal Kotecha's sell order (i.e. 1,009 shares) got matched with third parties.
h) The balance portion of Mukesh Jain's second buy order (i.e. 36,123) got traded with various third parties through 65 trades.

74. From the above, Mukesh Jain is observed to have purchased 45,114 shares and further 3,877 shares from Nirmal Kotecha at Rs.60.00 per share at 14:57:41 and 14:57:52 respectively through the above synchronized trades. In this regard, Mukesh Jain has contended that the allegations of synchronized trading against

him in the SCN are false and frivolous and that he was unaware as to the seller of the shares on December 16, 2008. That the transactions were merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business.

75. In this regard, I note that the SCN had mistakenly alleged that the Noticee was the director of Bihar Tubes Limited and associated him to Nirmal Kotecha through Sanjay Gupta. However, from the transactions entered into between Mukesh Jain with Nirmal Kotecha, I find it evident that the Noticee Mukesh Jain was connected with Nirmal Kotecha as he had executed synchronized trades with Nirmal Kotecha. As noted above, he was the top trading client on NSE and BSE and the percentage contribution of the Noticee was 14.33% of the total traded quantity on December 16, 2008. Further, I find that the execution of trades by Mukesh Jain was not an isolated instance but multiple number of such transactions were carried out with none other than Nirmal Kotecha himself, which clearly establishes the malafide intent of Mukesh Jain and his association with Nirmal Kotecha. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL which leads to the malafide intention of Mukesh Jain. In this regard, I place reference to the Order of the Hon'ble Supreme Court in the matter of SEBI Vs. Kishore R. Ajmera (*Supra*), wherein, it was held that the test to establish the meeting of minds is on the preponderance of probabilities, which in my opinion, has been established from the trading pattern of the Noticee.

76. In view of the above, I find that the malafide intention of Mukesh Jain to manipulate the scrip of PSTL is evident from the attending circumstances of the case that the Noticee entered into multiple synchronized transactions with Nirmal Kotecha. Further, considering the matching of quantity, price and time and sale in the said transactions, it would be too naive to hold that such transactions of Mukesh Jain with Nirmal Kotecha were by mere coincidence. Further, with regard

to his contention that he had suffered a loss on account of his trading in PSTL, I find that the same is irrelevant to the findings that he had indulged in manipulative trades as a loss per se is not a factor to prove that he was not involved in the fraudulent activity. Thus, the intention of Mukesh Jain has been established from his relationship with Nirmal Kotecha through their manipulative trading activity in the scrip of PSTL.

77. Further, with regard to allegations of LTP, the buy orders which resulted in cumulative traded quantity of 5,000 shares or more along with a cumulative price impact of 25 paisa or more as compared to the LTP were examined and it was revealed that Mukesh Jain had placed 5 buy orders in PSTL shares on December 16, 2008 for quantities of 5,000 shares or more, as detailed in the SCN. I note that out of the five buy orders placed by the Noticee Mukesh Jain, three buy orders were placed above LTP for 1,00,000 shares. I observe that one of the buy orders was placed for 10,000 shares at a price of Rs.0.70 more that the last traded price and this order got fully executed. The other two orders above LTP were also fully executed and these orders caused a positive impact on the traded price of PSTL shares on BSE on December 19, 2008. Further, I note that he had placed two buy orders below LTP for 25,000 shares each and these orders got fully executed. In this regard, the Noticee has contended that it is a normal practice of the market to place buy orders at process higher than LTP in case any person is interested in buying a scrip, as there are more chances of the said transaction being completed. However, I find the contention untenable as he has placed orders above LTP and also below LTP on December 16, 2008. Given the circumstances that Mukesh Jain has entered into multiple synchronized transactions with Nirmal Kotecha, the malafide intent of the Noticee is further resonated with his actions to place buy orders above LTP for 1,00,000 shares which caused a positive impact on the trading price of PSTL shares. In this regard, I place reference to the order dated March 21, 2014 of the Hon'ble SAT in the matter of Saumil Bhavanagari v/s SEBI, wherein it was held that:

"*It is amply clear that although the scrip was available at a lower price, the Noticees bought them at a higher price only with a view to give false representation to the general public about the rise in price of the scrip. This was repeatedly done by the Noticees. Such trades undoubtedly have a potential of raising the price of the scrip by sending a wrong signal to the gullible investors about the activity of price hike in the scrip.*

..... This was done evidently with ulterior motives, because if shares were available for a lesser price, there was no reason to place orders at a price higher than the LTP and if orders at price higher than LTP were placed on account of the financial status of the company then there was no reason to place some orders below LTP.'

