BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/AA/2021-22/12082-12084]

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. **Rakesh Sharma (PAN: AGZPS8586N)**
2. **Rajesh Unnikrishnan (PAN: AAPPU3912J)**
3. **Dharmesh Shah (PAN: AWUPS8139L)**

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. Investigations into the publication of the news of forged letter and trading activities thereafter revealed that on December 21 and 22, 2008 several sections of the media reported the contents of the SEBI's purported letter that was issued to P.S. Saminathan. Business Standard headlined its report that was carried on Sunday on December 21, 2008 edition as "Pyramid Saimira promoters told to make open offer", whereas, "Share at Rs. 75, Open Offer Rs. 250," was the headline in DNA Money on December 22, 2008. The Economic Times on December 22, 2008 carried its report with the headline which read – "SEBI ask Pyramid promoter to make open offer at Rs. 250 or more". DNA Money in its article on December 22, 2008 also reported that a PSTL spokesperson told DNA Money on Saturday that the company has just received the notification and is looking into the matter.

6. It was also revealed that Nirmal Kotecha had offloaded substantial number of shares of PSTL on December 22, 2008 at artificially inflated prices. It was also revealed that the forgery was done to manipulate the price of shares of PSTL and that Nirmal Kotecha was one of the major beneficiaries of the said manipulation exercise.

7. 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.

8. Rakesh Sharma (hereinafter referred as '**Noticee-1**') and Rajesh Unnikrishnan (hereinafter referred as '**Noticee-2**') were some of the entities against whom such directions were passed vide the interim order. Subsequently, confirmatory orders to confirm the ad interim ex parte order dated April 23, 2009 against Noticee-1and Noticee-2 was passed on January 28, 2010. I note that Noticee-2, aggrieved by the Confirmatory Order dated January 28, 2010, filed an appeal before the Securities Appellate Tribunal (hereinafter referred to as "SAT"). Vide Order dated April 20, 2010, the Hon'ble SAT directed SEBI to complete its investigations in the matter by July 31, 2010. Since the investigation could not be completed within the stipulated timeline, the Hon'ble SAT vide its Order dated October 27, 2010, stayed the operation of the Confirmatory Order dated January 28, 2010, against Noticee-2.

9. Investigation revealed that Noticee-1 and Noticee-2 played a key role in the circulation of the forged letter in the media by sending e-mails from Noticee-1's e-mail ID to various reporters and misled the media to believe the authenticity of the said letter. It was also observed that Dharmesh Shah (hereinafter referred as '**Noticee-3**') had misled the media to believe the authenticity of the forged SEBI letter circulated to them by posing as the company secretary of PSTL and confirming them about the same. It was

observed that Noticee-1, Noticee-2 and Noticee-3 (hereinafter collectively referred to as '**Noticees**') together facilitated Nirmal Kotecha to offload his stake on December 22, 2008 at artificially inflated price and earn a sizable profit by being part of a scheme to defraud investors in the market through forgery, dissemination of the false information contained in the forged letter to the media and an attempt to mislead the media to believe in the authenticity of the information that was circulated to them.

10. In view of the above, Adjudication Proceedings were initiated against the Noticees and it was alleged that the Noticees had violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e), and 4(2)(r) of PFUTP Regulations, 2003.

APPOINTMENT OF ADJUDICATING OFFICER

11. 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)(e) and 4(2)(r) 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

12. A Show Cause Notice (hereinafter referred to as "**SCN**") dated February 29, 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.

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

(i) Noticee-1, who worked with M/s. Adfactors PR Pvt. Ltd., was instrumental in publicizing the contents of the forged SEBI letter that was sent to P. S. Saminathan through his media circle of friends, and also, ensuring that they publish the news before the opening of the markets on December 22, 2008.

(ii) Noticee-2 was the Assistant Editor of Economic Times and a colleague of Noticee-1 when he was working in Business Standard nine years back. He had stated that he covered some stories for Economic Times on PSTL such as transfer of stake from one promoter to another, bidding for Reel Cinema etc. Noticee-2 introduced Noticee-1 to Nirmal Kotecha somewhere in October 2008.

(iii) Nirmal Kotecha was using the mobile number registered in the name of one Amol Anand Kokane, who was a front entity of Nirmal Kotecha.

(iv) The Call Data Records of Nirmal Kotecha's Amol Kokane number, Rakesh Sharma's number and Rajesh Unnikrishnan's number revealed that they were in close touch around the period of the media publicity of the forged SEBI letter sent to P. S. Saminathan. Investigation observed that Noticee-2 was in close touch with Nirmal Kotecha only from December 09, 2008, while Noticee-1 was in close touch with Nirmal Kotecha only during the period December 20-23, 2008.

(v) The tower locations of Nirmal Kotecha's Amol Kokane number, Rakesh Sharma's number and Rajesh Unnikrishnan's number indicate that the three had met in the afternoon of December 20, 2008, i.e., the day and around the time when the forged SEBI letter was circulated to the media circles through Rakesh Sharma's contacts in the media. The tower locations revealed that the three of them had met at Hotel Pritam at Dadar TT and that they had gone to Nirmal Kotecha's residence by taxi between 12:30 p.m. to 1:30 p.m. from where Noticee-1 had e-mailed the forged SEBI letter that was addressed to P. S. Saminathan, to some of his friends in the media. Investigation has alleged that the three of them had met in the afternoon of

December 20, 2008, first at/ around Pritam Hotel and then at Matunga (East), i.e., on the day and around the time when the forged SEBI letter was circulated to the media circles through Rakesh Sharma's contacts in the media.

(vi) Noticee-1 before being arrested claimed that the forged SEBI letter was e-mailed by him from Nirmal Kotecha's residence by using his own personal e-mail ID to his media contacts, viz. Raj Nambisan of DNA; Partha Sinha of Times of India and Ashish Rukhaiyar of Economic Times. He then went to Ashok Jainani's office at M/s. Khandwala Securities Ltd. and, through Ashok Jainani's computer, e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account, and thereafter, Ashok Jainani sent the same to Business Standard.

(vii) Rakesh Sharma had also emailed the forged SEBI letter to one of his ex-colleagues in Adfactors, Dheer Kothari based in Kolkata. Dheer Kothari in his statements to SEBI had stated that, as per the mandate, he disseminated the information to three newspapers – Business Standard, Telegraph and Hindu Business Line. He stated that he was paid Rs. 10,000 for the same. Investigation noted that the funds were transferred from Rakesh Sharma's account with HDFC which was opened only in July 2008.

(viii) Rajesh Unnikrishnan, vide his statements dated January 27, 2009 and letter dated May 25, 2009, had stated that he did not meet Rakesh Sharma or Nirmal Kotecha on December 20, 2008 and that he had gone to meet one Shashi Kumar instead. Investigation observed that the aforesaid statements dated January 27, 2009 and letter dated May 25, 2009 were not in sync with one another, especially on the crucial aspect about the meeting with Shashi Kumar as claimed by Rajesh Unnikrishnan as it is seen that though Rajesh Unnikrishnan claims that he met Shashi Kumar at Kabutarkhana which is located in Dadar (West) and travelled with him to Lower Parel, his tower location during the span of above one hour during the said time frame showed his cell IDs at Dadar (East) and near Matunga station.

(ix) Noticee-1 stated that one of the reporters, to whom Ashok Jainani had e-mailed the forged letter, desired to ascertain the authenticity of the information by counter checking with the company officials. Noticee-1 claimed that this reporter called back to check if they can speak to anybody in the company. Noticee-1 further claimed that he called Nirmal Kotecha at about 4.30 - 5.00 p.m. on his mobile, who in turn, SMSed to him the Company Secretary's telephone number and gave his name as one Ganesan, serving at Chennai office, which was passed on by Ashok Jainani to the Business Standard reporter.

(x) Noticee-1 stated that Ganesan denied any such development to the Business Standard reporter and that at about 6.00 - 6.30 p.m., the reporter of Business Standard called Ashok Jainani to inform about the same. Noticee-1 claimed to have informed Nirmal Kotecha that the Company Secretary had denied the development and thereafter, Nirmal Kotecha gave another Company Secretary Kanhucharan Sahu's number and name by SMS to him between 7.00 to 8.00 p.m. Noticee-1 further claimed that Noticee-2 also sent two SMSs to him – one to inform the telephone number and the second to inform the name, i.e., Kanhucharan Sahu. Noticee-1 stated that he then sent the SMS to all the persons, whom he had forwarded the e-mail earlier, so that, they could confirm the information by talking to Kanhucharan Sahu.

