

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, in respect of

Noticee : Mr. Nirmal Kotecha (PAN: AEZPK2016H)

In the matter of Pyramid Saimira Theatre Limited.

1. Background :

1.1. On December 21 and 22, 2008, there were media reports that vide a letter dated December 19, 2008, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') directed Mr. P.S. Saminathan, one of the promoters of Pyramid Saimira Theatre Limited (herein after referred as '**PSTL**'), to make an open offer within 14 days, for allegedly violating creeping acquisition norms under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the "**Takeover Regulations**"), at a price of not less than Rs.250/- per share.

1.2. As a result, the shares of the company shot up on Monday morning i.e. December 22, 2008, when the stock markets opened for the day. On the same day, PSTL first informed Bombay Stock Exchange Limited (herein after referred as '**BSE**') and National Stock Exchange Limited (herein after referred as '**NSE**') in the morning that the company had not received any such communication from SEBI. Subsequently, PSTL received the said communication

at around 10.30 a.m. the same day i.e. December 22, 2008, when the courier company Blue Dart delivered the said letter of SEBI. Mr. P.S. Saminathan informed BSE and NSE on December 23, 2008 about the receipt of the letter from SEBI. On December 23, 2008, SEBI also issued Press Release clarifying that no order or letter has been issued by SEBI against PSTL.

1.3. Preliminary enquiries revealed that SEBI had not issued any such direction and that the purported SEBI letter was forged. An investigation was ordered for the purpose of examination of trading in the scrip of PSTL. Based on the investigation, SEBI vide an *ad interim ex parte* order dated April 23, 2009 (hereinafter referred to as '*interim* order') issued under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), *inter alia* directed:

- Mr. Nirmal Kotecha, Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan, Mr. Pratheesh Kumar V.K. and Mr. P.S. Saminathan not to buy, sell or deal in the securities market including IPOs, in any manner, either directly or indirectly, till further directions.
- Certain persons/ entities alleged to be related/ associated with Nirmal Kotecha, who prima facie played a key role in facilitating him, in carrying out suspicious banking transactions, not to buy, sell or deal in the securities market including in IPOs, directly or indirectly, till further directions.

2. Show Cause Notice, Inspection of Documents, Cross Examination, Reply and Personal Hearing.

2.1. On the basis of the investigation, a Show Cause Notice (hereinafter referred to as 'SCN') dated December 03, 2013 was issued against Nirmal Kotecha (hereinafter referred to as 'the Noticee/ NK'). The SCN *inter alia* alleged that :-

- (i) during the six month period immediately prior to the forged SEBI letter that was sent to P.S. Saminathan, the Noticee used his fronts/ associated persons/ entities to carry out circular, synchronized and reversal transactions in an attempt to artificially push up the volumes in the scrip of PSTL;
- (ii) the Noticee connived with a few brokers and his associated persons to form a group using low income background persons as fronts in his bigger plan of manipulation of PSTL scrip so that he could offload his huge stake in the PSTL scrip;
- (iii) the Noticee had planned and executed the scheme of forgery involving the forged SEBI letter that was sent to P.S. Saminathan, the then CMD of PSTL with the involvement of the persons working with him;
- (iv) the Noticee connived with Rakesh Sharma, an executive from Adfcators PR Pvt. Ltd., a PR agency, Rajesh Unnikrishnan, a reporter with the Economic Times and Dharmesh Shah, his childhood friend from Cochin to offload his large stake in PSTL on December 22, 2008 when the market opened at artificially inflated price as against the last traded price and earned a sizeable profit, by forgery and by dissemination of the false information contained in the forged letter to the media in an attempt to

mislead the media to believe in the authenticity of the information that was circulated to them;

(v) Persons/ entities related/ associated with the Noticee had accumulated PSTL shares between December 16 to 19, 2008 and off-loaded most of their holdings on December 22, 2008 and were amongst the net sellers in PSTL scrip;

(vi) The Noticee along with persons/ entities associated with him had made undue profit of about Rs. 10 crore from the publication of forged SEBI letter and the consequent trading interest which got generated enabling him and his associates (related entities) to off-load substantial holdings in PSTL shares.

2.2. Therefore, it is alleged that the Noticee had violated Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulation 3(a),(b),(c),(d), 4(1), 4(2)(a), (b), (d), (e), (f), (g), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The legal provisions allegedly violated by the Noticee are reproduced for reference as follows:-

SEBI Act, 1992

" 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 recognised 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;

FUTP Regulations, 2003

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

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

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

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

2.3. The SCN was served on the Noticee and as requested by him, inspection of documents was granted to the Noticee. After the inspection of documents, the Noticee sought cross examination of 66 persons. After considering the relevance of their cross-examination, from

the perspective of the reliance placed by the Show Cause Notice, SEBI allowed cross examination of 6 persons, namely:-

- a) Dharmesh Shah;
- b) Mittal Acharya;
- c) Amol Kokane;
- d) Darshan Desai;
- e) Nirmal Shah; and
- f) Ansuman Dev Pradhan (SEBI officer).

2.4. In response to the SCN, the Noticee vide letter dated October 13, 2017 *inter alia* submitted that:-

- (i) *SCN has connected random entities and/or individuals with no or very distant and superfluous indirect connections to him and random trades to allege some kind of conspiracy. Same is very hypothetical. Particularly, when no cross examination was offered and therefore cannot be relied upon;*
- (ii) *The SCN has failed to show independent connection between him and / or connected group of entities, so as to allege that there existed any prior understanding or prior meeting of minds between the entities/ individuals, regarding synchronization of trades. The alleged synchronised trades between the purported connected entities are very few to use the same as a basis of drawing connection between independent and separate parties.*

- (iii) SEBI has inferred that in every instance merely knowing a person or having any kind of interaction with them is sufficient to establish that such a person was acting as his front entity without any cogent evidence to support such a claim.
- (iv) SEBI filed a FIR with the BKC Police Station in relation to the alleged forged SEBI Letter. Upon investigation, the BKC Police Station has filed a Charge Sheet in the said matter dated August 01, 2009 and in the said Charge Sheet it is expressly recorded that there is no evidence to suggest that he has master-minded the said fraud and in fact it was concluded that he was not involved in the said matter. The allegation that the e-mail containing the said SEBI letter was sent by Rakesh Sharma from Noticee's residence was denied and it was stated that the said email was sent from a Cyber Café.
- (v) Purportedly forged SEBI letter was also received by him on December 20, 2008. However, no independent efforts were made by SEBI to ascertain which courier agency delivered the said letter to his residence. The Show Cause Notice is silent as to whether Blue Dart, which delivered the letter to Mr. Saminathan, was questioned about the letter sent to him. Although it was within SEBI's knowledge that the letter sent to him was also forged, which is evident from the fact that he was informed of this by SEBI, no investigations or examination has been conducted to try and ascertain who sent the said letter to him, which could have a crucial bearing on determining who sent the letter to Mr. Saminathan.
- (vi) He had in fact been selling shares in PSTL from June 2008 onwards and not only on December 22, 2008 and he continued to sell shares up till January 2009. If it had been his intention to take advantage of "artificially inflated" prices, he would have sold his entire shareholding on December 22, 2008. He sold shares of PSTL in the normal course in the market during the period December 15-19, 2008 and had not attempted to sell the same to his associates as alleged. No prudent person who wants to exit a particular stock will sell that stock to his own related/ connected entities and unnecessarily incur

the expenses of trading when he knows that there is no market for that stock. Thus the allegation that the Noticee transferred shares to his related connected entities completely defies logic. Had he known about the forgery and wanted to sell the shares to public at large on December 22, 2008, he could have done so directly and would not have first sold the shares to his alleged associated entities as alleged. It may also be pointed out that a person who is trying to take advantage of forgery in similar circumstance and is aware about the forgery would in fact ask his associates to buy shares just prior to forgery and let them also take advantage of the price rise which he is expecting out of forgery and would have not sold his shares to the so called associates. It is the case of SEBI that the entire exercise was done to avoid depression in the prices of PSTL and to gain out of higher prices resulting from the alleged forged SEBI letter, however if it were so there was all the more reason for him to directly sell the shares from his account instead of transferring the stock to his alleged associated entities/persons. It is also interesting to note that the alleged transfer made by him to his associates during December 15-19, 2008 also did not have any impact on the price of the scrip and therefore there was no motivation to do so even from this aspect.

(vii) He has also sold shares in October, November and in the month of December i.e. before December 22, 2008 and even after December 22, 2008 and continued selling until January 2009. He had sold 30,80,442 shares in BSE and 11,16,574 shares in NSE aggregating 41,97,016 shares before December 22, 2008 and 22,84,377 shares in BSE and 23,79,504 in NSE aggregating 46,63,881 shares post December 22, 2008, thus it cannot be in any manner be stated that, he was part of the, alleged design vide which the purported forged letter was circulated and he took undue advantage by offloading a part of his holding on December 22, 2008 . If he was a part of the alleged forged letter circulation, then he would not have sold a single share between the period of June -December 22, 2008 nor would have contributed in such meagre volume generated on December 22, 2008.

(viii) *SEBI has considered the entire sale made on December 22, 2008 for arriving at the calculation of undue gains made by him, it is however submitted that it is SEBI's own case that on December 22, 2008 at 10:28 and 10:30 a.m. respectively P. S. Saminathan had declared to the public at large through BSE and NSE respectively that he has not received any direction from SEBI to make open offer and therefore the public shareholders were well informed that there was no direction of open offer on Mr. Saminathan.*

2.5. Considering the reply dated October 13,2017 received from the Noticee, an opportunity of personal hearing was granted to the Noticee on October 25 & 26, 2017 and November 6, 2017. During the personal hearings, the Noticee was represented by Shri Gaurav Joshi, Senior Counsel, Shri Ankit Lohia, Advocate and M/s. Mind Spright Legal. After the personal hearing, written submissions were filed by the Noticee vide letter dated November 24, 2017.

3. Issues for consideration.

- A. Whether the Noticee had fraudulently used the demat account, bank account and mobile number of Amol Kokane as his front entity to trade in the scrip of PSTL?
- B. Whether the Noticee resorted to artificial inflation of the trading volumes and stock price of PSTL scrip by entering into synchronized trades, reversal trades, self-trades, trades with front entities and artificial trades amongst front entities, funding of front entities for their trades, cross deals with the promoter of PSTL etc. so as to offload substantial holding in the scrip to unsuspecting investors during the investigation period?
- C. Whether the Noticee had, in connivance with Rakesh Sharma, Rajesh Unnikrishnan and Dharmesh Shah, caused the publication of the forged SEBI letter so as to book profits?