78. In view of the above, I find that Mukesh Jain has violated Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003.

Sanjay Gupta

79. I note that Sanjay Gupta is the Managing Director of APL Infrastructure Ltd. and Bihar Tubes Ltd. I note that he has not traded in the scrip of PSTL in his individual capacity and the allegations in the SCN are with regard to his role as the Managing Director of APL Infrastructure Ltd. and Bihar Tubes Ltd, which were also alleged to have entered into manipulative trades in the scrip of PSTL.

80. In this regard, I note that Bihar Tubes Ltd is not a Noticee in the present SCN and no proceedings have been initiated against it in the present matter. With regard to APL Infrastructure Ltd., I note that a separate show cause notice was issued to APL Infrastructure Ltd. and vide order dated December 27, 2011, it was *inter alia* held that APL Infrastructure Ltd. had entered into synchronized trades with Nirmal Kotecha and colluded with Nirmal Kotecha and his associates in creating artificial volumes in the scrip of PSTL and thereby, was found to have violated relevant provisions of the SEBI Act, 1992 and PFUTP Regulations.

81. Therefore, I find that there is no requirement to delve into the details of alleged violations of APL Infrastructure Ltd. as it has already been decided upon. However, I shall highlight upon the synchronized trades entered into by the Company with Nirmal Kotecha as alleged in the present SCN. In this regard, I note that on December 17, 2008 APL Infrastructure Pvt. Ltd. was the largest buying client and Nirmal Kotecha was the largest selling client on BSE and NSE. APL Infrastructure Pvt. Ltd. had purchased 2,80,000 shares, i.e. 21.52% of the total traded quantity in the scrip of PSTL on December 17, 2008. Examination of the trades had revealed that APL Infrastructure Pvt. Ltd. and Nirmal Kotecha were the counterparties to each other. On December 17, 2008, Nirmal Kotecha sold 128,262 shares to APL Infrastructure Pvt. Ltd. and 5,000 Shares to Deepak Thakkar on BSE. Examination of the orders relating to the aforesaid trade revealed that:

a) At 10:25:41 AM., Nirmal Kotecha placed a sell order, though the broker Kotak Securities Ltd for 1,00,000 shares at Rs. 60.00 per share with a disclosed quantity of 14,000 shares.
b) At.10:27:04 AM. Nirmal Kotecha placed second sell order, through the broker Kotak Securities Ltd. for 40,000 shares at Rs. 60.00 per share
c) At 10:38:49 AM., APL Infrastructure Pvt. Ltd placed buy order through the broker Religare Securities Ltd. for 99,000 shares at Rs. 60.00 per share.
d) At 10:38:50 A.M the first sell order of Nirmal Kotecha and the buy order of APL Infrastructure Pvt. Ltd. got matched at the common order rate (i.e. Rs. 60.00 per share) for trade quantity 93,102 shares.
e) The balance portion of buy order of APL infrastructure Pvt. Ltd. (i.e. 5,898 shares) got traded with various third parties through 25 trades.
f) Thereafter at 10:40:21A.M., APL Infrastructure Pvt. Ltd. placed its second buy order through the broker Religare Securities Ltd. for 40,000 shares at Rs. 60.00 per share.
g) At 10:40:21 AM., the second buy order of APL Infrastructure Pvt. Ltd.

got matched with the balance quantity of Nirmal Kotecha's first sell order (i.e. 6,898 shares) at a price of Rs. 60.00 per share

h) At 10:40:21 AM., out of the balance portion of the second buy order of APL Infrastructure Pvt. Ltd., 28,262 shares got matched with second sell order of Nirmal Kotecha at a price of Rs. 69.00 per share.

i) The balance portion of the second buy order of APL Infrastructure Pvt. Ltd. (i.e. 4,840 shares) got traded with various third parties through eight trades.

j) At 10:49:26 A.M. Deepak Thakkar placed buy order of 5,000 shares at a price of Rs. 60.00 per share

k) Out of the balance portion of second sell order of Mr. Nirmal Kotecha, 5,000 shares were got matched with Deepak Thakkar's aforesaid buy order at a price of Rs. 60.00 per share

l) The balance portion of the second sell order of Nirmal Kotecha (i.e. 67,387) got traded with various third parties through 13 trades.