(xi) Investigation also ascertained the versions of events from the reporters, who were approached by Noticee-1 for publishing news on the SEBI forged letter. The following was disclosed by the reporters:

a) Raj Nambisan, Business Editor of DNA, in his Statement recorded on January 29, 2009 at SEBI has stated that, on December 20, 2008, around 5-6 p.m., Noticee-1 called him to give the mobile number of Kanhucharan Sahu, the Company Secretary of PSTL, which was 9947219100. He stated that he passed on the said mobile number to his special correspondent, N. Sundaresha Subramanian, who called

Kanhucharan Sahu on the said number, and the person who answered the call confirmed the receipt of the letter. In view of the same, DNA decided to publish the news. However, as per Nambisan's statement when Sundaresha Subramanian called on the same mobile number, i.e., 9947219100 of Kanhucharan Sahu on Tuesday, i.e., on December 23, 2008, nobody picked up the number. Later, Sundaresha Subramanian realized that a media release on BSE site on December 23, 2008 showed a different number of Kanhucharan Sahu. When N. Sundaresha Subramanian called on that number of Kanhucharan Sahu, i.e., the true company secretary of PSTL, he denied having received any call from Sundaresha Subramanian on Saturday.

b) Partha Sinha, Asst. Markets Editor of Times of India, in his statement recorded on January 29, 2009 at SEBI, stated that he met Noticee-1 on Saturday, the December 20, 2008 at around 2.30 p.m. in Howrah Restaurant in Hotel New Bengal near Crawford market and had food together. Partha Sinha in his statement stated that during the time that they were having food together, Noticee-1 received a call, which he said was from Nirmal Kotecha, and he told him that he was having lunch and would call later. During lunch, Noticee-1 informed Partha Sinha regarding the contents of the forged SEBI letter and also told him that Noticee-1 will forward the contact number of Kanhucharan Sahu, the Company Secretary of PSTL, from whom he can confirm the details. Noticee-1 forwarded the mobile number of Kanhucharan Sahu by SMS in the evening. Partha Sinha stated that he called to contact on that number after 7.30 P.M. on Saturday, but the number was not reachable. Partha Sinha stated that he again called that number on Sunday around 8.00 p.m. and the person who took the call confirmed that they had received the letter and are looking into the matter.

c) Ashish Rukhaiyar, Principal Correspondent of Economic Times, in his Statement dated February 2, 2009 has stated that on Saturday, at

around 9.45 p.m., Rakesh Sharma by SMS sent the mobile number of Kanhucharan Sahu, the company secretary and compliance officer of PSTL and mentioned that he can confirm from Kanhucharan Sahu. However, Ashish Rukhaiyar in his statement stated that he did not call Kanhucharan Sahu on Sunday and on Monday when he called on that number, the person who picked the call informed him that it was not the number of Kanhucharan Sahu.

d) Jayanta Mallick, Special Correspondent, The Hindu Business Line, in his statement dated March 26, 2009 stated that he got Saminathan's mobile number as 09840980111, the Company Secretary Kanhucharan's mobile number as 09947219100 and Noticee-1's mobile number as 09821419263, and that all these numbers were SMSed to him by Dheer Kothari, who passed on the e-mail of the forged letter to him. Mallick in his statement has stated that call to Saminathan's mobile did not elicit any response. Mallick stated that on contacting the number of Kanhucharan Sahu that was provided to him, the person who answered the call admitted that an order on Saminathan was received by the company. Mallick has further stated that the person also said that he would not be able to comment on it and that he was new to the company before disconnecting the line. Mallick has also claimed that, when he contacted Noticee-1 on the number provided to him, Noticee-1 informed him that he got the release and the order from the company. Mallick in his statement has stated that he decided to write the story as he had no reasonable basis to disbelieve the so-called press release and the order, as he was clearly told by Dheer Kothari and Noticee-1 that the release from the company.

(xii) Kanhucharan Sahu, who is the compliance officer and company secretary of PSTL since March 2008, vide his statement dated January 28, 2009, claimed that the he did not receive any calls on December 19, 20 and 21,

2008 in the matter of forged SEBI letter advising P.S. Saminathan to make an open offer. He stated that the phone number 9947219100 did not belong to him. Investigation revealed that the number 9947219100, which was passed on as one of Kanhucharan Sahu by Nirmal Kotecha to Noticee-1 who in turn circulated within his media circle of friends was actually registered in the name of Pratheesh Kumar V.K.

(xiii) Investigation revealed that the number 9947219100 was actually used by Noticee-3, who was a childhood friend of Nirmal Kotecha. On June 12, 2009, before the Investigating team, Dharmesh Shah stated that he was using this mobile number for almost two years and that he had received the same from a distributor one M/s. Mohasin Enterprises at Ernakulum. In reply to whether any journalist/ media persons called on the mobile number 9947219100 used by him, between December 20, 2008 to December 25, 2008 regarding PSTL, he stated that nobody had called for the issue of PSTL during the period December (20-25), 2008. In reply to the query as to whether he was still using the mobile number 9947219100, Noticee-3 stated that he had lost the phone almost 3-4 months back.

(xiv) Investigation further revealed that Nirmal Kotecha had made multiple calls and was in touch with Noticee-3 on the number 9947219100 and also with his wife Meera Venugopal Shah on the number 9847298213. Hence, it was alleged that the above sequence of events brought to light the fact that the number 9947219100, though registered in the name of Pratheesh Kumar V.K, was being used by Noticee-3, at the time the forged letter was circulated through the media circles for wide publicity.

(xv) Accordingly, the SCN inter alia alleged that:

a. Noticee-1 and Noticee-2 played a key role in the circulation of the forged letter in the media by sending e-mails from Noticee-1's e-mail ID to various reporters and misled the media to believe the authenticity of the said letter.

b. Noticee-3 had misled the media to believe the authenticity of the forged SEBI letter circulated to them by posing as the company secretary of PSTL and confirming them about the same.

c. Nirmal Kotecha masterminded the forgery and that he along with Noticee-1 and Noticee-2 was instrumental in disseminating of the false information contained in the forged letter to the media.

d. Noticee-1, Noticee-2 and Noticee-3 together facilitated Nirmal Kotecha to offload his stake on December 22, 2008 when the market opened, at artificially inflated price as against the last traded price, and earn a sizable profit by playing a key role in an arrangement contrived to defraud investors in the market by being part of a scheme elaborate in its design with several elements which included forgery, dissemination of the false information contained in the forged letter to the media and an attempt to mislead the media to believe in the authenticity of the information that was circulated to them.

(xvi) In view of the above, SCN alleged that the Noticees have violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of PFUTP Regulations, 2003.

14. I note from available records that the SCN has been duly delivered to the Noticees. Noticee-1 (Rakesh Sharma), vide letters dated January 6, 2021, July 20, 2018 and April 3, 2012, has made written submissions in the matter. I also note that Noticee-1 has availed of a hearing opportunity before the undersigned on January 08, 2021, wherein the Authorised Representative ('AR') of the Noticee-1 made oral submissions, while reiterating the aforesaid written submissions submitted by Noticee-1. I note that Noticee-1 in his aforesaid letters has *inter alia* made the following submissions:

a) There is no proof whatsoever that the Noticee was aware that the SEBI letter was forged. No person in his right senses would forward the letter to his friends in the media through his actual email id if he had the knowledge that the letter was forged.

b) *Direct proof or proof beyond reasonable doubt is required in cases where fraud is alleged and especially when the person is not dealing in securities. In the present case, there is no proof whatsoever that the Noticee had knowledge that the SEBI letter was forged.*

c) *Instead of using a proxy email (which a person with knowledge of forgery or with a guilty mind would have used), the Noticee used his personal email for forwarding the letter. The Noticee would not have used his personal mobile number to communicate with his friends in the media for forwarding the contact numbers of the representatives of PSTL. The Noticee would not have asked Mr. Ashok Jainani to inform the reporter of Business Standard not to go ahead with the news if the same is not verified.*

d) *The Noticee did what he did only to gain a prospective client for his company which was into the business of handling media and PR for their clients. SEBI related news pertaining to substantial acquisitions do keep getting published in newspapers since public announcements are statutorily required under the regulations and hence there was nothing that the Noticee could doubt when he was asked to forward the news. Further, the letter was with a promoter director (one of the largest shareholders of PSTL) and hence there was no occasion for the Noticee to doubt anything.*

e) *SEBI has nowhere even alleged, let alone producing proof that Noticee had knowledge that the SEBI letter has been forged. The Noticee has been made a scape goat by the persons who masterminded the entire transaction.*

f) *The basic and the only allegation against the Noticee is that of deliberate, planned and intentional dissemination of information pertaining to the alleged forged SEBI letter to his contacts in the media, which is not an illegal act, especially in view of the fact that the Noticee did not have knowledge that the said letter was forged.*

g) *SEBI from its thorough investigation has not found a shred of evidence and rather has not even alleged against the Noticee that he ever had knowledge of the forgery of the letter at the time when he disseminated the same within his circle of friends in the media. Further, SEBI, after thorough investigation, has not found a shred of evidence to prove that dissemination of information pertaining to the alleged forged SEBI letter to his contacts in the media was deliberate, planned, intentional or deceitful.*