D. In case, the issues above are answered in the affirmative, what is the quantum of unlawful profits earned by the Noticee?

4. CONSIDERATION OF ISSUES AND FINDINGS

A. Whether the Noticee had used the demat account, bank account and mobile number of Amol Kokane as his front entity?

Allegations in the SCN on Issue A:-

4.1. In the SCN, it is alleged that Amol Kokane (**AK**) was being used Nirmal Kotecha (**NK**) as his front. When SEBI recorded AK's statement at his residence on February 27, 2009, AK admitted to SEBI that the Noticee was operating all his accounts. Further, AK in his statement claimed to have opened a share trading account with the broker M/s. India Capital Markets Pvt. Ltd. (ICMPL) on the recommendation of his late brother-in-law, Sandeep pati Gavhane, who was working as an Accountant with M/s. Kotecha Capital Services Pvt. Ltd. In his statement, AK had also claimed that his brother-in-law was operating that account for his boss Nirmal Kothecha and that his brother-in-law used to take his signatures on blank forms and documents. AK had further claimed that he does not have any idea about the share market, that he has never visited the broker's office, and that he had never given any order (buy or sell) to the said broker. Further, he stated that his account was operated by his brother-in-law, till his brother-in-law met with an accident on October 16, 2008 and had to be hospitalized. He further claimed that after the death of his brother-in-law on November 01, 2008, NK was operating his share trading account and also his bank account.

4.2. SCN further alleges that Nirmal Kotecha claimed in his statement to SEBI that the mobile number 9819988816 belonged to him. However, as per the information obtained by SEBI from the telecom service provider 'vodafone', the mobile number 9819988816 is registered in the name of Amol Kokane (resident of 622/B, Kushaba Kale Chawl, N.M. Joshi Marg, Byculla, Mumbai – 400027). AK had claimed in his statement to SEBI that he was a student of an Engineering College at Navi Mumbai and that he did not have any personal income. The family's annual income as disclosed in the Client Registration form of the broker (M/s. India Capital Markets Pvt. Ltd.) was in the range of Rs. 1-5 lacs only. On the other hand, it is observed that cash payments of as high as Rs. 40,000 in a month were made towards charges incurred on the aforesaid mobile number 9819988816. AK has further stated in his statement to SEBI that the mobile number 9819988816, which was registered in his name, was never used by him nor his brother-in-law, but was used by his brother-in-law's office staff at M/s. Kotecha Capital Services Pvt. Ltd.

4.3. In the SCN, it is further alleged that the fund trail of AK's bank account held with Bank of India, D.N. Road branch (A/c no. 001710100058428) revealed that AK had received Rs. 10 lakhs from the bank account of one M/s. Om Associates held with Axis Bank on September 10, 2008. Amol Kokane vide his statement dated June 25, 2009 has confirmed that from January 01, 2008 to February 02, 2009, no funds in the said account were deposited by him and his family. A perusal of the bank account statement of M/s. Om Associates revealed that transactions running into crores of rupees were routed through that account of M/s. Om Associates. Investigations revealed that M/s. Om Associates does not carry any bonafide business activity. Further, it was found that the funds that were transferred from the bank

account of M/s. Om Associates to the bank account of AK, were ultimately routed to the stock market through the broker ICMPL. It is observed that this client account of AK with the broker M/s. India Capital Market Pvt. Ltd. was opened in his name on September 12, 2008, and on the very same day, it was also found that Nirmal Kotecha too had opened a new client account with ICMPL.

- 4.4. Further, a perusal of the statement of the Bank of India account of AK for the period September-October 2008 revealed that funds were transferred to the account of AK through cheques issued from the bank accounts of various persons / entities. It is observed that one such cheque bearing no. 769790 for Rs. 18 lakhs drawn on Indian Overseas Bank, Kalbadevi branch was credited in the bank account of AK on October 15, 2008. Investigations revealed that the said cheque was issued to AK by one Jignesh Amrutbhai Patel of Classic Enterprises. Investigations further revealed that the pay-in-slip dated October 14, 2008 used for depositing the said cheque into the account of AK was not deposited at D.N. Road branch of Bank of India where AK's account was held but was deposited at the Bandra Kurla Complex branch of Bank of India. Further, it is observed that on the said pay-in-slip, local contact phone number details were mentioned as: Tel Number: 22886202 and Mobile Number: 9867076307. Investigations carried out by SEBI have revealed that landline number 22886202 mentioned on the pay-in-slip was the landline number of M/s. Kotecha Capital Services Pvt. Ltd. The mobile number 9867076307 mentioned on the pay-in-slip belonged to Ghanshyam Yadav, who worked as a peon at Kotecha Capital Services Pvt. Ltd. This further confirms that AK's bank account was operated by Nirmal Kotecha.

Defence / justification of the Noticee on Issue A:-

- 4.5. In response to the said allegation, the Noticee relied upon the statement of Amol Kokane in cross-examination, wherein he had stated that Sandeep Gavhane (SG), his brother-in-law was not permitted to trade directly in the stock market because of his affiliation with Kotecha Capital. Therefore, SG decided to set up a trading account in Amol Kokane's name and trade through that account. Thus, SG informed AK that he would be opening a trading account in his name and requested him to sign the necessary forms and other paper-work from time to time to facilitate the said trading account.
- 4.6. The trading account was under the exclusive control of SG and all the funds used for trading in the said account as well as the proceeds therefrom belonged to SG and not Amol Kokane. After the death of SG, Amol Kokane transferred the balance funds in the said account to his sister, i.e. the widow of Mr. Gavhane. After the death of Mr. Gavhane, the trading account was operated by Darshan Desai. Darshan Desai was a friend of SG and he was also sub-broker with ICMPL. It was Darshan Desai who opened the trading account of both Amol Kokane and Nirmal Kotecha with ICMPL on the same day. Amol Kokane has further stated in his cross examination that after the death of Mr. Gavhane, the trades in the account were done by Darshan Desai and the same has been affirmed by Darshan Desai in his statement dated March 05, 2009 recorded before SEBI and re-affirmed by Darshan Desai in his cross examination held on May 22, 2017.
- 4.7. Nirmal Kotecha has no relationship with AK whatsoever. The first time when the Noticee met Amol Kokane was shortly before the death of SG when he had an accident and was hospitalized. As the Noticee was SG's employer, Amol Kokane met the Noticee and discussed about financial assistance for SG's medical treatment. Thereafter, the Noticee met Amol Kokane only on February 25, 2009 when Amol Kokane's statement was being recorded by SEBI.

4.8. There is no allegation or evidence to show any other meeting between Amol Kokane or the Noticee during the relevant time period. There is no evidence of any phone calls or other means by which the Noticee could have instructed Amol Kokane on how and in what manner to trade in the shares of PSTL. The Noticee has never operated Amol Kokane's trading account and has not derived any benefit directly or indirectly therefrom.

4.9. The Noticee was using a phone number that was registered in the name of Amol Kokane. This number was admittedly used by the Noticee and even in his statement to SEBI, the Noticee admitted to using the said number. This number was obtained for the Noticee's use by Sandeep Gavhane. It is submitted that it is not an offence under any law in force for the Noticee to be using a mobile number registered in Amol Kokane's name. In fact the Indian Telegraph Act, 1885 does not place any restriction on the use of the number of one person on whose name the said number has been issued by another person. All of the Noticee's communication from the said number was in his own name and the bills in respect thereof were paid directly by the Noticee. Further, it is not the case that the said number was used secretly or only for a limited period of time or only for transactions related to PSTL. It is therefore submitted that there is no impropriety in the Noticee using the said mobile number and no adverse inference ought to be drawn on account of the same. It is reiterated that the Noticee had asked his employee SG to get a new number and not particularly in the name of Amol Kokane. His reason for getting another number was that he wished to avoid getting unwanted calls coming on his number from media, market people etc. At the relevant time, he was not aware that the number was in the name of Amol Kokane or that Sandeep Gavhane was trading in the name of Amol Kokane, whose number was provided to him by Sandeep Gavhane.

4.10. The Noticee in his reply further stated that on bare perusal of the statement recorded by SEBI officials, it can be deciphered that assuming Noticee was using AK's account as his front then the cheque amounting to Rs. 4, 29,000/- as discussed in the said statement should have been received by Noticee instead of AK himself or in any event would not have been transferred to the account of Mrs. Nirmala Gavhane who is not even alleged to be connected to the Noticee.

4.11. According to the Noticee, on June 25, 2009 when the second statement of AK was recorded, it is to be noted that not a single question was asked to AK regarding discrepancy in the facts stated by him in his statement dated February 27, 2009 and the statement of Darshan Desai. In fact, the only question that was asked to AK regarding his trading account is regarding the receipt of payout from the India Capital Market Ltd. to which AK has answered that he did receive the payout. No questions were asked about any flow or transfer of funds by AK to the Noticee nor was any attempt made at any time to establish how the Noticee used/had the benefit of or access to the gains earned by the alleged connected entities at the alleged behest of the Noticee. The Noticee strongly refuted the allegation that the funds which were routed to stock market through AK and M/s Om Associates belonged to the Noticee. The SCN has not produced any evidence leaving aside any credible evidence on record to establish the allegation levied upon him. The Noticee cannot be linked to the banking transactions of Amol Kokane as one of the pay-in-slips had the landline number of KCSPL and mobile no. of a peon Gansham Yadav, who worked with KCSPL, mentioned on it. Merely because of the mention of these numbers on the pay-in-slip of the cheque deposited, it cannot make the Noticee connected to Kokane's transactions. It is important to note here that the statement of Ghanshyam Yadav was recorded by investigation team on January 15, 2009, however during the course of recording of statement, no efforts were

made by investigation team to find out as to upon whose instruction Ghanshyam had deposited the cheque in the account of Amol Kokane. The Noticee stated that since none of the trades executed in the account of AK were on his instructions and he had no role of whatsoever in these transactions, therefore he does not have any comments to offer on the same in relation to the purchase and sell of shares in the account of AK.

Findings in Issue A :-

4.12. I have carefully considered the charges in the SCN, the statements of NK and AK and the defence put forward by the Noticee. I find that the Noticee has been very defensive and inconsistent throughout his response. For instance, the Noticee initially claimed in his statement that mobile no. 9819988816 belonged to him, but later, when confronted with the information obtained from Vodafone, that the number belonged to AK, he accepted that the mobile number belonged to AK and made up the excuse that he has been using this number for avoiding calls from media and market people and the same is not illegal. I do not find any substance in the justification put forward by the Noticee. Contrary to this justification given by the Noticee, there are numerous instances cited in the SCN which reveal that mobile number 9819988816 has been used to contact and receive calls and sms from / to market people against which the Noticee did not put up any defence. I do not find any justification for the Noticee to have used the number of AK as if it was his own. On the other hand, it leads to an inference that he had dubious intentions.