82. I note that there was a time difference of 13:08 minutes between the placing of APL Infrastructure Pvt. Ltd.'s buy order and the placing of Nirmal Kotecha's sell order (i.e. 10:38:49 AM minus 10:25:41 AM). However, examination of trade logs of PSTL shares on December 17, 2008 revealed as follows:

a) At 10:25:41 A.M., when Nirmal Kotecha placed his sell order at Rs. 60.00 per share, the last traded price was 58.15. Thus Nirmal Kotecha had placed a sell order at a price which was higher than the last traded price by Rs. 1.85 per share.

b) During the time period between 10:25:41 AM and 10:38:49 AM (i.e. between the placing of Nirmal Kotecha's sell order and the placing of APL Infrastructure Pvt. Ltd.'s buy order), PSTL shares were being traded on BSE at price range of Rs. 58.40 per share to 59.20 per share

c) Therefore the sell order of Nirmal Kotecha remained unexecuted in the order book of the stock exchange.

d) Thereafter at 10:38:49 A.M, APL Infrastructure Pvt Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of Nirmal Kotecha which was pending in the Order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share

e) Thus the trade between Mr. Nirmal Kotecha and APL Infrastructure Pvt. Ltd. resulted in an increase in the traded price of PSTL on BSE on December 17, 2008 and the market traded price of PSTL became Rs. 60.00 per share.

83. Further, on December 17, 2008 APL Infrastructure Pvt. Ltd. purchased 96,049 shares from Nirmal Kotecha through eight trades on NSE. Examination of the orders relating to the aforesaid trades revealed that:

a) At 10:27:25 A.M., Nirmal Kotecha placed sell order for 1,40,000 shares at Rs. 60.00 per share with a revealed quantity of 14,000 shares.

b) At 10:44:04 A.M., APL infrastructure Pvt. Ltd. placed a buy order for 99000 shares at Rs.60.00 per share.

c) Thereafter, at 10:44:30 A.M., APL infrastructure Pvt. Ltd. placed another buy order for 1,000 shares at Rs. 60.00 per share.

84. The aforesaid buy and sell orders of APL Infrastructure Pvt. Ltd. and Nirmal Kotecha got matched as follows:

a) 14000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M vide trade no. 2008121733689162.

b) 14,000 shares got matched at Rs. 60.00 per share at 10:44:04AM vide trade no. 2008121733689179.

c) 14,000 shares got matched at Rs. 60.0 per share at 10:44:04 AM vide trade no. 2008121733689185.

d) 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 AM vide trade no. 2008121733689190.

e) 14,000 shares got matched at Rs.60.00 per share at 19:44:04 AM vide trade no. 2008121733689195.
f) 14,000 shares got matched at Rs.60.00 per share at 10:44:04 AM vide trade no. 2008121733689200.
g) 11,928 shares got matched at Rs.60.00 per share at 10:44:04 AM vide trade no. 200812173368920.
h) 121 shares got matched at Rs. 60.00 per share at 10:44:30 AM vide trade no. 2008121733692260.
i) The balance portion of buy order of APL Infrastructure Pvt. Ltd. (i.e. 3,951 shares) got matched with various third parties through 50 trades.
j) The Balance portion of sell order of Nirmal Kotecha (i.e. 808 shares) got matched with various 'third parties through seven trades. Further, at 10:48:35 AM. Nirmal Kotecha deleted the unexecuted portion of his sell order (i.e. 43,143 shares).

85. It was observed that there was a time difference of 16:39 minutes between APL Infrastructure Pvt. Ltd.'s aforesaid buy order placement time and Nirmal Kotecha's sell order placement time (i.e., 10:44:04 A.M minus 10:27:25 A.M.). However, examination of the trade logs for the aforesaid period revealed as follows:
    a) At 10:27:25 A.M., when Nirmal Kotecha placed his sell order at Rs. 60.00 per share, the last traded price was Rs. 58.75. Thus Nirmal Kotecha had placed a sell order at a price which was higher than the last traded price by Rs. 1.25 per share
    b) During the time period between 10;27:25 A.M and 10:44:04 A.M (i.e. between the placing of Nirmal Kotecha's sell order and the placing of APL Infrastructure Pvt. Ltd.'s buy order, PSTL shares were being traded on NSE at price range of Rs. 58.00 per share to Rs. 59.50 per share.
    c) Therefore the sell order of Nirmal Kotecha remained unexecuted in the order book pf the stock exchange.

d) Thereafter at 10:44:04 AM APL Infrastructure Pvt. Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of Nirmal Kotecha which was pending in the order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share

Thus the trade between Nirmal Kotecha and APL Infrastructure Pvt. Ltd. resulted in an increase in the traded price of PSTL on BSE on December 17, 2008 and the market traded price of PSTL became 60.00 per share.