h) *SEBI, in paragraph 231 of the Criminal Complaint 11 of 2016 has in terms contended on the basis of its thorough investigation that - "Further that Shri Rakesh Sharma was in close touch with him (NK) only during the period December 20-23, 2008." This, along with the fact that it is no one's case that Mr. Rakesh Sharma had knowledge that the SEBI letter dated 19-12-2008 was forged at the time when he disseminated information pertaining to the same to his friends in the media, proves that the action on his part to disseminate the said information was certainly not planned, deliberate or intentional in furtherance of NK's larger conspiracy. This submission is further supported by specific case of Mr. Rakesh Sharma that in case he knew the SEBI letter was forged, he would not have - a) emailed information pertaining to the said letter from his own email, b) would not have sent messages from his personal phone number, c) would not have asked some of his friends in the media to verify the said letter from SEBI officials. The aforesaid submission of Mr. Sharma is further strengthened from the fact that out of the three persons, namely NK, Rajesh Unnikrishnan and Rakesh Sharma, who according to SEBI planned the entire conspiracy or part thereof, only the statement of Mr. Rakesh Sharma is found to be corroborated with other material and hence found to be true by SEBI.*

i) *Since April 2009, that is, for nearly 10 years, the Noticee Mr. Rakesh Sharma was banned from accessing the securities market in any manner. The WTM has not even found it appropriate to extend the said debarment in his final order dated 23.06.2020.*

j) *The Noticee, Mr. Rakesh Sharma is the only person who is being prosecuted for alleged forgery of SEBI letter and personally couriering it to Mr. Saminathan, an allegation, which SEBI has found to be baseless. The said prosecution is going on before the Ld. Metropolitan Magistrate, Bandra since more than 10 years now.*

k) *Despite detailed investigation, SEBI has not found any money trail leading to Mr. Rakesh Sharma, because, he did not receive even a single penny out of the alleged default/violation. SEBI found several money trails between Nirmal Kotecha and other persons involved but not with Mr. Rakesh Sharma. As such, Mr. Rakesh Sharma did not earn any gain or advantage, let alone disproportionate gain or unfair advantage;*

l) Without prejudice to the aforesaid and without prejudice to Mr. Rakesh Sharma's contention that he is innocent, SEBI has not come to a finding that investors lost money due to the alleged violation/default nor is any complaint received in that respect;

m) This case is the first and last instance of any kind of proceedings against Mr. Rakesh Sharma. As such, neither is the alleged violation/default repetitive in nature nor is any subsequent default reported to be in the nature of repetitive default.

n) There is no wrongful gain or profit made by Mr. Rakesh Sharma nor has he averted any loss and hence there is no question of ordering him to disgorge an amount equivalent thereto.

o) The Noticee, Mr. Rakesh Sharma lost his job in the year 2009 itself as a direct outcome of the SEBI proceedings against him. Since then he has been doing free lancing to make ends meet. The unjust blot of this scam perpetrated by others has ensured that Mr. Rakesh Sharma does not get a decent job like the one he had earlier.

15. Noticee-2 (Rajesh Unnikrishnan), vide letters dated June 1, 2012, April 23, 2018 and May 31, 2018, has made written submissions in the matter. I also note that Noticee-2 has availed of a hearing opportunity before the undersigned on December 12, 2019 and January 12, 2021, wherein the AR of Noticee-2 made oral submissions, while reiterating the aforesaid written submissions submitted by Noticee-2. I note that Noticee-2 in his aforesaid letters has *inter alia* made the following submissions:

a) I am a journalist by profession and was employed by M/s Bennett, Coleman & Co Ltd as an Assistant Editor with The Economic Times at the relevant time.

b) As a journalist, it is my primary responsibility to report newsworthy stories and for the purpose, I maintain contacts and relationships with persons who are closely associated with the activities/areas covered by me. Private Equity investment and corporate matters, the Securities Market in India has been an area of interest to me and several news stories including breaking stories penned by me have been published in various newspapers and publications. My profession required me to be in touch with persons and entities irrespective of their antecedents and merely

because I have met with such persons or obtained information from them, I cannot be considered as having acted together with them in any illegal or malafide scheme devised and implemented by them.

c) *I have to state that the present order against me is based on the illegal and erroneous inference that by meeting, calling and sending SMSs in my capacity as a journalist to Mr. Nirmal Kotecha and Mr. Rakesh Sharma, I have participated in the alleged fraud perpetrated by them. Such an inference would amount to denying a journalist the freedom to carry on his profession and also amount to a curtailment of the right of the public to access information and this amount to a violation of the Fundamental Right to Freedom of speech and expression and the present order is thus not only violation of my fundamental rights, but also seeking to dissuade journalists from associating with market participants of perceived dubious / suspicious nature, amounts to curbing the legitimate activities of a journalist.*

d) *it is pertinent to note that while I had access to information relating to the securities market including price sensitive information, I did not and do not invest in or deal in shares of companies or futures & options or other securities. During my 12 years of professional life, I was neither involved in any kind of controversies nor any market manipulation activities.*

e) *The alleged violation by the Noticee-2 took place nearly 10 years ago. The present SCN was issued on February 29, 2012, more than 3 years after the events that formed the basis for allegations against the Noticee. The present proceedings are vitiated by the delay and laches and the Noticee ought to be discharged from the same on this ground alone.*

f) *It is not alleged that Nirmal Kotecha ever told the Noticee that the letter was forged or that the news regarding SEBI's instructions to Saminathan to make the open offer was false. It is also not alleged that the Noticee knew that the mobile number sent by Nirmal Kotecha in the evening of December 19, 2008 was being used by Dharmesh Shah and the same did not belong to Kanu Shah.*

g) *The allegations and findings in the captioned SCN are based on alleged Call Data Records, Cell ID Location details, Tower Location details, etc., provided by mobile telephone companies to SEBI and also the alleged fact that I knew Mr. Rakesh Sharma and Mr. Nirmal Kotecha and used to contact them. I submit that*

these do not constitute sufficient and irrefutable proof that I was aware of the said alleged plan of Mr. Nirmal Kotecha to circulate SEBI's said alleged letter to media/press persons or that I was present at Mr. Nirmal Kotecha's residence when the said alleged email was sent or thereafter. It is a well-established principle of law that allegations of fraud, which are of a serious nature have to be established conclusively and in the absence of sufficient and irrefutable proof the accused has to be given the benefit of doubt. It is evident that SEBI has relied upon Call Data Records, Cell ID Location details, Tower Location details, etc., which do not constitute sufficient evidence to establish that I was aware of the said alleged plan of Mr. Nirmal Kotecha to circulate SEBI's said alleged letter to media/press persons or that I was present at Mr. Nirmal Kotecha's residence when the said alleged email was sent or thereafter; yet the benefit of doubt has not been given to me.

h) *I had no knowledge of any forged SEBI letter e-mailed by Mr. Rakesh Sharma to his three friends in the media and/or it was also forwarded by him to one of his ex-colleagues in Adfactors Mr. Dheer Kothari based in Kolkata, in fact, I am not acquainted with the said Mr. Dheer Kothari. I repeat, reiterate and deny the allegation that when Mr. Rakesh Sharma had forwarded the alleged e-mail to Mr. Dheer Kothari at 1.43 pm on December 20, 2008, I was present at Mr. Kotecha's residence at Matunga. I further submit that I was not aware of the alleged fact that Mr. Rakesh Sharma was in constant touch with Mr. Dheer Kothari on December 20, 2008 from about 12.30 pm to around 10.00 pm, nor I am concerned with the same or with Mr. Dheer Kothari's further dissemination of the information to three newspapers viz. Business Standard, Telegraph and Hindu Business Line for a payment of Rs.10,000/-.*

i) *SEBI's allegation that I aided and abetted Mr. Nirmal Kotecha is based on the inference (from the location data provided by the mobile telephone service provider) that I was around Matunga (E) when the said alleged email was sent to media persons by Mr. Rakesh Sharma and on the basis that I had sent the mobile number of Mr. Kanhucharan Sahu to Mr. Rakesh Sharma after having received the same from Mr. Nirmal Kotecha. I submit that the same are mere conjectures and surmises and cannot be the basis for a serious charge like fraud. It is also pertinent to note that I did not contact any other journalist with the news or send*

emails or otherwise disseminate the information relating to the said allegedly forged SEBI letter. This would not have been the case if I wanted to help Mr. Kotecha to spread news about the said alleged letter. Therefore, while it is evident that there is no concrete, reliable and sustainable evidence to show that I had knowledge of the said alleged forged letter or that I was present when the said alleged email was sent by Mr. Rakesh Sharma, the circumstances, i.e., my subsequent conduct and the fact that I had no investment in the shares of the Company or even a demat account, clearly show that I had no reason to aid and abet Mr. Kotecha.

j) I repeat, reiterate and submit that SEBI has relied on the location data relating to my mobile telephone On December 20, 2008 to establish that I was allegedly present at Mr. Nirmal Kotecha's residence. I repeat, reiterate and submit that the data provided by the service provider does not accurately show that I was ever at Mr. Nirmal Kotecha's residence on December 20, 2008; it only indicates that I passed through Matunga (E) around the time that the purported email was allegedly sent by Mr. Rakesh Sharma from Mr. Nirmal Kotecha's residence.

k) SEBI has failed to consider the fact that I had no investment in shares and did not stand to benefit directly or indirectly by helping Mr. Kotecha to sell shares at a higher price and no such benefit is shown to have been derived by me. Furthermore, SEBI has failed to show that my relationship with Mr. Kotecha was anything more than a professional one.