4.13. I have also noted that the Noticee consciously kept the fact that late Sandeep Gavhane was working with him under wraps. The Noticee was specifically asked by SEBI, to name all employees (past / present) working with him, vide summons dated July 08, 2009 and July

31, 2009. In response to the summons dated July 30, 2009, the Noticee vide reply dated August 12, 2009, stated that the following persons were/ are working with him:

- Anil Raj (since last 2.5 years approx.)
- Ruma Kinariwala (since last 1.3 years approx.)
- Ms. Mittal Acharya (since last 1.5 years approx.)

It was only vide letter dated August 25, 2009, that the Noticee submitted that inadvertently the name of Sandeep Gavhane was missed out.

4.14. I have also noted the fact that in its response dated May 15, 2009 filed after the interim order dated April 23, 2009, Kotecha Capital Services Private Limited (KCSPL) has submitted to SEBI that Sandeep pati Gavhane was never its employee. KCSPL was incorporated on July 20, 2007 wherein Nirmal Kotecha, Shweta Kotecha and Manilal Kotecha held 9800, 100, 100 shares respectively. Thus the Noticee was in control of KCSPL and his initial submission was to mislead the regulatory investigation by stating that Sandeep Gavhane was not an employee of KCSPL. However, contrary to his initial stand, the Noticee subsequently made a submission that Sandeep Gavhane was an accountant of KCSPL.

4.15. I note that the Noticee adopted a similar strategy of switching his stance, with respect to his usage of the registered mobile number of Amol Kokane, from the initial stand that the number does not belong to him to the later stand that he was using the number of AK to avoid unwanted calls from the media and the market people, as discussed earlier. Moreover, the Noticee has further relied on the statement of AK during his cross-examination to the effect that SG had opened the account in the name of AK for his own trading purpose, as SG had trading restrictions arising out of his employment. Assuming this to be correct, I

am of the view that it cannot be a matter of sheer coincidence that NK would also open a trading account on the very same day on which AK's account was opened. It cannot be another co-incident that both their trading accounts were opened with the same broker, namely ICMPL. I further note that Darshan Desai of ICMPL was otherwise connected to the Noticee, as brought out later in this order. All the circumstances reasonably lead to the inference that the Noticee had caused SG to open an account in the name of AK and used AK as his front for trading in PSTL.

4.16. This inference is further strengthened by the size of transactions carried out in the bank account of the Amol Kokane, which were not in tune with the status of AK being a student. Some of the illustrative transactions carried out in the bank account of Amol Kokane as alleged in the SCN, are as follows:-

- 1) Received Rs. 10 lakhs from the bank account of one M/s. Om Associates held with Axis Bank on September 10, 2008.
- 2) Received Rs. 18 lakhs from the bank account of Jignesh Amrutbhai Patel of Classic Enterprises held with Indian Overseas Bank on October 14, 2008.
- 3) Received Rs. 15 lakhs as loan from Nigam V. Shah in October 2008.
- 4) Received Rs. 2.75 lakhs as loan from Hemal Gandhi in October 2008.
- 5) Received credit of Rs. 12 lacs from Janak H. Chitalia of M/s. J.H. Chitalia & Co. on October 10, 2008.
- 6) Loan of Rs. 50 Lakh given by Amol Kokane to Nikhil Securities Limited (Nikhil) during this period was stated to be refunded back by Nikhil to Amol Kokane vide cheques, the details of which are tabulated as below:

Cheque Date	Cheque No.	Cheque Amount	Name of the bank
2/3/2009	103148	10,99,060	Standard Chartered
3/3/2009	103149	8,00,000	Standard Chartered
4/3/2009	103150	8,00,000	Standard Chartered
5/3/2009	103151	8,00,000	Standard Chartered
6/3/2009	103152	8,00,000	Standard Chartered
7/3/2009	103153	8,00,000	Standard Chartered
Total		50,99,060	

4.17. I note that the SCN, under the head **“Role of M/s. Nikhil Securities Ltd.”** had brought out certain adjustments/losses to be made good by the Noticee to Nikhil Securities, arising out of the earlier trades executed by Nikhil Securites acting as a front of the Noticee, in certain identified scrips of interest to the Noticee, such as SEL Manufacturing Company, Usher Agro Ltd and PSTL. The investigation had also identified that Nikhil Securities had sustained loss to the tune of Rs. 39,62,997.30, as a result of its trades in the scrips of PSTL and SEL, as on October 10, 2008. Nikhil Securites claimed that the said amount of Rs.50 lacs was received from AK in the form of a loan and they have repaid the said amount. However, upon verification, Sarwesh Dubey, a director of Nikhil Securities, vide his e-mail dated April 13, 2010, has stated that the said cheques are yet to be cleared, which means that the cheques were not encashed. This also confirms the position that AK had not sent the cheques for collection thereby falsifying the case of the Noticee that it was a loan transaction between AK and Nikhil Securities. I observe that the reply of the Noticee does not give any explanation to this part of the allegations except stating that AK is not connected to him. Therefore from the circumstances, it appears that the fund transfer from AK’s account to

Nikhil Securities, which is another front entity of the Noticee, has happened at the instance of the Noticee and not otherwise.

4.18. I am unable to accept that within a short period of 3-4 months, between September 2008 to December 2008, Sandeep Gavhane who was an accountant with the Noticee, could acquire a financial wherewithal to do transactions of this magnitude without the patronage and support of the Noticee. I have noted that AK in his statement dated February 27, 2009 had stated that initial salary of Sandeep Gavhane was Rs. 7,000 and last salary was Rs. 12,000 from which it follows that he was not a man of substantial means to enter into these transactions. I am therefore led to conclude that neither AK nor SG had the financial strength to put through trades of this magnitude. Admittedly Nirmal Kotecha was using the mobile number of AK. Gavhane was NK's employee while he opened the accounts in the name of his Brother - in - law with the same sub- broker as that of his employers, namely ICMPL. Hefty amounts were transferred in and out of AK's bank a/c, which had no correlation with the financial means or other supporting reasons to back them up. The noticee tried to furnish full details of his employees during the investigation but suppressed Sandeep Gavhane's name consciously. Considering all the above factors, the circumstances clearly point to the accounts of Amol Kokane (which includes the trading account and the bank account) and the mobile number of AK were being actually used by the Noticee for his trades.

B. Whether the Noticee has resorted to artificial inflation of the trading volumes and stock price of PSTL scrip by entering into synchronized trades, reversal trades, self-trades, trades with front entities and artificial trades amongst front entities, funding of front entities for their trades, cross deals with the promoter of PSTL etc. so as to offload

substantial holding in the scrip to unsuspecting investors in the market during the investigation period?

Allegations in the SCN on Issue B:-

4.19. Based on the investigation, it was alleged in the SCN that Nirmal Kotecha along with connected entities or associated entities as shown at para 16 of the SCN executed circular, synchronized / structured deals amongst themselves on various trading dates. I note that at para.16, 15 entities have been shown as connected to the Noticee. These entities are called 'Nirmal Kotecha Associates' in the SCN ('NKA' in short hereinafter in this order). It was alleged that artificial volumes by fraudulent modes were put in the system through persons namely Amol Anand Kokane, Priyanka Darshan Desai, Girish Kumar Ankit, Falguni Jayesh Shah, Inventure Growth & Securities Ltd., DKG Securities Pvt. Ltd., Milaribhai Hardik, SPJ Stock Broker Pvt. Ltd., B.K. Shah, APL Infrastructure Ltd., M/s Standard Securities & Investment Intermediaries Ltd., Transglobal Securities Ltd., MBL & Co. Ltd., Mansukh Securities & Finance Ltd., and Uttani Financial Services Ltd. (Mansukh Stocks Brokers Ltd.). They had also reversed their positions on the same day by executing synchronized / structured deals whereby the entities had nil / negligible trading positions on most of the trading dates which resulted in negligible pay-in positions, from their side, on the stock exchanges. SCN further alleged that in order to generate trading interest in the scrip, the Noticee also planted false news through his media contact.

Defence / justification of the Noticee on Issue B:-

4.20. In response to the said allegations, the Noticee *inter alia* submitted that the SCN has connected random entities and/or individuals with nil or very distant and superfluous indirect connections to the Noticee and relied upon some random trades to allege some

kind of conspiracy, which is hypothetical. Particularly, when no cross examination was offered to the Noticee, such statements cannot be relied upon. The Noticee further submitted that synchronised trades between the purported connected entities are very few that it cannot form a basis of drawing connection between independent and separate parties.

4.21. The SCN has not brought out a single piece of evidence, which could establish connection and/or prior meeting of mind inter-se the purported connected entities and/or with, Nirmal Kotecha. Further, the SCN also failed to establish on record a single shred of evidence, which could with judicial scrutiny establish that the Noticee had facilitated trading of any by the purported connected entities or that any of the purported entities were trading in the scrip of PSTL on the instruction of Nirmal Kotecha either directly or indirectly.

4.22. It is further denied that the Noticee had used his associated persons/entities to carry out circular and synchronised reversal transactions in his attempt to artificially push up the volumes in the scrip of PSTL as alleged. It is further denied that the entities name in para 16 of the SCN were directly or indirectly connected/associated persons/entities of the Noticee.

4.23. With regard to the reversal, synchronised and circular trades executed between purported connected entities, the Noticee strictly without prejudice submitted that the SCN has failed to show independent connection between the alleged Nirmal Kotecha Associate (NKA) and /or connected group of entities, so as to allege that there existed any prior understanding or prior meeting of minds between the entities/individuals, so as to allege synchronization of trades.

4.24. Further at para 571(c) of the SCN, it is admitted that SEBI has not examined the entire order log and trade in respect of the trades conducted between the parties and only analyzed the trades

on sample basis. Thus the whole allegation of having executed circular and synchronised trades is based on partial analysis of data and must be dropped on the basis of the same.

Findings with respect to Issue B :-

4.25. The SCN has brought out fraudulent trades executed in the scrip of PSTL through a web of inter-connected entities (15 in number) as shown from para 16 till para 108 in the SCN. The connections have been brought out by the investigation on the basis of analysis of trade and order log, fund movement from the account of one entity to another account, examination of certain entities, analysis of Call Data Records etc. I note that certain entities who were examined by SEBI were not allowed to be cross-examined even though the Noticee had requested for the same. I do not wish to rely on the statements of those who were not allowed to be cross examined and I would restrict myself to drawing inferences from other facts and circumstances that are borne out of records. As the part of the SCN dealing with these trades (trades between connected entities) is voluminous, I would like to discuss the averments and allegations in the SCN in juxtaposition with the Noticee's defence advanced on the cited transactions, to avoid repetition.