86. From the above transactions, it is evident that APL Infrastructure Pvt. Ltd. had entered into synchronized trades with Nirmal Kotecha. Considering the matching of quantity, price and time and sale in the said transactions, it would be naive to hold that such transactions were by mere coincidence. Hence, I observe that APL Infrastructure Pvt. Ltd. had entered into synchronized trades with Nirmal Kotecha and colluded with Nirmal Kotecha and his associates in creating artificial volumes in the scrip of PSTL. In light of the above, I will now proceed to examine the role of Sanjay Gupta as a Managing Director of APL Infrastructure Ltd. and whether he is responsible and liable for the violations committed by APL Infrastructure Ltd. in the scrip of PSTL.

87. Sanjay Gupta has submitted that, as already explained in his statements dated April 30, 2010 made before SEBI, investment decisions were taken by the experts in the company on their own understanding of the market and he did not deal with the day-to-day affairs of the Company. That the experts of the company were Pankaj Gupta, the head of accounts department and Ajay Garg, the General Manager for Purchase and Accounts department of the Company. Further, Pankaj Gupta used to generally place the order with the broker and he was not involved in placing the order with the broker.

88. In this regard, I observe that as per his statements dated April 30, 2010, on being asked who takes the decision to purchase and sell in the shares of PSTL in the name of Bihar Tubes and APL Infra, Sanjay Gupta has stated that for purchase, the decision is taken by Ajay Garg and Pankaj Gupta and for sale he also takes the decision. Further, with regard to the query on whether Ajay Garg and Pankaj Gupta would take his approval before taking any investment decisions, he has stated that "sometimes before, sometimes after investment'. Hence, I find that investments decisions in the company were taken in the companies either with the approval of Sanjay Gupta or by himself. Thus, I find that Sanjay Gupta, in his own statements before SEBI as managing director of the company, admitted that he took investment and trading decisions for the company, APL Infrastructure Ltd. It appears that his denial of such decisions in his replies is an afterthought.

89. Further, from the call data records of Nirmal Kotecha, it was observed that Nirmal Kotecha was in touch with Sanjay Gupta through calls and SMSs just prior to the execution of synchronized trades with APL Infrastructure Ltd. on December 17, 2008. The relevant extract of Nirmal Kotecha's (9819988816 which belonged to Amol Kokane) call data records with Sanjay Gupta (9810096439) is given below:

Called No	Calling No	Type	Duration	Date and Time
9810096439	9819988816	OUT	163	12/17/2008 9:29
9810096439	9819988816	SMS	1	12/17/2008 9:50
9810096439	9819988816	SMS	1	12/17/2008 10:08
9810096439	9819988816	OUT	20	12/17/2008 10:50
9810096439	9819988816	SMS	1	12/17/2008 11:19
9810096439	9819988816	SMS	1	12/17/2008 11:19
9810096439	9819988816	OUT	36	12/17/2008 12:04
9810096439	9819988816	OUT	19	12/17/2008 13:58
9810096439	9819988816	OUT	86	12/17/2008 14:54
9810096439	9819988816	OUT	111	12/17/2008 14:57
9810096439	9819988816	SMS	1	12/17/2008 18:45
9810096439	9819988816	OUT	6	12/17/2008 21:34
9819988816	9810096439	INC	90	12/17/2008 9:57
9819988816	9810096439	INC	112	12/17/200810:06
9819988816	9810096439	INC	2	12/17/2008 15:08

90. In this regard, Sanjay Gupta has submitted that SEBI had not provided the call recordings and content of SMS and hence reliance cannot be made on merely the logs as available. It has been further contended that the call log record is only available for the period from November 2008 to December 2008, whereas he was in touch with Nirmal Kotecha on and off on various occasions during the period prior and after. I find the submissions of Sanjay Gupta untenable as the timing and frequency of calls between Nirmal Kotecha and the Noticee, records of which have been referred in the SCN, shows that these calls were made when the manipulated trades on behalf of APL Infrastructure Pvt. Ltd, were undertaken. Thus, even in the absence of transcript/recordings of call and messages, such record gives rise to a reasonable inference that these calls were made in the furtherance of the manipulative plan of Nirmal Kotecha of which the Noticee was also a party. Further, the contention of Sanjay Gupta that the call records is only for the period from November 2008 to December 2008, whereas he was in touch with Nirmal Kotecha on and off on various occasions during the period prior and after only adds to the inference that he was a close associate of Nirmal Kotecha. With regard to the submissions of Sanjay Gupta on Mukesh Jain, I have already dealt with the same in the aforesaid paras and find that it is not relevant to the allegations against the Noticee.