16. Noticee-3 (Dharmesh Shah), vide letters dated May 05, 2012, May 30, 2012, November 28, 2019 and January 25, 2021, has made written submissions in the matter. I also note that Noticee-3 has availed of a hearing opportunity before the undersigned on January 13, 2021, wherein the AR of Noticee-3 made oral submissions. I note that Noticee-3 in his aforesaid letters has *inter alia* made the following submissions:

a) Admittedly, the alleged cause of action arose in December 2008. Admittedly, SEBI commenced its investigations immediately in December 2008 itself. Yet, it took SEBI more than 3 years to issue the SCN. The hearing of the matter then took place nearly 9 years later in January 2021. The Noticee No. 3 cannot be

blamed for this extraordinary delay on the part of SEBI. It is settled law by the Hon'ble SAT that on the ground of delay in commencing and concluding proceedings, great prejudice is caused to parties, and on this ground alone, the proceedings ought to be dropped.

b) *It is submitted that most of the relevant documents have not even been supplied to the Noticee No. 3, despite the same expressly having been referred to and relied upon in the Show Cause Notice. The Show Cause Notice at paragraph 40 specifically refers to the statements of one, Mr. Partha Sinha of the Times of India and Mr. Ashish Rukhaiyar of the Economic Times, made to SEBI. However, in a shocking breach of the principles of fair play and natural justice, their statements have not even been annexed to or supplied to the Noticee No. 3.*

c) *It is most pertinent to note that as set out in paragraph 40 of the SCN itself, Mr. Ashish Rukhaiyar in his statement says that when he called the person who answered the call, he was informed that the same was not the number of Mr. Kanhucharan Sahu. Therefore, there is no question even arising of the Noticee No. 3 impersonating Mr. Sahu. This one statement by itself completely demolishes the case of SEBI in the Show Cause Notice. Further, there is no allegation made in the Show Cause Notice that Mr. Parth Sinha even published any news article, and the Noticee No. 3 verily believes and is given to understand that in fact no such news article was ever published.*

d) *There is only a vague allegation about the date and time of making such calls, without providing full particulars of the same which SEBI is bound to provide in the Show Cause Notice. Undoubtedly, in law full and complete particulars have to be set out in a Show Cause Notice which make such serious charges of fraud against the Noticee No. 3.*

e) *The Noticee No. 3 does not have any family relation with Mr. Kotecha. There is no allegation in the Show Cause Notice that the Noticee received any compensation or consideration for his alleged role. There was absolutely no reason for the Noticee No. 3 to impersonate Mr. Sahu, and in fact the same was never even done so.*

f) *The Show Cause Notice mentions that the conspiracy apparently took place in Mumbai. The company Pyramid Saimira Theatre Ltd. and Mr. Sahu apparently are based in Chennai, Tamil Nadu. The Noticee is based in Cochin, Kerela. The*

mobile number 9947219100 is supposed to have been used to impersonate Mr. Sahu in Chennai. However, the 9947 series of mobile telephone numbers were based only in Kerela. Consequently, there could be no cogent reason to use the 9947219100 mobile telephone number for any intended mischief. In fact, if the allegations were true, it would have struck the astute reporters that they were calling a Kerela number instead of a Chennai number which they ought to have called. Consequently, it is submitted that the allegation in the SCN is unbelievable, and on this ground alone, the charges in the SCN must fail qua the Noticee No. 3.

g) *The Noticee No. 3 has not traded in a single share of PSTL. The Noticee No. 3 has no connection with PSTL or its directors. The Show Cause Notice does not even make any allegation that the Noticee No. 3 made a single rupee in profit. There are no fund transfers from Mr. Nirmal Kotecha or any other third party.*

17. I note from above that the Noticees have filed their written submissions in the matter and have also availed of hearing opportunity. 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)(e) and 4(2)(r) 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:-

…….

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

……..

(r) planting false or misleading news which may induce sale or purchase of securities……..

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 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 allegation in the SCN is that Noticee-1 and Noticee-2 played a key role in the circulation of the forged letter in the media by sending e-mails from Noticee-1's e-mail ID to various reporters and misled the media to believe the authenticity of the said letter. I further note that the allegation against Noticee-3 is that he had misled the media to believe the authenticity of the forged SEBI letter circulated to them by posing as the company secretary of PSTL and confirming them about the same. I now proceed further to examine the allegations and submissions of each of the Noticees.

Rakesh Sharma (Noticee-1):

22. I note that Noticee-1, who worked with M/s. Adfactors PR Pvt. Ltd., was introduced to Nirmal Kotecha by Noticee-2. It has been alleged in the SCN that he played a major role in the fraudulent scheme of Nirmal Kotecha and was

instrumental in publicizing the contents of the forged SEBI letter through his media circle of friends and also ensuring that they publish the news before the opening of the markets on December 22, 2008. I also note that Noticee-1, before being arrested by the Mumbai Police, claimed that the forged SEBI letter was e-mailed by him from Nirmal Kotecha's residence by using his own personal e-mail ID to his media contacts, viz. Raj Nambisan of DNA; Partha Sinha of Times of India and Ashish Rukhaiyar of Economic Times. He stated that he had then gone to Ashok Jainani's office at M/s. Khandwala Securities Ltd. and that through Ashok Jainani's computer, he e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account, and then, Ashok Jainani sent the same to Business Standard.

23. I note that Noticee-1 in his written submissions has stated that the only allegation against him is that he abetted Nirmal Kotecha in providing wide media publicity to the forged SEBI letter. Noticee-1 has contended that there is neither a shred of evidence nor has it been alleged in the SCN that the Noticee-1 ever had any knowledge of the forgery of the letter at the time, when he disseminated the same to the media. Noticee-1 has further contended that SEBI has failed to prove any evidence that the dissemination of the information pertaining to the forged letter by Noticee-1 to his contacts in the media was deliberate, planned, intentional or deceitful. Further, none of the events mentioned in the SCN indicate that the Noticee-1 had even the slightest of knowledge of the letter being forged when he admittedly circulated the said letter to his friends in the media. The Noticee-1has contended that the allegation that he played a major role in publicizing the SEBI letter is exactly what his job is and what he has been doing for the last so many years for his clients.

24. In this regard, I note that Noticee-1 had submitted the following details of the meeting between Noticee-1 and Noticee-2 with Nirmal Kotecha, before he was arrested:

a) At around 12.00 p.m. on December 20, 2008, Noticee-1 called Noticee-2 and after 5-10 minutes, Noticee-2 called Shri Nirmal Kotecha;

b) All three of them sat at Hotel Pritam at Dadar TT and ordered two fresh watermelon juices and one coffee and that the bill, which came to Rs.180/-, was paid by Nirmal Kotecha;

c) Nirmal Kotecha showed SEBI's original letter to Noticee-1 and asked him whether he can get some media coverage. To this, Noticee-1 claimed to have stated that he would try out with his friends;

d) That all three of them then went to Nirmal Kotecha's house by taxi between 12.30 p.m. to 1.30 p.m. There Noticee-1 claimed that Nirmal Kotecha scanned the SEBI letter on the printer cum scanner available at his residence and then told him to e-mail it to his friends;

e) From Nirmal Kotecha's house, Noticee-1 sent e-mails to three of his friends:

   (i) Raj Nambisan of DNA;
   (ii) Ashish Rukhaiyar of Economic Times; and
   (iii) Partha Sinha of Times of India;

f) Since Noticee-2 does not cover SEBI and since the document had to be e-mailed to media persons who covered SEBI, probably for this reason, Noticee-1 claimed, that he may have been approached by Nirmal Kotecha through Noticee-2. However, Noticee-1 claimed that Noticee-2 covers Pyramid for ET;

g) After that Noticee-1 claimed that he and Noticee-2 went to Dalal Street side in a cab around 2.00 – 2.30 p.m.;

h) That from there, Noticee-2 went to his office and Noticee-1 went to one Ashok Jainani's office at M/s. Khandwala Securities Ltd.;

i) Through Ashok Jainani's computer, Noticee-1 claimed to have e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account and then, Ashok Jainani sent the same to Business Standard at around 3.00 – 3.30 p.m.;

j) That after meeting Ashok Jainani, Noticee-1 went to Howrah restaurant near J.J. Art for lunch with Partha Sinha, the Times of India reporter, however, he claimed that he did not discuss about the e-mail with him during lunch;

k) After that Noticee-1 claimed that he came back to Ashok Jainani's office, when they got a call from Business Standard reporter asking them whether anybody in the company can be spoken to;

l) After that Noticee-1 claimed to have called Nirmal Kotecha at about 4.30 - 5.00 p.m. on his mobile;