4.26. **Trades of Nirmal Kotecha:-**

(1) Allegation regarding self-trade by Nirmal Kotecha:- During the period June 2008 to Dec. 19, 2008, NK had purchased 3,40,000 shares on BSE. The purchase had been done on two trading dates only viz. Oct. 24, 2008 (140000 shares) and Oct. 27, 2008 (200000 shares). On both the above dates, he had acted as the major counterparty to his buy trades. The details of self-trades by NK are as below:

Trading Date	Name of entity	Net Buy quantity in market	Self-trade qty	% of self-trade qty (net) to entity's net buy traded qty	No. of buy Trades in market	No. of self-trades
24-Oct-08	NIRMAL KOTECHA	140000	125568	89.69%	26	10
27-Oct-08	NIRMAL KOTECHA	200000	192985	96.49%	24	7
	Total	340000	318553	93.69%	50	17

(2) The self-trades executed by NK on October 24 and October 27, 2008 on BSE and NSE were compared with the market traded quantity on the concerned stock exchanges on the respective dates. The data is tabulated below:

	BSE			NSE		
	Market Traded Quantity (Net)	Self-trade by NK (Net)	% Contribution of Self trade to Market Quantity	Market Traded Quantity (Net)	Self-trade by NK (Net)	% Contribution of Self trade to Market Quantity
24-Oct-08	2,62,964	125568	47.75 %	127973	0	0 %
27-Oct-08	2,91,298	192985	66.25 %	276969	50000	18.05 %

(3) In response to the said allegation of self-trade, the Noticee has submitted that he wanted to shift his position from one broker to another and the same resulted into inadvertent self-trades. It has also been submitted that the volume generated by these self-trades when compared to the total volume during the investigation period is miniscule. I have considered the submissions of the Noticee. No reasonable person would try to transfer position from one broker to another by entering into cross deal and self-trades, fully being aware of the nature of the transaction. The transfer of position from one broker to another, could have been done more easily by giving suitable instruction to depository, without misusing the stock exchange mechanism for executing trades without any intention of change in beneficial ownership. I am

hence inclined to believe that the Noticee has consciously used the Stock Exchange mechanism to carry out bogus trades, which was not intended to change the beneficial ownership from the transferor to a third party but to boost volumes in the scrip. Therefore, it can be concluded that the self-trade by the notice, to the tune of more than 47% and 66% on October 24 and 27, 2008, was only for the purpose of artificial volume creation on the trading platform.

- (4) As far as cross deals of the Noticee with P. S Saminathan are concerned, it is noted from the SCN that P.S. Saminathan did not make any funds transfer to the broker for the purchase of 13,58,896 shares of PSTL @ of Rs. 250 on June 20, 2008. Instead, Nirmal Kotecha, vide letter dated June 24, 2008 requested the broker to transfer the credit (Rs.34 crore) lying in his account to the account of P.S. Saminathan. Pursuant to the same, the broker passed a ledger entry, transferring an amount of Rs. 33,99,04,292.28 to Saminathan's account. It is observed that Kotecha paid Rs. 25,95,707.26, vide postdated cheque dated December 02, 2008 to the broker towards brokerage payable by Saminathan. The aforesaid transaction is represented in a tabular form below:-

Details of Cross-deals through stock broker Keynote Capital.

Sl. No.	Description	P.S. Saminathan	Nirmal Kotecha
A	Value of transaction excluding brokerage	34,25,00,000 (actually Rs.33,97,24,000 = 250*1358896)	34,25,00,000
B	Brokerage and other charges payable	24,37,679.54	24,37,870
C	Amount payable/ receivable (A+B for Buyer and A-B for seller)	34,49,37,679.50	34,00,62,129.52
D	Adjustment entry between buyer and seller	33,99,04,292.28	33,99,04,292.28
E	Balance amount payable to the broker	50,33,387.26	0 (after adjustment of the

			debit balance lying in ledger account of Nirmal Kotecha)
F	Amount actually paid to the broker	24,37,680	25,95,707.26 (by Post Dated Cheque dated December 02, 2008)

(5) In response to the said allegation, the Noticee submitted that Saminathan was in need of funds amounting to approximately Rs. 34,25,00,000/- and had approached the Noticee to lend him the said amount. The Noticee agreed and accordingly a Loan Agreement dated June 24, 2008 was entered into whereby the said loan was given by the Noticee to Saminathan in the form of shares of PSTL. The shares got transferred from the Noticee to Saminathan, on market through negotiated deal. The records show that the brokerage for the deal amounting to Rs . 2437680/- was paid by Nirmal Kotecha vide a post-dated cheque of 2nd December, 2008. Besides this, post the transfer of shares, market disclosures were made, by both the promoters, to the effect that Nirmal Kotecha had sold and Swaminathan had purchased the shares, which showed that the one of the promoters still had interest in the shares. Moreover, I find that if the intention of the Noticee was only to give loans in the form of shares, he could have transferred these shares by giving suitable instructions to DP rather than using the market mechanism for such transfers and private lending arrangements. I find that the motive behind such huge transfers is to create a misleading impression that there is considerable interest in the scrip.

(6) With regard to circular, reversal and synchronised / structured trades, , the Noticee has taken the plea of hypothetical connections, mis-matching of quantity and time

difference and the instances of synchronized trades being few in number etc., to the effect that the allegation of manipulation cannot be sustained. Based on the investigation, it is alleged in the SCN that 15 entities connected with the Noticee have carried out circular and reversal of trades amongst themselves creating artificial/ inflated trading volumes and stock price of PSTL, so as to offload substantial holding in the scrip to unsuspecting investors. Thus in order to allege the connection between these 15 entities, it is vital to examine the connection / link between the Noticee and each of these 15 entities and the plea of the Noticee that these entities are hypothetically connected.

- (7) **Amol Kokane** - It is already established at Issue A that Amol Kokane's trading account was actually operated by the Noticee. The data of trading done by AK in PSTL shares from June 1, 2008 to December 19, 2008 is represented in the table below:

	BSE	NSE	GROSS ACROSS BOTH EXCHANGES
BUY QTY BY AK	4,59,084	93,909	5,52,993
SELL QTY BY AK	4,21,974	1,31,019	55,29,93
NET QTY BY AK	37110	- 37110	0
GROSS QTY BY AK	8,81,058	2,24,928	11,05,986
% contribution of each exchange to AK's gross	79.66%	20.34%	100%

Thus, on BSE and NSE taken together, AK had bought 5,52,993 shares and sold 5,52,993 shares and hence his net trading position across both the exchanges taken together was Nil. SCN has precisely brought out several instances of circular and reversal trades at para 53, sub para 21, 22, 23 and 26 wherein Amol Kokane was found to be involved in circular and reversal trades with Priyanka Darshan Desai, Inventure Growth Securities, Ankit Girish Kumar Vasani and DKG securities.

For example – On November 04, 2008, Ankit Girishkumar Vasani purchased 35,000 shares from Amol Anand Kokane through four trades having trade numbers 4025,

4027, 4028 & 4029. The details of the orders placed by Ankit Girishkumar Vasani & Amol Kokane and the details of the four trades are narrated below:

1. At 3:29:13 P.M., Ankit Girishkumar Vasani placed a buy order for 10,000 shares at Rs. 56.50 per share.
2. At 3:29:16 P.M., Ankit Girishkumar Vasani placed another buy order for 5,000 shares at Rs. 56.00 per share.
3. At 3:29:19 P.M., Ankit Girishkumar Vasani placed another buy order for 20,000 shares at Rs. 56.00 per share.

Thus, Ankit Girishkumar Vasani placed buy order for 35,000 shares. This got matched completely with the sell order placed by Amol Kokane resulting in traded quantity of 35,000 shares. The details of sell orders placed by Amol Kokane which resulted in the aforesaid trade of 35,000 shares is given below:

1. At 3:29:07 P.M., Amol Kokane placed sell order for 25,000 shares at Rs.56.00 per share.
2. At 3:29:24 P.M., Amol Kokane placed another sell order for 25,000 shares at Rs.56.00 per share.

Thus, Amol Kokane placed sell order for 50,000 shares at Rs. 56.00 per share.

The aforesaid buy and sell orders of Ankit Girishkumar Vasani & Amol Kokane got matched as follows:

1. 10,000 shares got matched at Rs. 56.00 per share at 3:29:14 P.M. vide trade no. 4025.
2. 5,000 shares got matched at Rs. 56.00 per share at 3:29:16 P.M. vide trade no. 4027.
3. 8,683 shares got matched at Rs. 56.00 per share at 3:29:20 P.M. vide trade no. 4028.
4. 11,317 shares got matched at Rs. 56.00 per share at 3:29:24 P.M. vide trade no. 4029.

Thus, 35,000 shares got traded between Ankit Girishkumar Vasani & Amol Kokane in respect of the aforesaid orders. In this regard, it is interesting to note that at the fag end of the trading day, order for such high volume was placed at negligible time difference.

- (8) From the SCN, it is noted that on November 4, 2008 Amol Kokane placed a buy order (order no.79108200000026624) for 10,000 shares of PSTL at Rs. 50 per share at 2:23:09 P.M. through

the broker India Capital Markets Pvt. Ltd. During the next 28:19 minutes (i.e. upto 2:51:28 P.M.) Amol Kokane repeatedly increased the order rate 27 times taking the order rate in a series of successive orders gradually and incrementally increasing the share price from Rs. 50.00 per share to Rs. 59.25 per share. Further, along with the revision in the rate, he made addition in unexecuted order quantity. The cumulative order quantity placed by Amol Kokane was 12,585 shares. The order of Amol Kokane got traded with various counterparties resulting in an increase in the traded price from Rs. 50 to 59.25 per share. Thus the order of Amol Kokane caused an increase of 18.50% in the market traded price in a span of about 28 minutes on November 04, 2008. It is observed that there were nine selling clients with whom the aforesaid buy order of Amol Kokane got matched. The largest selling client was DKG Securities Pvt. Ltd who had sold 5,447 shares. The second largest selling client was Priyanka Darshan Desai who had sold 5,000 shares to Amol Kokane. Both these selling clients are also part of NKA and their connection with Nirmal Kotecha has been brought out in table at Para 17 of the SCN. The table brings out the fact that Priyanka Desai is connected to Nirmal Kotecha through her husband Darshan Desai and DKG Securities Pvt. Limited is connected to Nirmal Kotecha through Radha Krishna Garg, who took trading decisions on behalf of DKG Securities Pvt. Limited.