91. Further, I find that as the Managing Director of APL Infrastructure Pvt. Ltd, Sanjay Gupta cannot escape liability by contending that he did not deal with the day-to-day affairs of the company. In this regard, reference is drawn towards K.K. Ahuja vs. V.K. Vora and another (2009(3) JCC (NI)194, where the Hon'ble Supreme Court observed that: - *"if the accused is the managing director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of business of the company. It is sufficient if an averment is made that the accused was the Managing Director / Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company."* As noted above, the Noticee was

admittedly part of the investment making decisions and has thus played a key role in the actions of APL Infrastructure Pvt. Ltd while trading in the scrip of PSTL.

92. In view of the above, I find that Sanjay Gupta has violated Section 12A of the SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

93. In view of the foregoing, I am of the considered view that this scheme, plan, device and artifice exhibited in the said pattern of trading tantamount to fraud in the securities market in as much as it involves manipulative transactions in securities and misuse of the securities market. The manipulative / deceptive transactions of the Noticees are, *prima-facie*, covered under the definition of 'fraud' and the dealings of the Noticees as discussed herein above were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003 and prohibited under the provisions of regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b) and (e) of PFUTP Regulations, 2003 read with Section 12A of the SEBI Act.

94. In this regard, I would also like to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in its order dated July 14, 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 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."

95. Hon'ble SAT further observed that, - *"…. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

96. In view of the foregoing, I conclude that the Noticees viz. Maheshbhai Himatlal Sheth, Deepak Thakkar, Raju V. Shah, Sharda Pujara, Meet Shares and Stock Services Ltd and Sanjay Gupta have violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003. I also find that Mukesh Jain has violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP) Regulations, 2003

97. Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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…".* In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of Section 15HA of the SEBI Act, which reads as under:

SEBI Act

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 failure, whichever is higher.

98. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

SEBI Act

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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

99. I note that the Whole Time Member of SEBI in Order dated March 22, 2018 had directed Maheshbhai Himatlal Sheth to disgorge the profit amount of Rs. 1,84,200/- and Deepak Thakkar to disgorge the profit amount of Rs. 20,75,858.50 along with interest calculated at the rate of 12% per annum from December 22, 2008 onwards. I further note that Deepak Thakkar was restrained from dealing in securities market vide interim order dated 23 April, 2009. The said direction was revoked vide the aforesaid order dated March 22, 2018. I also

note that Maheshbhai Himatlal Sheth was restrained from dealing in securities market for a period of 1 year vide order dated June 23, 2020, while Sharda Pujara, Meet Shares and Stock Services Pvt Ltd, Mukesh Jain and Sanjay Gupta was restrained from dealing in securities market for a period of 2 years vide order dated June 23, 2020. In view of the same, I find it appropriate to consider the direction in the nature of debarment and the disgorgement that has already been passed against the Noticees herein as a relevant factor while deciding the quantum of penalty. I also note that the matter pertains to the year 2008 and that a considerable amount of time has lapsed since the act of the Noticees took place. Nonetheless, any manipulation in the volume or price of the stocks caused by vested interest always erodes investor confidence in the market so that investors find themselves at the receiving end of market manipulators. The PFUTP Regulations aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. Execution of manipulative trades, as has been executed in the instant matter, affects the price discovery system. It also has an adverse impact on the fairness, integrity and transparency of the stock market. I have also taken into account the fact that the Noticees had traded in a specific pattern and their contribution in manipulation in the scrip. In view of the same, I am inclined to consider that the Noticees are responsible for the aforesaid violations and therefore, I impose an appropriate penalty on the Noticees.

ORDER

100. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticees under the provisions of Section 15HA of the SEBI Act:

S. No.	Name	Penalty
1	Maheshbhai Himatlal Sheth	Rs. 2,00,000 (Rupees Two Lakh Only)
2	Deepak Thakkar	Rs. 3,00,000 (Rupees Three Lakh Only)
3	Raju G. Shah	Rs. 1,00,000 (Rupees One Lakh Only)
3	Sharda Pujara	Rs. 2,00,000 (Rupees Two Lakh Only)
4	Meet Shares and Stocks Services Ltd.	Rs. 2,00,000 (Rupees Two Lakh Only)
5	Mukesh Jain	Rs. 2,00,000 (Rupees Two Lakh Only)
6	Sanjay Gupta	Rs. 1,00,000 (Rupees One Lakh Only)

101. I am of the view that the above penalty is commensurate with the lapse/omission on the part of the Noticees. The Noticees 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 online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

102. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-II, SEBI, SEBI Bhavan 2, Plot No. C –7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051". The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity

b) Name of the case / matter

c) Purpose of Payment – Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

103. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

104. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: May 31, 2021 **VIJAYANT KUMAR VERMA**

Place: Mumbai **ADJUDICATING OFFICER**