m) Noticee-1 claimed that Nirmal Kotecha then sent an SMS to him the Company Secretary's telephone number and gave his name as one Ganesan, serving at Chennai office;

n) That Ashok Jainani at around 5.30 – 6.00 p.m. passed on Ganesan's number to the Business Standard reporter. Noticee-1 recalled her name as one Priya Nadkarni;

o) Noticee-1 claimed further that Ganesan denied any such development on this front to the Business Standard reporter;

p) That at about 6.00- 6.30 p.m., the reporter of Business Standard called back Ashok Jainani to inform the same;

q) Noticee-1 claimed to have told Ashok Jainani to inform the reporter that if she is not certain about the news, she should not publish it. That, in turn, Ashok Jainani told the same to the reporter;

r) After that Noticee-1 claimed to have informed Nirmal Kotecha that the Company Secretary is denying the development;

s) That, in turn, Nirmal Kotecha gave another Company Secretary, Kanu Sahu's number and name by SMS to Noticee-1between 7.00 to 8.00 p.m.;

t) Noticee-1 claimed that Noticee-2 also sent two SMSs to him – one to inform the telephone number and the second to inform the name, i.e., Kanu Sahu;

u) That Noticee-1 then SMSed it to all those whom he had forwarded the e-mail earlier, so that, if they so desire, they can confirm the information by talking to Kanu Sahu;

v) On Sunday morning at about 10.15 a.m., after the article appeared in Business Standard, Noticee-1 claimed that Nirmal Kotecha called him on his mobile stating that Saminathan is upset and wants to get in touch with the reporter;

w) Noticee-1 further claimed that Noticee-2 probably called before Nirmal Kotecha called, around 9.30 – 10.00 a.m. on Sunday, to say that the story has appeared in Business Standard;

x) That later Nirmal Kotecha called Noticee-1 at about 11.00 a.m. -12.00 p.m. to post for coverage in other newspapers;

y) Thereafter, Noticee-1 claimed, that an SMS received by Nirmal Kotecha from Saminathan, which read as follows – FYI: These guys are behind you, please take care; - was forwarded by Nirmal Kotecha to him.

25. I note from the call data records of Nirmal Kotecha's Amol Kokane number and Noticee-1 and Noticee-2's respective numbers that they were in close contact with Nirmal Kotecha only around the period of the media publicity pursuant to the forged letter that was sent to P.S. Saminathan. I note that Noticee-1 has admitted to the meetings with Nirmal Kotecha and Noticee-2 and his main contention is that he was not part of the forgery or had any knowledge of the letter being forged when he had circulated it among his media circle, as he was just doing what his job is and that is to publicize data and information to the media.

26. In this regard, I note that the forged SEBI letter was addressed to Mr. Saminathan directing him to make an open offer. As claimed by Noticee-1, the said original forged letter was shown by Nirmal Kotecha who told Noticee-1 to give the letter a wide publicity. I note that it is suspicious as to why an original letter that was addressed to one P.S. Saminathan was with Nirmal Kotecha. Further, no

rationale is provided for wide publicity to such letter. I also note that it is doubtful that, even after the Business Standard reporter had called back stating that Ganesan (the company secretary, whose number was given by Nirmal Kotecha), had denied such development, Noticee-1 did not get suspicious of the information given to him by Nirmal Kotecha. I observe that thereafter, upon getting another company secretary's number, Noticee-1 has forwarded it to all the other journalists who he had earlier sent emails regarding the forged SEBI letter. I note that Noticee-1 has claimed himself to be a person who has been in the media related profession for two decades. In view of the peculiar facts narrated above regarding the SEBI's forged letter, which would have alerted an ordinary media professional unless such media professional deliberately chooses not to be so alerted, there can only be inference that Noticee-1 himself was part of the fraudulent scheme of Nirmal Kotecha.

27. I further note that, in the aforesaid narration of events by Noticee-1, he had failed to mention about one Dheer Kothari, who is his ex-colleague from M/s. Adfactors PR Pvt. Ltd. to whom he had emailed the forged SEBI letter. I note that he had forwarded the email to Dheer Kothari at 1:43 PM, which would be around the time the Noticee was in Nirmal Kotecha's house from where he had emailed Raj Nambisan of DNA, Ashish Rukhaiyar of Economic Times and Partha Sinha of Times of India. However, I find that he did not mention that he had also emailed Dheer Kothari around the same time. I also observe that Dheer Kothari in his statements before SEBI, had stated that he disseminated the information to three newspapers, i.e., Business Standard, Telegraph and Hindu Business Line and he got paid Rs. 10,000 for carrying out the job. I find that Noticee-1 has also left out this information that he paid Dheer Kothari for disseminating the information. Noticee-1 has now submitted that he paid the money to Dheer Kothari because he sought for some financial help from him.

28. I further note that Noticee-1 had stated that after sending the email from Ashok Jainani's house to the person from Business Standard, he had gone to have

lunch with one Partha Sinha, a reporter from Times of India and claimed that he did not discuss about the email with him during this meeting. However, Partha Sinha in his statement before SEBI, stated that during the lunch meeting Noticee-1 had discussed the contents of the forged letter and told him that he would later forward the contact number of Kanhucharan Sahu, the Company Secretary of PSTL, to him. In this regard, I observe that post the lunch meeting, Noticee-1 stated that he went back to Ashok Jainani's house and then the reporter from Business Standard had called asking for someone from the company she could speak to. Noticee-1 claims he then spoke to Nirmal Kotecha who gave him Ganesan's number. Thereafter, the reporter from Business Standard said that Ganesan had denied such development and then Noticee-1 got the name and number of Kanhucharan Sahu from Nirmal Kotecha as another reference to give to the reporter. I find that if this is the narration of events stated by Noticee-1, how did he know and give the name of Kanhucharan Sahu to Partha Sinha much earlier to that. I am of the view that Noticee-1 was already mindful and complicit of the situation and has deliberately misrepresented facts in his statements. Therefore, I find that the facts alleged in the SCN brings out the knowledge on the part of Noticee-1 about the forged letter and the contention of the Noticee-1 in this regard is untenable. Further, with regard to the Noticee-1's contention that he has not monetarily benefitted by this fraud, I find that profit or monetarily benefit per se is not necessary to prove that the Noticee was part of the fraudulent scheme.

29. I further find that Noticee-1 had met with Nirmal Kotecha and Noticee-2 on December 20, 2008 at Dadar, after which they went to Nirmal Kotecha's house and sent emails to various reporters. This has been corroborated by the tower location of each of their numbers on December 20, 2008. The three of them first met at Dadar and subsequently at Matunga. I note that the meeting between Noticee-1 and Noticee-2 with Nirmal Kotecha at Dadar and Matunga has been established in the SEBI Order dated March 22, 2018 passed against Nirmal

Kotecha and the same has been upheld by the Hon'ble SAT vide its Order dated March 02, 2020. Further, I note that Noticee-1 has himself admitted that these meetings took place with Noticee-2 and Nirmal Kotecha. Hence, I find the Noticee-1's contention that it was Nirmal Kotecha who had couriered the letter with Blue Dart as irrelevant.

30. The Noticee-1 has also stated that the fact that almost all the correspondents of various media houses failed to realize that the said letter was forged and found it appropriate to publish it without doubting the credibility of the said letter and the fact that none of the correspondents have been even show caused by SEBI are all important factors, since his role and the said correspondents is similar. However, I am of the view that the other reporters and correspondents of various media houses were not in the same position as Noticee-1, since it was Noticee-1 who had met with Nirmal Kotecha to circulate the forged letter. Further, Noticee-1 had circulated the forged letter to all the reporters and correspondents of various media houses. Noticee-1 had also given the wrong number of the company secretary to all the reporters and correspondents of various media houses to verify the information of the forged letter. Therefore, Noticee-1 is on a completely different footing from the other reporters and therefore, the said contention of Noticee-1 is not acceptable. I find that he is the one who had misled all the reporters and correspondents of various media houses into believing that the letter was authentic.

31. I also find the Noticee-1's contention that it was Nirmal Kotecha who had couriered the letter with Blue Dart and Nirmal Kotecha's employee's handwriting on the envelope as irrelevant since I find that Noticee-1 was aware of the forged letter. I am of the considered view that the writing or delivery of the forged letter is irrelevant as the role of the Noticee-1 in the scheme of things was to disseminate the information of the forged letter to reporters and correspondents of various media houses and mislead them into believing that the letter was authentic, which I find stands established. In this regard, I place reference to the

Order of the Hon'ble Supreme Court in the matter of SEBI Vs. Rakhi Trading Pvt. Limited (MANU/SC/0096/2018), wherein, it was held that:

"……The Supreme Court has also emphasized the duties of print and electronic media, that they should not mislead the public who are present and prospective investors, in their forecast on the securities market.

42. The capital market regulator, SEBI has a significant role to play in safeguarding the interest of investors and to ensure strict compliance of all the relevant SEBI rules and regulations targeting at safeguarding the interest of small investors. In order to protect the interests of the investors and the integrity of the markets, as a regulator, SEBI has to make the market place efficient and clean, wherein all the participants play their role diligently and professionally within the four corners of the system, without there being any scope for market abuse. Where certain unscrupulous elements are trying to manipulate the market to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to maintain public confidence in the integrity of the securities market."