(9) Similarly, on November 4, 2008 Amol Kokane again placed a buy order (order no.7910820000026634) for 1100 shares of PSTL at Rs. 51.20 per share at 2:26:30 P.M. through the broker India Capital Markets Pvt. Ltd. During the next 25 minutes (i.e. upto 2:51:30 P.M.) Amol Kokane repeatedly increased the order rate 24 times taking the order rate successively increasing the shares price from Rs. 51.20 per share to Rs. 59.20 per share. The buy order of Amol Kokane was pending in the order book at the passive order rate of Rs.59.20. At 2:52:22 P.M. DKG Securities P Ltd. placed sell order no.29804000020115117 for 5000 shares at Rs.58.50. The buy order of Amol Kokane got traded with sell order of DKG Securities P Ltd. for 1,100 shares of PSTL at the passive order rate of 59.20 per share at 2:52:22 P.M. vide trade no.3241.

(10) Another buy order on November 4, 2008 was placed by Amol Kokane (order no. 7910820000026635) for 1050 shares of PSTL at Rs. 51.15 per share at 2:26:34 P.M. through the broker India Capital Markets Pvt. Ltd. During the next 24:59 minutes (i.e. upto 2:51:33 P.M.) Amol Kokane repeatedly increased the order rate 24 times taking the order again rate again in a series of successive orders from Rs. 51.15 per share to Rs. 59.15 per share. The buy order of Amol

Kokane was pending in the order book at the passive order rate of Rs.59.15. At 2:52:22 P.M. DKG Securities P Ltd. placed sell order no.29804000020115117 for 5000 shares at Rs.58.50. The buy order of Amol Kokane got traded with sell order of DKG Securities P Ltd. for 1,050 shares of PSTL at the passive order rate of 59.20 per share at 2:52:22 P.M. vide trade no.3242.

(11) Similarly, the fourth buy order on November 4, 2008 Amol Kokane was placed (order no. 79108200000026639) for 1111 shares of PSTL at Rs. 51.10 per share at 2:27:00 P.M. through the broker India Capital Markets Pvt. Ltd. During the next 24:35 minutes (i.e. upto 2:51:35 P.M.) Amol Kokane repeatedly increased the order rate 25 times taking the order rate in a series of increasing steps from Rs. 51.10 per share to Rs. 59.10 per share. The buy order of Amol Kokane was pending in the order book at the passive order rate of Rs.59.10. At 2:52:22 P.M. DKG Securities P Ltd. placed sell order no.29804000020115117 for 5000 shares at Rs.58.50. At 2:52:25 P.M. NARESH JAIN placed sell order no. 51900700020373690 for 1000 shares at Rs. 59.00. The buy order of Amol Kokane got traded with sell orders of DKG Securities P Ltd. and NARESH JAIN at the passive order rate of 59.10 per share at 2:52:22 P.M. for 996 and 115 shares of PSTL respectively vide trade no.3243 and 3244.

(12) In the fifth order on November 4, 2008, Amol Kokane placed a buy order (order no. 79108200000026655) for 5,000 shares of PSTL at Rs. 52.50 per share at 2:30:22 P.M. through the broker India Capital Markets Pvt. Ltd. During the next 21:03 minutes (i.e. upto 2:51:25 P.M.) Amol Kokane repeatedly increased the order rate 16 times taking the order rate in series of increasing steps from Rs. 52.50 per share to Rs. 59.25 per share. Further, along with the revision in the rate, he made addition to the unexecuted order quantity. The cumulative order quantity placed by Amol Kokane was 49,829 shares. The order of Amol Kokane got traded with various counterparties resulting in an increase in the traded price from Rs. 52.50 to 59.25 per share. Thus the order of Amol Kokane caused an increase of 12.86% in the market traded price in a span of about 21 minutes. Apart from the above illustrations, SCN has also brought out several instances of circular, reversal and synchronized trades executed by Amol Kokane.

(13) **Priyanka Darshan Desai** – She is the wife of Darshan Desai, in whose name the Borivali (West) branch of ICMPL was registered. Darshan Desai in his statement dated March 13, 2009 had stated that ICMPL branch was in the name of his wife Priyanka Darshan Desai and he used to handle the branch on her behalf. Considering the same I am of the opinion that though,

Priyanka Darshan Desai was not cross examined by the Noticee, Darshan Desai was allowed cross examination by the Noticee and in view of the relationship that existed between them, I am inclined to conclude all the trades of Priyanka Darshan Desai were handled by Darshan Desai only.

(14) As already noted in Issue A, Darshan Desai was a guarantor for several loans received by Amol Kokane. In cross-examination, Darshan Desai deposed that *“On the instructions of Sandeep Gawhane in order to increase my broking business, I arranged for the loans and stood guarantor. **Since the loan amount as well as the shares remained with ICMPL, I am secured**”*. Admittedly, Darshan Desai stood as a guarantor for loans given to his client Amol Kokane. This, he says, was based on the request of SG. As a sub-broker, Darshan Desai primarily acted beyond the scope of his relationship with his client, thereby indicating that he was otherwise connected to SG and Amol Kokane – who were in turn connected to the Noticee. Moreover, the part of the statement that he arranged for the loans to AK’s account and that he stood as guarantor to increase his broking business, bears testimony to the conduct of Darshan Desai and to his eventual connection with NK. It is also relevant to note that Darshan Desai was admittedly operating the account of AK after the death of SG. Further, the opening of AK’s account is itself at the behest of the Noticee and it is apparent that SG and Darshan Desai were aware of these understandings with the Noticee.

(15) In the SCN, there are several instances brought out at para 53, sub para 20, 21 and at para 56 which show circular, reversal, structured and synchronized trades by Priyanka Desai/Darshan Desai with Amol Kokanee, Falguni Shah etc. Some of them are as follows:-

On November 3, 2008, Priyanka Darshan Desai sold 27,902 shares of PSTL through 11 trades to Amol Kokane on BSE. On the same day, Priyanka Darshan Desai bought back 36,753 shares through 4 trades from Amol Kokane on BSE.

On November 3, 2008, Priyanka Darshan Desai purchased 20,000 shares vide trade no. 3650 from Falguni Jayesh Shah at Rs. 51.50 per share at 3:20:12 P.M. Examination of the orders relating to the aforesaid trade revealed that

1. At 3:20:08 P.M., Falguni Jayesh Shah placed a sell order, through the broker B.N. Rathi Securities Ltd., for 20,000 shares at Rs. 51.50 per share.
2. At 3:20:12 P.M., (after 4 second) Priyanka Darshan Desai placed a buy order through the broker Venture Broking Pvt. Ltd., for 20,000 shares at Rs. 51.60 per share.
3. At 3:20:12 P.M., the aforesaid buy and sell order matched at the passive order rate (i.e. 51.50 per share) for trade quantity of 20,000 shares.

The aforesaid transaction was reversed through the following order / transactions:

1. At 3:20:47 P.M., Priyanka Darshan Desai placed a sell order, through the broker Venture Broking Pvt. Ltd., for 20,000 shares at Rs. 51.55 per share.
2. At 3:20:52 P.M., (after 5 seconds), Falguni Jayesh Shah placed a buy order through the broker B.N. Rathi Securities Ltd., for 20,000 shares at Rs. 52 per share.
3. At 3:20:52 P.M., out of the buy order of Falguni Jayesh Shah, 599 shares got matched with third parties and the balance 19,401 shares of Falguni Jayesh Shah's buy order got matched with the sell order of Priyanka Darshan Desai at 3:20:52 P.M., at the passive order rate (i.e. 51.55 per share) vide trade no. 3655.

On **November 03, 2008**, Amol Anand Kokane purchased 6,000 shares vide trade no. 2580 from Priyanka Darshan Desai at Rs. 49.75 per share at 2:40:24 P.M. Examination of the orders relating to the aforesaid trade revealed that

1. At 2:40:19 P.M., Priyanka Darshan Desai placed a sell order, through the broker Venture Broking Pvt. Ltd. for 6,000 shares at Rs. 49.75 per share.
2. At 2:40:24 P.M., (after 5 seconds) Amol Anand Kokane placed a buy order through the broker India Capital Markets Pvt. Ltd. for 7,000 shares at Rs. 50.00 per share.
3. At 2:40:24 P.M., the aforesaid buy and sell orders got matched at the passive order rate (i.e. 49.75 per share) for traded quantity of 6,000 shares.

The balance portion of 1,000 shares of Amol Kokane's buy order got matched with third parties.

- (16) Thus the SCN brings out several such instances of circular, reversal, structured and synchronized trades. At this juncture, it is pertinent to repeat that Amol Kokane's account was

used as a front by Nirmal Kotecha for his trades and Darshan Desai was actually operating it. Priyanka Desai's Account was also operated by Darshan Desai.

- (17) **Ankit Girishkumar Vasani** –The Call Data Records of Ankit Vasani's mobile number 9833884005 revealed that Amit Navin Joshi, who was the Branch Manager of Rashmi Building, Borivali (West) branch of ICMPL, was in close touch with him from his mobile number 9930002346. Calls were made on November 03 and 05, 2008 between Ankit and Amit Joshi as per the details are shown below:

(Incoming Calls of Amit Joshi on Ankit Vasani's mobile)

A_Number	B_Number	Duration	Date_Time
09930002346	09833884005	14	03-NOV-2008 09:38:45
09930002346	09833884005	48	03-NOV-2008 11:19:01
09930002346	09833884005	47	05-NOV-2008 10:41:48
09930002346	09833884005	54	05-NOV-2008 14:23:20

Further, Darshan Desai, was also observed to be in close touch with Amit Joshi and had called him on November 03, 2008 as per details given below:

(Outgoing Calls by Darshan Desai to Amit Joshi)

Call_Direction	Start_Date	Start_Time_Hour	Start_Time_Min	Start_Time_Sec	Calld_Party_No	Callg_Party_No	Bill_Duration
OUT	11/3/2008	9	8	39	9930002346	9324540561	37.5
OUT	11/3/2008	9	41	48	9930002346	9324540561	16.3
OUT	11/3/2008	14	3	42	9930002346	9324540561	25.7
OUT	11/3/2008	15	10	22	9930002346	9324540561	70.5

Darshan Desai was also observed to be in touch with Ankit Vasani especially on November 03, 2008 as per details given below:

(Outgoing by Darshan Desai to Ankit Vasani)

Call_Direction	Start_Date	Start_Time_Hour	Start_Time_Min	Start_Time_Sec	Calld_Party_No	Callg_Party_No	Bill_Duration
OUT	11/3/2008	9	9	53	9833884005	9324540561	21
OUT	11/3/2008	13	31	52	9833884005	9324540561	64.3

(Incoming Calls received by Darshan Desai from Ankit Vasani)

Call_Direction	Start_Date	Start_Time_Hour	Start_Time_Min	Start_Time_Sec	Calld_Party_No	Callg_Party_No	Bill_Duration
IN	11/3/2008	10	0	34	9324540561	9833884005	10.3

(18) From the above, it can be observed that Darshan Desai called Amit Joshi on Nov 03, 2008 at 9:08:39 and called Ankit Vasani at 09:09:53. Amit Joshi called Ankit Vasani on 9:38:45. Again Darshan Desai called Amit Joshi at 9:48:41 and Amit Joshi called Ankit Vasani at 11:19:01. In between Ankit Vasani had also called Darshan Desai at 10:00:34.