32. In view of the above, I find from the facts and circumstances of the case, that Noticee-1 was aware of the fact that the letter was forged and was part of the fraudulent scheme of events orchestrated by Nirmal Kotecha in disseminating the forged letter to the media and misleading them in believing the authenticity of the said forged letter, which in turn, upon its publication, has misled investors to trade in the scrip of PSTL. Thus, I find that Noticee-1 (Rakesh Sharma) has violated Section 12A of SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.

Rajesh Unnikrishnan (Noticee-2):

33. I note that Noticee-2 was the Assistant Editor of Economic Times at the relevant time. Further, Noticee-1 and Noticee-2 were colleagues when they both were working at Business Standard. In his statement dated May 19, 2009, Noticee-2 stated that he had covered some stories for Economic Times on PSTL such as transfer of stake from one promoter to another, bidding for Reel Cinema, etc. He

also stated that from his investment banking circle, he got the contact number of Nirmal Kotecha sometime around Jan-Feb, 2008 and he contacted Nirmal Kotecha for a story regarding Dhanush Technologies. Further, he also stated that he used to contact Nirmal Kotecha regularly for stories and he came to know P.S. Saminathan, the CMD of PSTL through Nirmal Kotecha. Further, that he introduced Noticee-1 to Nirmal Kotecha somewhere in October 2008.

34. I note that Noticee-2 has denied that he had a meeting with Noticee-1 and Nirmal Kotecha on December 20, 2008 and vide his statement dated January 27, 2009, submitted the following alternative narrative:

a. Noticee-1 had called him at 12:00 noon to say that there was a story regarding SEBI order in PSTL and asked him whether he can meet;
b. Noticee-2 in response asked him to come to his office or call later as he had a meeting at 12:30 pm with Shashi Kumar, fund manager of Birla Sunlife Real Estate Fund in Lower Parel;
c. that he travelled from his home at Belapur by train and got down at Wadala and took a cab to Dadar where he met Shashi Kumar at around 12:30 pm;
d. that from Dadar he travelled with Shashi Kumar to Lower Parel where they had lunch together at Shri Krishna Udipi Hotel in Lower Parel at around 1:00 pm., and
e. that at 2:30 pm he reached office.

35. I, however, note that vide his letter dated May 25, 2009, the Noticee-2, in reply to the ex-parte ad interim order dated April 23, 2009, had *inter alia* also submitted the following narrative:

a) That on and around December 19, 2009, Noticee-1 called him and informed him that he wanted to meet him and give him an exclusive story;
b) that he told him that he had a prearranged meeting with Shashikumar of Birla Sunlife Ltd. on December 20, 2008 at Kabutarkhana at Dadar and that he could meet him after the said meeting at Dadar;

c) Further that on December 20, 2008, Noticee-1 once again reminded him about the meeting with him;
d) that he travelled to Wadala Station by train from his residence at Belapur and then took a taxi to Dadar to meet Shashikumar and that he did not meet Sharma or Kotecha on December 20, 2008;
e) That when he reached somewhere near Dadar, he received a call from Noticee-1 enquiring about his location;
f) That since the meeting with Shashi Kumar was very important and related to his beat, he told Noticee-1 that he would meet him only if time permits after his prearranged meeting or that he could come to his office;
g) That he spoke to Kotecha regarding news relating to corporate developments in companies such as Bihar Tubes, Usher Agro, Dhanush Technologies etc.,
h) That he met Shashi Kumar at near Kabutarkhana in Dadar around 12:50 pm;
i) That Shashi Kumar requested him to travel with him since he had another meeting at Lower Parel and was late for the same;
j) That thereafter he travelled with Shashikumar in his car till Parel and thereafter went to office;
k) That he reached office at around 2:15 pm.

36. I observe that the statement dated January 27, 2009 of Noticee-2 and his aforesaid letter dated May 25, 2009 are not consistent with each other. In his statement dated January 27, 2009, he stated that from Dadar he travelled with Shashi Kumar to Lower Parel, where they had lunch together at Shri Krishna Udipi Hotel in Lower Parel at around 1:00 p.m. and that at 2:30 p.m. he reached office. However, vide his reply dated May 25, 2009, he has submitted that he met Shashi Kumar near Kabutarkhana in Dadar around 12:50 p.m. and travelled with him up to Lower Parel as he had another meeting and was late for the same and thereafter, went to office. I find that there is no mention in his aforesaid letter

about the lunch together at Shri Krishna Udipi Hotel in Lower Parel as claimed in his statement, instead it has been stated that he had another meeting and was late for the same. It appears that the lunch with Shashi Kumar did not take place and he went for another meeting to Parel. Hence, I find that the Noticee-2 has given conflicting narrations of the events in his own statements and replies.

37. Nonetheless, even if there is no clarity on whether he had lunch with Shashi Kumar, I note that Noticee-2 claims that he met Shashi Kumar at Kabutarkhana, which is located in Dadar (West), Mumbai around 12:50 pm on December 20, 2008. However, as per the cell ID locations provided by the mobile service provider, it was found that the Noticee-2 was at/around Royal Status, Sir Bhalchandra Road, Near Pritam Hotel Dadar (East) at 12:03, 12:09 and 12:23 on December 20, 2008. Further, his cell ID locations at 12:57, 13:14 and 13:44 on the same day as provided by the service provider indicated that he was at/ around Jamnadas Mansion, Near Matunga Station (East), which is where Nirmal Kotecha stays. Hence, I find that even though the Noticee-2 claims that he was at Kabutarkhana which is located in Dadar (West) to meet Shashikumar and then travelled with him to Lower Parel, his tower location during the span of about one hour during the said time frame showed his cell IDs at Dadar (East) and Near Matunga Station (East). In this regard, I note that the Noticee-2 vide his reply dated May 25, 2009, submitted that the times relating to the location of his mobile telephone and the findings in the ex-parte, ad-interim order seem to be incompatible, because as per the SEBI ex-parte, ad-interim order he was at Matunga (East) at 1:44 pm and that he had left for office along with Noticee-1 at 2:00 p.m., whereas, his office records shows that he logged in at 2:17 p.m. He therefore claims that he could not have travelled from Matunga (East) to his office at D.N. Road (opposite CST) within 17 minutes by road or alternatively that a person making calls at Matunga at 1:45, cannot be near the Times of India Building at 2:15 pm, given the traffic in Mumbai. In this regard, I rely on the tower locations readings of the Noticee's cell ID rather than the office records of the

Noticee-2. Further, I find that this contention, rather than assisting him, further corroborates the fact that he was with Noticee-1 and Nirmal Kotecha, as admittedly it was impossible for him to be at his office at D. N. Road when his cell ID showed him to be at Matunga (East).

38. I note that, the Noticee-2 in his submissions has sought for the benefit of doubt with regard to the alleged meeting, since that he has not been held to play any significant role in the said allegation of dissemination of information to journalists. However, I note that the Noticee-2 has given conflicting statements and replies and has failed to satisfactorily prove that he did not meet Nirmal Kotecha and Noticee-1 on December 20, 2008, when the corroborative evidence of his cell ID location makes it clear that the three of them had met together. I find that the corroborative evidence available from the tower locations of the Noticee-2 is reasonable evidence to conclude that the Noticee-2 had met Noticee-1 and Nirmal Kotecha on December 20, 2008. Further, I note that the meeting between Noticee-1 and Noticee-2 with Nirmal Kotecha at Dadar and Matunga has been established in the SEBI Order dated March 22, 2018 passed against Nirmal Kotecha which has been upheld by the Hon'ble SAT vide its Order dated March 02, 2020 in Appeal no. 261 of 2018, wherein, it was held that:

"Though the statements of Mr. Rakesh Sharma recorded by SEBI during the investigation were not relied, during the proceedings by SEBI as Mr. Rakesh Sharma was not offered for any cross-examination, the learned Whole Time Member (hereinafter referred to as 'WTM') found that at least a piece of statement of Mr. Rakesh Sharma that the conspiracy was hatched on December 20, 2008 in the afternoon in Pritam Hotel at Dadar (East), Mumbai is corroborated by the tower location of the mobile numbers of the appellant, Mr. Rakesh Sharma and Rajesh Unnikrishnan at the relevant time i.e. at about 12 noon in contradistinction to the statement of the appellant that he was far away from this location, at Ghatkopar. Various other probabilities were taken into consideration by the WTM while concluding that the appellant was one of the conspirators. We find that there is a direct proof in this regard which requires to be considered prominently."

39. I note that the Noticee-2 had also sent an SMS to Noticee-1 informing him of the name of the compliance officer and the mobile number on December 20, 2008. It was revealed that the mobile number did not belong to Kanhucharan Sahu, the compliance officer, but to one Dharmesh Shah (Noticee-3) who misled the reporters that called him to verify the authenticity of the forged letter. With regard to the same, Noticee-2 has submitted that the mobile number purportedly belonging to Kanhucharan Sahu, the compliance officer of PSTL, which he received from Nirmal Kotecha, was forwarded to Noticee-1. However, it is not alleged that he knew that the said number was being used by Dharmesh Shah or that he had misrepresented to the journalists who called the said number that he was Kanhucharan Sahu, a company secretary at PSTL or that he confirmed the fact of the letter issued by SEBI to P.S. Saminathan. In this regard, I note that Noticee-2 has not clarified as to why Nirmal Kotecha had forwarded the wrong number of Kanhucharan Sahu to Noticee-2 in the first place, since as per Noticee-2's contention he has not played any significant role in the alleged dissemination of information to journalists or that he didn't meet Nirmal Kotecha and Noticee-1 to discuss the forged letter. In this regard, I find that from the call records of the Noticees that Noticee-1 had called Nirmal Kotecha (on his Amol Kokane number) at 18:13 on December 20, 2008. Immediately thereafter, Nirmal Kotecha called Noticee-2 at 18:14 and again at 18:35. Noticee-1 also called Noticee-2 at 18:41 and Ashok Jainani at 18:51. Thereafter, there has been continuous long exchange of calls between the Noticee-1 and Noticee-2 and Nirmal Kotecha before Nirmal Kotecha sent four SMSs, of which two were sent to Noticee-1 and two to Noticee-2 between 19:31 to 19:33. Noticee-2 thereafter also sent two SMSs to Noticee-1 at 19:36. The flow of calls and SMSs continued between the three till 19:40. Further, after receiving the SMSs from Nirmal Kotecha's number and from Noticee-2, Noticee-1 had sent SMSs to the reporters and correspondents of various media houses. Hence, I find that not only did Noticee-2 meet Nirmal Kotecha with Noticee-1 on December 20, 2008, but also

had multiple telephonic conversations and SMSs with Nirmal Kotecha and Noticee-1 on that day. Therefore, the reasonable inference from the above facts and circumstances is that Noticee-2 was also actively involved with Nirmal Kotecha and Noticee-1 on December 20, 2008.

40. I also note that Noticee-2 has admitted he had previous dealings with Nirmal Kotecha with regard to PSTL. I note that Noticee-2 vide his letter dated May 19, 2009 had submitted that Nirmal Kotecha used to give him stories on various companies such as Usher Agro, Dhanus Technologies and PSTL and that Nirmal Kotecha was the main source of the articles that he wrote about on PSTL promoter stake sale. I note that Noticee-2 along with one Boby Kurian had written an article titled “Pyramid Saimira: US’ Regal Entertainment, PEs eye 14% in Pyramid” in The Economic Times dated July 07, 2008. The article declared that the World’s largest theatre chain, US-based Regal Entertainment Group, and the private equity funds such as Bain Capital, Goldman Sachs and Texas Pacific Group were in talks with the promoters of PSTL to pick up around 14% stake in the company and that the deal, if concluded, will be in the range of Rs 250-300 crore. The article further stated that Nirmal Kotecha, one of the promoters of the company, was in an exit mode and that NYSE-listed Regal Entertainment, controlled by billionaire Philip Anschutz, and, the PE funds are in discussions to pick up Nirmal Kotecha’s stake in the company (which was stated to be around 14%) through a negotiated price of over Rs 350 per share. However, I note that on the same day, i.e., July 7, 2008, PSTL had clarified to BSE that with reference to the news item appearing in a leading financial daily titled "US' Regal Entertainment, PEs eye 14% in Pyramid", the Company does not subscribe to any of the news expressed in those columns and that the Company has nothing to do with this information, which seems to be speculative report emanating from the media and Economic Times had also carried the said clarification. Investigations revealed that the trading volume in the scrip of PSTL on July 7, 2008 (when the article was published) on both BSE and NSE was exceptionally

high. On the said day, 2,618,759 shares were traded on BSE and 2,795,947 shares were traded on NSE. It was revealed that the top three trading clients on BSE and NSE on gross volume basis on July 7, 2008 were persons/ entities associated with Nirmal Kotecha and I note that separate proceedings have been initiated against these entities associated with Nirmal Kotecha in this regard.

41. I note that the news article published by Noticee-2 led to huge trading volumes in the scrip of PSTL on July 07, 2008. I note even after the company PSTL dismissed the news article as the information was false and speculative, Noticee-2 still proceeded to write a second article titled “PS Saminathan to hike Pyramid stake to 51%” on October 14, 2008, wherein it had been reported that P.S. Saminathan would be acquiring around 25% stake in the company from the other two promoters N.C. Ravichandran and Nirmal Kotecha, for around Rs. 150 crore, by paying Rs. 200 per share. It was emphasized in the article that this price was almost three times the company’s then ruling market price. It was further reported that Nirmal Kotecha held a little over 24% stake in PSTL while N.C. Ravichandran held less than 1% stake. It was also reported that P.S. Saminathan’s move follows the ambitious expansion plans of the company and its subsidiaries, and that, this expansion will require funding from outside and the promoters will be better placed with a higher shareholding for the same. Further, despite the clarification given by PSTL to BSE and carried by Economic Times in the first article, it was again reiterated in this article by Noticee-2 that many US based Regal Entertainment Group and PE funds such as Bain Capital, Goldman Sachs and Texas Pacific Group were in talks with the promoters to pick up equity in the company and that Shri Kotecha who originally held 30% stake in the company has been reducing his exposure in PSTL. Furthermore, I note that Noticee-2 wrote a third article on December 10, 2008 titled “Market slide forces companies to give more shares” covering that many companies like PSTL, GTL Infrastructure, Hotel Leela venture and GHCL, which issued Foreign Currency Convertible Bonds (FCCBs), are revising their conversion price downwards after

negotiations with institutional investors after a sharp fall in the share prices. I note that this article emphasized only on PSTL.

42. From above, I find that the relationship between Noticee-2 and Nirmal Kotecha is clearly evident from the fact that despite PSTL and Economic Times giving clarifications that the information published in the article was only speculative, Noticee-2 had continued to publish articles relying only upon Nirmal Kotecha as his source. I am of the view that any reasonable reporter/journalist would be apprehensive after the information relied upon in his articles about a company from his only source is dismissed by the said company. However, it appears that the Noticee-2 has not even confirmed the information about PSTL from the company itself while publishing the second article. Noticee-2's act of continued reliance on Nirmal Kotecha, without confirming the information, can only be inferred to mean that the Noticee-2 was part of the fraudulent scheme of Nirmal Kotecha. Therefore, I find the Noticee-2's submission that he had no reason to assume that Nirmal Kotecha had forged the said letter to be not acceptable. Given that Nirmal Kotecha in the past has not been reliable in the information provided of PSTL, Noticee-2 should have verified the same with the company. However, Noticee-2 has not made any such effort.

43. From the facts and circumstances of the case and the relationship of the Noticee-2 with Nirmal Kotecha, I find that Noticee-2 had met Nirmal Kotecha and Noticee-1 on December 20, 2008 to discuss the dissemination of the forged letter and was aware that the letter was forged. Hence, I find that Noticee-2 has colluded with Nirmal Kotecha and Noticee-1 in disseminating a forged letter and misleading the reporters and correspondents of media houses by circulating the wrong number of the compliance officer of PSTL. In this regard, I place reference to the Order of the Hon'ble Supreme Court in the matter of SEBI Vs. Rakhi Trading Pvt. Limited (supra), wherein, Hon'ble Supreme Court has also

emphasized the duties of print and electronic media, that they should not mislead the public.

44. In view of the above, I find that Noticee-2 was aware that the letter was forged and was part of the fraudulent scheme of events orchestrated by Nirmal Kotecha in disseminating the forged letter to the media and misleading them in believing the authenticity of the said forged letter, which in turn, upon its publication, has misled investors to trade in the scrip of PSTL. Therefore, I find that Noticee-2 (Rajesh Unnikrishnan) has violated Section 12A of SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.

Dharmesh Shah (Noticee-3):

45. I note that it has been alleged in the SCN that Nirmal Kotecha had given the number of Kanhucharan Sahu, the Compliance Officer and Company Secretary of PSTL, to Noticee-1 and 2 as 9947219100. Noticee-1 in turn, provided the same to all his media friends to whom he had provided information on the forged SEBI Letter. However, the said number 9947219100 was actually being used by Noticee-3 (Dharmesh Shah), who was not a Compliance Officer or Company Secretary or representative of the company PSTL.

46. I note from the SCN that certain reporters, who had received the number from Noticee-1, had called on this number 9947219100 to verify the information of the SEBI letter from the company PSTL and the person who answered the call had confirmed the receipt of the SEBI letter by PSTL. I note that N. Sundaresha Subramanian of DNA, Partha Sinha of Times of India and Jayanta Mallick of the Hindu Business Line had all called on the number 9947219100 and the person who answered the call, admitted that the SEBI letter was received by the company PSTL. It is alleged in the SCN that Noticee-3, to whom this number 9947219100 belonged, was impersonating Kanhucharan Sahu and misled the reporters in believing that the company had received such letter from SEBI.