(19) From the nature of trades carried out by Ankit Vasani, several instances of circular, reversal, structured and synchronized trades were demonstrated in the SCN and some of them are as follows:-

Amol Kokane purchased 31,538 shares from DKG Securities Pvt. Ltd on November 04, 2008. From the trade log it is observed that there were 11 trades through which Amol Kokane purchased 31,538 shares from DKG Securities Pvt. The order log and trade log were perused to ascertain whether the trades were executed in a synchronised / structured manner.

DKG Securities Pvt. Ltd purchased 41,019 shares from Ankit Girishkumar Vasani on November 04, 2008. From the trade log, it is observed that there were nine trades through which DKG Securities Pvt. Ltd. purchased 41,019 shares from Ankit Girishkumar Vasani.

Ankit Girishkumar Vasani purchased 40,363 shares from Amol Anand Kokane on November 04, 2008. From the trade log, it is observed that on November 4, 2008, Ankit Girishkumar Vasani purchased 40,363 shares of PSTL from Amol Kokane on BSE. Thus, considering the above, it

can be concluded that Ankit Vasani was carrying out circular, reversal and synchronized trades with connected entities of the group.

- (20) **Falguni Jayesh Shah** - Falguni Jayesh Shah vide her letter has stated that her husband was trading in her name. From the trade and order log, it was observed that Falguni Jayesh Shah was executing reversal transactions with Priyanka Desai in PSTL scrip. Though Jayesh Kumar Chimanlal Shah declared his mobile number as 9324594069 and landline number as 20393631, investigation revealed that he had another mobile number 9322494242 also. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 revealed that he had received an incoming call from mobile number 9324594069 on December 24, 2008. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 further revealed that from mobile number 9322494242 of Jayesh Shah, Darshan Desai had received 4 Incoming calls/SMSes during the period. Further, Darshan Desai was regularly making outgoing calls to Jayesh Shah on mobile number 9322494242 and that too many times in a day. During the two month period Nov-Dec, 2008, Darshan Desai is observed to have made more than 150 outgoing calls/SMSes to Jayesh Shah. Further, Falguni Jayesh Shah's account with the Kapol Co-op. Bank Ltd. shows receipt of Rs. 4,76,340/- on Jan 23, 2008 from the account of Nitin Goradia HUF and the said funds were transferred to ICMPL on Jan 24, 2008. The Borivali (W) branch of ICMPL was being run in the premises of 202, B Wing, Goyal Shopping Centre, Borivali (W), Mumbai – 400092, which was owned by the said Nitin Goradia and lent on leave and license basis to ICMPL. The account of Falguni J. Shah with the Kapol Co-op. Bank Ltd. has been closed on Nov 13, 2009. Investigation further revealed that Nitin Goradia from his mobile number 9322233908 was also observed to be in close touch with Darshan Desai. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 revealed that Darshan Desai had made more than 50 outgoing calls/SMSes to Nitin Goradia on his mobile number 9322233908 and received more than 35 incoming calls/SMSes. The fact that Nitin Goradia HUF had transferred funds from his account to the account of Falguni J. Shah, which in turn, were transferred to ICMPL, clearly brings to light the fact that Falguni J. Shah was also one of the fronts of Nitin Goradia. Thus, here again it is observed that Falguni Shah was indirectly connected/ associated with Nirmal Kotecha through her husband Jayesh Kumar Chimanlal Shah, who in turn, was in touch with Darshan Desai. Also, her account shows that she had received funds from Nitin Goradia for trading purpose.

- (21) As brought out in the SCN, Falguni J. Shah had carried out circular, reversal and synchronized trades with Priyanka Desai and other entities in the group on several occasions. Thus from the above, it can be concluded that Falguni J. Shah also belonged to this group which carried out the manipulative trades in the scrip of the PSTL.
- (22) **Inventure Growth & Securities Limited** (Inventure) - It was observed from the Schedule of Loans and Advances as on March 31, 2007 that Nirmal Kotecha had given an interest free loan of Rs. 25 lacs to Shanti Kanji Rita, who is the wife of one of the directors of Inventure, Kanji B. Rita. Thus Inventure Growth & Securities Limited was having direct connection with the Noticee as he gave an interest free loan to inventure. The instances of circular, reversal and synchronized trades by inventure with other connected entities have been clearly brought out in the SCN.
- (23) **Yatin Shah** – As per the SCN, Yatin Shah is not among those 15 connected entities of the Noticee who were involved in the creation of artificial volume and price in the scrip of PSTL. However Yatin Shah is the connecting link between the Noticee and Milanbhai Hardik, SPJ Stock Brokers Pvt. Limited etc. In the SCN, it is alleged that as per the Schedule of Loans and Advances as on March 31, 2007 made available by Nirmal Kotecha, vide letter dated August 11, 2010, it is observed that Nirmal Kotecha had given a loan of Rs. 20 lacs to Yatin B. Shah. In response to the same, the Noticee submitted that he had originally wrongly submitted that he had given a loan to Yatin Shah. This statement is erroneous and was made on account of an error of the Chartered Accountant in maintaining the Noticee's books of account. In fact the said loan, was given to one Mr. Sameer Shah and not Yatin Shah. This statement was subsequently clarified and a copy of the cheque issued by the Noticee to Sameer Shah was submitted.
- (24) I am unable accept the plea of the Noticee that the name of Yatin Shah was due to an error on the part of the Chartered Accountant. The Chartered Accountant had given a certificate stating that he had obtained all the information and explanation for the purpose of the Audit. I am unable to understand why and how a Chartered Accountant by mistake writes the name of a wrong person in the list of “Loans and Advances” which ultimately turns out to be a friend of the Noticee. Apart from the alleged above transaction, as submitted by the Noticee, Yatin Shah was a personal friend of the Noticee with whom he used to communicate from time-to-time.

(25) **Milanbhai Hardik**- The Call Data Records of Yatin Shah's mobile number 9890355693 revealed that he was in touch with Milan Mithani whose mobile number was 9374103518. It has further come to light that Milan Mithani from his mobile number had called up Nirmal Kotecha on his Amol Kokane's number on December 22, 2008. As submitted that all trading on behalf of Hardik Mithani was done by his father Milan Mithani, who had links with Nirmal Kotecha and Yatin Shah.

(26) In this regard, it is noted that Hardik M Mithani was one of the top trading entities on NSE, in the scrip of PSTL during the investigation period having a gross volume of 3,548,082 shares constituting 3.82% of the gross traded quantity on NSE. Some of the examples of reversal trades by Hardik M Mithani are illustrated below:-

Reversal transaction between Hardik M. Mithani and B.K. Shah & Co.

On June 20, 2008 Hardik M Mithani sold 11,237 shares of PSTL to B.K. Shah & Co. (Ketan Bhailal Shah) on NSE. On the same day, Hardik M Mithani bought back 6,727 shares from B.K. Shah & Co. (Ketan Bhailal Shah) on NSE.

On June 30, 2008 B.K. Shah & Co. (Ketan Bhailal Shah) sold 28,849 shares of PSTL to Hardik M Mithani on NSE. On the same day, B.K. Shah & Co. (Ketan Bhailal Shah) bought back 17,529 shares from B.K. Shah & Co. (Ketan Bhailal Shah) on NSE. On June 30, 2008 BK SHAH sold 23,001 shares of PSTL through 233 trades to Milanbhai Hardik on BSE. On the same day, BK Shah bought back 17,492 shares through 88 trades from Milanbhai Hardik on BSE.

On July 4, 2008 Milanbhai Hardik sold 22,832 shares of PSTL through 194 trades to BK Shah on BSE. On the same day, Milanbhai Hardik bought back 36,070 shares through 63 trades from BK Shah on BSE.

On July 7, 2008 Hardik M Mithani sold 46,051 shares of PSTL to B.K.Shah & Co. (Ketan Bhailal Shah) on NSE. On the same day, Hardik M Mithani bought back 9,854 shares from B.K.Shah & Co. (Ketan Bhailal Shah) on NSE. On July 7, 2008 Milanbhai Hardik sold 21,199 shares of PSTL through 118 trades to BK Shah on BSE. On the same day, Milanbhai Hardik bought back 10,882 shares through 88 trades from BK Shah on BSE.

On July 8, 2008 B. K. Shah & Co. (Ketan Bhailal Shah) sold 8,022 shares of PSTL to Hardik M Mithani on NSE. On the same day, B. K. Shah & Co. (Ketan Bhailal Shah) bought back 5,927 shares from Hardik M Mithani on NSE.

Reversal transaction between SPJ Stock broker Pvt. Ltd. and Milanbhai Hardik

On June 30, 2008, SPJ Stock Broker Pvt. Ltd. sold 30,085 shares of PSTL through 24 trades to Milanbhai Hardik on BSE. On the same day, SPJ Stock broker Pvt. Ltd. bought back 52,661 shares through 27 trades from Milanbhai Hardik on BSE.

On July 4, 2008, Milanbhai Hardik sold 43,402 shares of PSTL through 21 trades to SPJ Stock Broker Pvt. Ltd. on BSE. On the same day, Milanbhai Hardik bought back 11,969 shares through 6 trades from SPJ Stock broker Pvt. Ltd. on BSE.