47. I note that Kanhucharan Sahu is the Compliance Officer and Company Secretary of PSTL since March 2008. In his statement recorded on January 28, 2009 at SEBI, he claimed that mobile numbers 9790910824 and 9940249404 belonged to him. He further claimed that he did not receive any calls on December 19, 20 and 21, 2008 in the matter of forged SEBI letter advising P.S. Saminathan to make an open offer. He also stated that neither any person from the media or any reporter called him on those days, nor did he receive any calls from Nirmal Kotecha on those days. He further claimed that he had not confirmed to anybody regarding the receipt of the letter by the company and that he spoke to Nirmal Kotecha only after issue of SEBI's press release and that the conversations were in the routine matters including the forged SEBI letter. Hence, I observe that the number 9947219100 which was given to Noticee-1 by Nirmal Kotecha and then circulated among the media houses, did not belong to Kanhucharan Sahu, the Compliance Officer and Company Secretary of PSTL. The number in fact was found to belong to one Pratheesh Kumar V.K. that lived in Thrissur, Kerala. A detail analysis of the calls made by Nirmal Kotecha to the number 9947219100 was done and it was revealed that Nirmal Kotecha was in touch with the number 9947219100 on December 20, 2008 and thereafter. It was also revealed that immediately prior to calling the number 9947219100, Nirmal Kotecha had made calls and sent SMSs to a number 9847298213. Upon ascertaining to whom the number 9847298213 belonged to, it was found that the number belonged to one Meera Venugopal, wife of Noticee-3, with the address in Cochin. From a detailed analysis of Meera Venugopal's number 9847298213, it was found that she had also made various calls to the number 9947219100 that belonged to Pratheesh Kumar, as per the registered details provided by the service provider. When the investigation team had met Meera Venugopal for her statement and enquired about her call records with the number 9947219100, she stated that the number 9947219100 belonged to her husband Dharmesh Shah, the Noticee-3. The investigation team then took the statement of Noticee-3 again on June 12, 2009, wherein, he admitted that he has been using the number 9947219100 for the last

2 years and lost the phone almost 3-4 months back. I note that Noticee-3 denied then that he had not received any calls on the issue of PSTL during the period December 20-25, 2008. I also note that the statement of Pratheesh Kumar V.K. was also taken on June 11, 2009, and he claimed that the signature on the KYC and the handwriting on the KYC of the service provider was not his and that the number 9947219100 did not belong to him. Hence, from the above facts, I find that the number 9947219100 was being used by Noticee- 3 during the month of December 2008, when the said number was provided by Nirmal Kotecha to Noticee-1 who in turn circulated it to various reporters and correspondent media houses.

48. I note that, although Noticee no. 3 in his statement taken on June 12, 2009 had denied having received any calls from anybody in the matter of PSTL during the period December (20-25), 2008, an analysis of calls received on number 9947219100 during the said period revealed that Partha Sinha of The Times of India and Ashish Rukhaiyar of The Economic Times had called on the number 9947219100 that was being used by Noticee-3 on December 21 at 19:52 and on December 22, 2008 at 11:41 a.m. respectively. Partha Sinha had informed SEBI that he called that number on Sunday around 8.00 p.m. and the person who took the call confirmed that they had received the letter and are looking into the matter. Ashish Rukhaiyar in his statement stated that on Monday when he called on the number 9947219100, the person who answered the call informed him that it was not the number of Kanhucharan Sahu. Hence, I find that the reporter from Times of India who was given the number 9947219100 by Noticee-1, had called the number assuming that it was the number of Kanhucharan Sahu, the Compliance Officer/Company Secretary of PSTL, and the person who answered the call confirmed that PSTL had received the said letter from SEBI. However, it appears that the person who answered the call was not Kanhucharan Sahu but someone else impersonating him and I find that it was Noticee-3 who was using the number 9947219100 during that period.

49. In this regard, the Noticee-3 in his submissions has denied that he acted as an imposter of Kanhucharan Sahu, the company secretary of PSTL. Noticee-3 has submitted that since the allegations against him rest on the statements made by the said reporters, he should be given opportunity to cross-examine them. However, since cross examination of Mr. Partha Sinha or Mr. Ashish Rukhaiyar was not granted to the Noticee Therefore, the charges against him should be dropped on this ground alone. In this regard, I observe that the Noticee-3 was not given the opportunity to cross examine the aforementioned reporters on whose statements the allegations have been made against the Noticee-3. Therefore, I am inclined to agree with the Noticee- 3 that the statements of the reporters cannot merely be relied upon. However, I note that, even if the statements of the reporters cannot be relied upon, the facts deposed by reporters to the extent that they are corroborated by other documents available on record cannot be dismissed as unreliable. In this regard, I observe that the call records of the number 9947219100, reveal that a call was made by Partha Sinha on December 21, 2008 around 8:00 pm to the number 9947219100 and the person who took the call confirmed that they had received the letter and are looking into the matter. Therefore, I note that a call was made to the number 9947219100 which was provided by Nirmal Kotecha to Noticee-1 and 2, and which Noticee-1 in turn circulated to various reporters who wanted to confirm whether the SEBI letter to PSTL was credible information as provided to them by Noticee-1. I also note that, even if it was one call, the Noticee-3, who admittedly was using the number 9947219100 then, had confirmed to that one caller that the information about the letter to PSTL was true. Hence, I find that Noticee-3 has in fact impersonated Kanhucharan Sahu, the compliance officer and company secretary of PSTL. I find that the number of persons to or number of times he impersonated Kanhucharan Sahu is not relevant to prove that he acted in a fraudulent manner. I find that the one act of Noticee-3 is sufficient to prove that he impersonated Kanhucharan Sahu and has colluded with Nirmal Kotecha in

misleading the media to believe in the authenticity of the information that was circulated to them.

50. I further note that Noticee-3 has in his statements recorded on June 09, 2008, admitted that he knows Nirmal Kotecha as they are childhood friends and he is in touch with him at times. He had also stated that his wife Meera Venugopal Shah and Nirmal Kotecha's first wife Shweta Menon were also childhood friends and they were in touch with each other. I further note that the Noticee-3 has also stated that he knew Deepak Thakkar, who is the maternal uncle of Nirmal Kotecha against whom separate proceedings have been initiated for his alleged role in manipulating the scrip of PSTL. Therefore, it is not the case that the Noticee-3 did not know Nirmal Kotecha, rather, I find that Nirmal Kotecha was very good friends and connected with Noticee-3. I find that the evidence to test the preponderance of probability in the present case is not dependent on thin parameters of association between the Noticee with Nirmal Kotecha, but on a well-connected and admitted association between the two.

51. In view of the foregoing, I find that Noticee-3 was associated with Nirmal Kotecha and from the call records of Partha Sinha with the Noticee-3, it is established that the Noticee-3 was impersonating the compliance officer/company secretary of PSTL in December 2008. In view of the above, I find that Noticee-3 (Dharmesh Shah) has violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.

52. In view of the foregoing, I am of the considered view that the manipulative / deceptive acts 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)(e) and 4(2)(r) of PFUTP Regulations, 2003 read with Section 12A of the SEBI Act.

53. In view of the foregoing, I find that Noticees viz. Rakesh Sharma, Rajesh Unnikrishnan and Dharmesh Shah were part of a scheme to defraud investors in the market through forgery, dissemination of the false information contained in the forged letter to the media and an attempt to mislead the media to believe in the authenticity of the information that was circulated to them. This had facilitated Nirmal Kotecha to offload his stake on December 22, 2008 at artificially inflated price and earn a sizable profit. In view of the above, I conclude that the Noticees viz. Rakesh Sharma, Rajesh Unnikrishnan and Dharmesh Shah have violated the provisions of Section 12A of SEBI Act and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of PFUTP Regulations, 2003.

54. 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.

55. 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.

56. I note that that Noticee-1 was restrained from dealing in securities market vide interim order dated 23 April, 2009. The said direction was revoked vide SEBI order dated June 23, 2020. I also note that Noticee-2 was restrained from dealing in securities market between April 23, 2009 and October 27, 2010 and thereafter, for a period of 1 year vide order dated June 23, 2020. Noticee-3 was restrained from dealing in securities market for a period of 1 year vide order dated June 23, 2020. In view of the same, I find it appropriate to consider the direction in the nature of debarment 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. I also note that Prosecution Proceedings have also been initiated against the Noticees. 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. Any manipulative scheme affects the price discovery system and has an adverse impact on the fairness, integrity and transparency of the stock market. 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

57. 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	Rakesh Sharma	Rs. 2,00,000 (Rupees Two Lakh Only)
2	Rajesh Unnikrishnan	Rs. 2,00,000 (Rupees Two Lakh Only)
3	Dharmesh Shah	Rs. 2,00,000 (Rupees Two Lakh Only)

58. 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.

59. 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

60. 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.

61. 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**