On July 7, 2008, SPJ Stock Broker Pvt. Ltd sold 1,35,484 shares of PSTL through 48 trades to Milanbhai Hardik on BSE. On the same day, SPJ Stock Broker Pvt. Ltd bought back 1,03,753 shares through 47 trades from Milanbhai Hardik on BSE. Examination of the trades between SPJ Stock Broker Pvt. Ltd. and Milanbhai Hardik revealed that there were a total of 95 trades between them on July 7, 2008 on BSE. Some of the orders placed by SPJ Stock Broker Pvt. Ltd and Milanbhai Hardik which resulted in large quantities of shares being traded amongst them were examined on a random basis. The examination revealed that the orders were placed by SPJ Stock Broker Pvt. Ltd. and Milanbhai Hardik in a synchronised manner so as to result in their orders getting matched in trades of large quantities of shares. For example:-

- (i) On **July 07, 2008**, Milanbhai Hardik purchased 9,000 shares vide trade no. 6236 from SPJ Stock Broker Pvt. Ltd at Rs.186.80 per share at 11:57:36 A.M. Examination of the orders relating to the aforesaid trade revealed that
1. At 11:57:07 A.M., SPJ Stock Broker Pvt. Ltd. placed a sell order, in its proprietary account for 9,000 shares at Rs.186.80 per share.
 2. At 11:57:36 A.M., (after 29 seconds) Milanbhai Hardik placed a buy order through the broker Arcadia Share & Stock Broker for 10,000 shares at Rs.186.80 per share.

3. At 11:57:36 A.M., the aforesaid buy and sell order matched at the common order rate (i.e. 186.80 per share) for trade quantity of 9,000 shares.
- (ii) Similarly, on July 07, 2008, Milanbhai Hardik purchased 5,000 shares vide trade no. 8494 from SPJ Stock Broker Pvt. Ltd at Rs.183.80 per share at 12:45:31 P.M. Examination of the orders relating to the aforesaid trade revealed that
1. At 12:45:16 P.M., SPJ Stock Broker Pvt. Ltd placed a sell order, through the broker SPJ Stock Broker Pvt. Ltd, for 5,000 shares at Rs.183.80 per share.
 2. At 12:45:31 P.M., (after 15 seconds) Milanbhai Hardik placed a buy order through the broker Arcadia Share & Stock Broker for 6,000 shares at Rs.184.00 per share.
 3. At 12:45:31 P.M., the aforesaid buy and sell order matched at the passive order rate (i.e. 183.80 per share) for trade quantity of 5,000 shares.

Thus from the call data records and the trading pattern it can be concluded that Milanbhai Hardik group was part of the Nirmal Kotecha Associate / connected group.

- (27) **DKG Securities Private Limited** - The Call Data Records of Nirmal Kotecha's Amol Kokane number revealed that he was in close touch with Radha Krishna Garg on his mobile number 9839084979 almost on a day-to-day basis. Radha Krishna Garg was an employee of DKG Securities Pvt. Ltd and used to take the trading decisions for DKG Securities Pvt. Ltd. SCN has brought out several instances of circular, reversal and synchronized traded by DKG Securities Private Limited.
- (28) **SPJ Stock Broker Private Limited** - The Call Data records of Yatin Shah's mobile number 9890355693 revealed that he has received calls from mobile number 9833178508 registered in the name of Pal Jain, on December 05, 2008 and Yatin Shah too had called on the said mobile number on December 02, 2008. During the investigation period SPJ Stock Broker Private Limited (SPJ) was involved in 231 instances of self-trade for 1,58,518 (gross value) shares of PSTL which amounts to 2.89 % of gross traded quantity of the entity. During the investigation period SPJ had traded in 54,92,525 shares of PSTL. The SCN has brought out several instances of circular, reversal and synchronized trades by SPJ, some of which are already illustrated above. The trading

pattern of SPJ along with the call data records showing communication between Pal Jain and Yatin Shah clearly brings out that he was connected with the group.

- (29) **APL Infrastructure Pvt. Limited** - APL Infrastructure (Pvt.) Ltd. is a promoter group entity of Bihar Tubes Ltd and Sanjay Gupta is the Managing Director of Bihar Tubes Ltd. He is also the Director of APL Infrastructure (Pvt.) Ltd. Mukesh Jain is also a director of APL Infrastructure (Pvt.) Ltd. An examination of Call Data Records reveal that Nirmal Kotecha was in close touch with Sanjay Gupta (Mobile No. 9810096439) from December 12, 2008 onwards and Nirmal kotecha was using the mobile number that was registered in the name of Amol Kokane.

Synchronised transactions between Nirmal Kotecha and Mukesh Jain on December 16, 2008 (BSE) — On December 16, 2008, Mukesh Jain purchased 45,114 shares vide trade no. 3661 and further purchased 3,877 shares vide- trade no. 3675 from Mr.Nirmal Kotecha at Rs. 60.00 per share at 2:57:41 P.M. and 2:57:52 P.M. respectively. Examination of the orders relating to the aforesaid trade revealed that:

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

- h) The balance portion of Mukesh Jain's second buy order (i.e. 36,123) got traded with various third parties through 65 trades.
- i) Thus, Mukesh Jain is observed to have purchased 45,114 shares and further 3,877 shares from Nirmal Kotecha at 260.00 per share at 14:57:41 and 14:57:52 respectively through the above synchronized trades. This finding is further strengthened by the fact that Nirmal Kotecha had called Sanjay Gupta on December 16, 2008 at 14:48;14:51 and 14:55, immediately after which both Mr.Mukesh Jain and Mr.Nirmal Kotecha had placed their buy and sell orders at 14:57.

(30) Apart from the above trades between connected entities, SCN has also brought out circular, reversal and synchronized trades by Standard Securities and Investment Intermediates Ltd., B.K. Shah & Co. (Prop. Ketan Bhailal Shah), MBL & Co. Ltd., Tranglobal Securities Ltd, Mansukh Securities and finance limited and Uttam Financial Services Limited. The gross traded quantity of NKA during June 1, 2008 to December 19, 2008 vis-à-vis the market gross traded quantity during the same period is given below:

Sr.No.	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty	% Contribution to Market
1	SPJ STOCK BROKER PVT LTD	2,746,250	2,746,275	5,492,525	85,550,058	6.42%
2	MILANBHAI HARDIK	1,795,004	1,795,004	3,590,008	85,550,058	4.20%
3	DKG SECURITIES PVT LTD	1,576,663	1,488,252	3,064,915	85,550,058	3.58%
4	MBL & Co. LTD.	1,201,112	1,201,112	2,402,224	85,550,058	2.81%
5	BK SHAH	992,037	972,933	1,964,970	85,550,058	2.30%

Sr.No.	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty	% Contribution to Market
6	INVENTURE GROWTH & SECURITIES LTD.	907,634	915,719	1,823,353	85,550,058	2.13%
7	M/S STANDARD SECURITIES & INVESTMENT INTERMEDIATES LTD.	764,221	765,221	1,529,442	85,550,058	1.79%
8	AMOL ANAND KOKANE	459,084	421,974	881,058	85,550,058	1.03%
9	MANSUKH SECURITIES & FINANCE LTD	370,843	370,843	741,686	85,550,058	0.87%
10	APL INFRASTRUCTURE PRIVATE LIM	434,248	151,960	586,208	85,550,058	0.69%
11	UTTAM FINANCIAL SERVICES LIMITED	238,732	238,681	477,413	85,550,058	0.56%
12	ANKIT GIRISHKUMAR VASANI	224,367	224,367	448,734	85,550,058	0.52%
13	PRIYANKA DARSHAN DESAI	194,910	194,910	389,820	85,550,058	0.46%
14	TRANSGLOBAL SECURITIES LTD.	180,195	180,195	360,390	85,550,058	0.42%

Sr.No.	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty	% Contribution to Market
15	FALGUNI JAYESH SHAH	140,265	140,265	280,530	85,550,058	0.33%
	Gross Total	12,225,565	11,807,711	24,033,276	85,550,058	28.09%

(31) From the above table, it is observed that NKA comprising of 15 entities constituted as much as 28.09% of the gross market traded quantity on BSE during the 6 month period. It may be mentioned that about 37,160 clients dealt in the scrip during the relevant period. The average trading concentration per client works out to 0.27% (i.e. $100/37160 * 100$). Thus 15 trading clients, on an average, should have constituted approximately about 4.05% (i.e. $0.27\%/client * 15$ clients) whereas NKA comprising of 15 trading clients constituted as much as 28.09% of market traded quantity on BSE. This establishes that NKA had contributed in a significant manner to the trading volume in the scrip of PSTL on BSE during the relevant period.

(32) Similarly, the trade data of NKA during June 1, 2008 to December 19, 2008 on NSE was compared with the market traded quantity during the same period. The data is given below:

Sr. No	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty (all clients)	% Contribution to Market
1.	HARDIK M MITHANI	1,747,056	1,801,026	3,548,082	92,843,518	3.82%
2.	DKG SECURITIES PVT LTD.	1,381,895	1,543,197	2,925,092	92,843,518	3.15%
3.	B. K. SHAH & CO. (KETAN BHAILAL SHAH)	1,315,414	1,331,455	2,646,869	92,843,518	2.85%
4.	MBL & CO. LIMITED	1,177,799	1,177,799	2,355,598	92,843,518	2.54%
5.	INVENTURE GROWTH & SECURITIES LTD	802,953	793,998	1,596,951	92,843,518	1.72%

Sr. No	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty (all clients)	% Contribution to Market
6.	STANDARD SECURITIES & INVESTMENT INTERMEDIATES LTD	694,416	694,418	1,388,834	92,843,518	1.50%
7.	MANSUKH SECURITIES & FINANCE LTD	350,719	350,717	701,436	92,843,518	0.76%
8.	MANSUKH STOCK BROKERS LTD	215,530	215,530	431,060	92,843,518	0.46%
9.	TRANSGLOBAL SECURITIES LTD	203,373	203,273	406,646	92,843,518	0.44%
10.	APL INFRASTRUCTURE PRIVATE LIM	280,000	2,288	282,288	92,843,518	0.30%
11.	AMOL ANAND KOKANE	93,909	131,019	224,928	92,843,518	0.24%
12.	PRIYANKA DARSHAN DESAI	35,255	35,255	70,510	92,843,518	0.08%
	Grand Total	8,298,319	8,279,975	16,578,294	1,114,122,216	17.86%

(33) From the above table, it is observed that the NKA had constituted about 17.86% of the gross market traded quantity in the scrip of PSTL on NSE, during the investigation period. On NSE, about 45,741 clients dealt in the scrip during the relevant period. The average trading concentration per client works out to 0.22% (i.e. $100/45,741 * 100$). Thus 12 trading clients, on an average, should have constituted approximately about 2.64% (i.e. $0.22\%/client * 12$ clients) whereas NKA comprising of 12 trading clients on NSE constituted as much as 17.86% of market traded quantity. This further establishes that NKA had contributed in a significant manner to the trading volume in the scrip of PSTL on both BSE and NSE during the relevant period. From the above two tables, it is also noted that the difference between buy and sell quantity is almost same or very negligible for the 15 connected entities. Thus these entities were involved in creation of

artificial trading volumes for alluring the common investors and facilitating the Noticee to off-load the shares of PSTL.

- (34) Concentration of trading within the group in PSTL shares on BSE - It is observed that more than 50% of trades of Falguni Jayesh Shah, Priyanka Darshan Desai And Transglobal Securities Ltd were matched within the group i.e. they were largely trading within the group itself. In respect of the remaining entities, their percentage trading within group as compared to their respective total traded quantity on BSE ranged between 14.57% (for Apl Infrastructure Private Ltd) and 48.25% (for Ankit Girishkumar Vasani). For all NKA entities taken together, the percentage was 35.46%. Thus, it is clear that trading of NKA amongst themselves was quite significant.
- (35) Concentration of trading within the group in PSTL shares on NSE - It is observed that the % trading by NKA entities within the group as compared to their respective total traded quantity on NSE ranged between 36.82% (for Transglobal Securities Ltd) and 8.38% (for Amol Anand Kokane). For all NKA entities taken together, the % trading within group was 22.82%. Thus, it is clear that trading of NKA amongst themselves on NSE was quite significant.
- (36) Thus, NKA were dealing amongst themselves in substantial quantities on both BSE and NSE. Further, it is observed that NKA were trading in the market on all trading days on BSE and NSE. On many of the trading days, they had contributed significantly (10% or above) to the market traded quantity. Their trading data for the period from June 1, 2008 to December 19, 2008 which comprised of 137 trading dates, as extracted from the SCN is shown below:

	BSE	NSE
No. of Trading dates	137	137
No. of dates on which NKA traded	137	137
No. of dates on which NKA traded amongst themselves	135	136
No. of dates on which NKA contributed 10% or above to the market traded quantity (gross)	114	61

(37) From the above table, it may be observed that out of 137 trading days during the period from June 1, 2008 to December 19, 2008, NKA had traded amongst themselves on 135 and 136 days on BSE and NSE respectively. In as many as 114 trading days on BSE and 61 trading days on NSE are concerned, the trades of NKA constituted 10% or more of the market gross traded quantity. Thus it is established that NKA entities have played a significant role in manipulating the trading volume in the scrip of PSTL during the period from June 1, 2008 to December 19, 2008.

NKA's identified date-wise trading within the group and significant market concentration in PSTL shares on BSE

(38) The data of trading by NKA entities on BSE (Day-wise trade details) is given below:

Sr. No.	Date	Market Gross	Gross Traded qty within group	Gross traded qty by group	Trade within group as % of trade by group	Traded qty by the group as % of market traded qty
1.	20-Jun-08	4,176,862	199,804	456,647	43.75%	10.93%
2.	30-Jun-08	3,075,296	530,406	1,302,452	40.72%	42.35%
3.	2-Jul-08	3,780,320	259,258	992,449	26.12%	26.25%
4.	4-Jul-08	2,985,634	1,061,670	1,668,051	63.65%	55.87%
5.	7-Jul-08	5,237,518	1,927,328	3,146,857	61.25%	60.08%
6.	8-Jul-08	2,041,824	463,348	1,015,030	45.65%	49.71%

Sr. No.	Date	Market Gross	Gross Traded qty within group	Gross traded qty by group	Trade within group as % of trade by group	Traded qty by the group as % of market traded qty
7.	9-Jul-08	3,056,686	649,826	1,340,924	48.46%	43.87%
8.	22-Jul-08	2,600,604	318,434	1,037,956	30.68%	39.91%
9.	3-Nov-08	1,317,784	362,116	709,672	51.03%	53.85%
10.	4-Nov-08	1,477,378	538,888	870,039	61.94%	58.89%
11.	5-Nov-08	632,648	153,814	294,951	52.15%	46.62%
12.	8-Dec-08	1,117,660	124,746	350,752	35.57%	31.38%
13.	18-Dec-08	845,034	39,042	227,168	17.19%	26.88%
	Total	32,345,248	6,628,680	13,412,948	49.42%	41.47%

From the above table, it is observed that on certain trading dates (i.e. July 4 & 7, 2008 and Nov. 3, 4 & 5, 2008) more than 50% of the trades of NKA was amongst themselves i.e. the group was largely trading amongst themselves and was thereby causing appearance of significant trading volume in the market. It is observed that on the identified trading dates, on an average, inter-se trades of NKA was about 50% of their total trades in the market (BSE). On an average, there were more than one thousand buyers and one thousand sellers on the identified trading dates. Despite this, NKA entities largely traded amongst themselves. This was made possible by placing the buy

orders and sell orders in close time proximity i.e. the time difference between the placement of buy orders and placement of sell orders was less than 60 seconds. This enabled the matching of orders placed by NKA entities.

NKA's date-wise trading within the group and significant market concentration in PSTL shares on NSE

(39) The trading within group by NKA on NSE on each of the 13 dates (i.e. on the same dates as on BSE) was examined by Investigating Authority:

Sr. No.	Date	Market Gross	Gross Traded qty within group	Gross traded qty by group	Trade within group as % of trade by group	Traded qty by the group as % of market traded qty
1.	07-Jul-08	55,91,894	16,13,272	29,58,852	54.52%	52.91%
2.	04-Jul-08	22,88,052	3,69,954	8,28,682	44.64%	36.22%
3.	08-Jul-08	20,45,646	2,17,840	7,41,410	29.38%	36.24%
4.	30-Jun-08	22,14,790	1,62,710	5,79,955	28.06%	26.19%
5.	20-Jun-08	14,97,780	47,264	2,40,721	19.63%	16.07%
6.	04-Nov-08	7,07,980	25,838	1,48,597	17.39%	20.99%
7.	02-Jul-08	50,15,138	1,39,666	8,87,831	15.73%	17.70%
8.	09-Jul-08	33,11,696	1,01,650	7,05,804	14.40%	21.31%
9.	22-Jul-08	18,99,332	35,490	2,78,878	12.73%	14.68%
10.	05-Nov-08	5,72,464	14,872	1,31,306	11.33%	22.94%
11.	18-Dec-08	7,77,084	10,628	1,16,333	9.14%	14.97%
12.	08-Dec-08	16,97,938	16,202	3,00,714	5.39%	17.71%
13.	03-Nov-08	7,01,564	1,792	47,818	3.75%	6.82%
	Grand Total	2,83,21,358	27,57,178	79,66,901	34.61%	28.13%

(40) From the above table, it is observed that on 7-Jul-08 more than 50% of the trades of NKA was amongst themselves i.e. on that trading day, the group was largely trading amongst themselves. It is observed that on the selected trading dates, on an average, inter-se trades of NKA was about

34.61% of their total trades in the market (NSE). It may also be mentioned that on July 7, 2008, more than 50% of NKA's trades were within the group. Thus, a significant portion of the liquidity in the scrip was contributed by trades of NKA amongst themselves. It is observed that on the selected trading dates, on an average, NKA constituted more than 28.13% of the market traded quantity.

- (41) Thus, it is observed that on the identified 13 trading dates, NKA were contributing substantially to the market traded quantity on both BSE and NSE and on the same dates, they had indulged in inter-se dealings for large number of shares. Thus, NKA entities created an appearance of artificial trading volume / liquidity in the scrip on both BSE and NSE.

4.27. In response to the alleged trading pattern of the Nirmal Kotecha Associate / connected group, the Noticee had submitted that no connection among the group is established or put forth by the SCN. In this regard, I do not agree with the submissions of the Noticee, for the reason that the trading pattern, the volume of trades, the period of trading in the scrip; the particulars of the buy and sell orders, the proximity of time between the two orders and frequency of such orders, coupled with the call data records between the connected entities, financial transactions (Loans) between the connected entities etc. taken together prove otherwise. The facts and circumstances, as revealed in specific details by the investigation, if judged in its entirety leads to the conclusion that the Noticee along with his associates had indulged in fraudulent trade practices with respect to the scrip of PSTL.

4.28. I note that, the Noticee has attempted to assail the charge of synchronized and manipulative trades (reversal / circular etc.) on the ground of anonymity of the trading platform and his inability to see or know or control the counter party. However, the jurisprudence on the issue of the standard of proof in similar cases in securities market which has evolved through the case laws such as SEBI Vs. Rakhi Trading Pvt. Limited

(Judgment delivered by the Hon'ble Supreme Court on 8th February, 2018); SEBI Vs. Kishore R. Ajmera [(2016) 6 SCC 368] ; Ketan Parekh Vs. Securities and Exchange Board of India,(decided by Hon'ble SAT on 14th July, 2006) etc. render the arguments of the Noticee irrelevant. The relevant paragraphs from the judgments are extracted hereunder, to highlight the point of reliance placed in this connection:-

SEBI Vs. Rakhi Trading Pvt. Limited (MANU/SC/0096/2018)

*"We are fortified in our conclusion by the judgment of this Court in **Securities And Exchange Board of India v. Kishore R. Ajmera**, though it is a case pertaining to brokers, wherein it has been held at paragraph 25:*

"25. The SEBI Act and the Regulations framed thereunder are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the capital/securities market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."

*In this case it was also held that **in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or the provision of the Regulations is concerned.**" (emphasis supplied)*

SEBI Vs. Kishore R. Ajmera (2016) 6 SCC 368

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

*The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and **at the end of the day***

approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine.” (emphasis supplied)

Hon’ble SAT, in the matter of Ketan Parekh Vs. Securities and Exchange Board of India

(Appeal No. 2 of 2004):

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

While applying the principle laid down in the above mentioned judgments to the facts of the present case, I find that the arguments advanced by the Noticees regarding anonymity of the trading screen and other related issue are not credible and convincing.

C. Whether the Noticee had, in connivance with Rakesh Sharma, Rajesh Unnikrishnan and Dharmesh Shah, disseminated to the media the forged SEBI letter addressed to P.S. Saminathan?

Allegations in the SCN on Issue C:-

4.29. Investigations observed that the NKA entities had significant trading activity during July 2008 and on July 7, 2008, the market traded volume in the scrip was the highest on

BSE. The reason for the sudden increase in the activity of NKA entities during the first week of July 2008 was due to an article titled "Pyramid Saimira: US' Regal Entertainment, PEs eye 14% in Pyramid" in The Economic Times dated July 07, 2008 written by Rajesh Unnikrishnan along with Bobby Kurian. 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 Kotecha's stake in the company (which was stated to be around 14%) through a negotiated price of over Rs 350 per share. However, on the contrary, it is observed that PSTL had clarified to BSE on 7th July, 2008 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 the Company has nothing to do with this information, which seems to be a speculative report emanating from the media. Thus, it may be observed that Nirmal Kotecha through Rajesh Unnikrishnan had planted false news in the media through his contacts in media in order to generate interest in the scrip for common investors.

4.30. Based on the investigation, it is alleged in the SCN that Nirmal Kotecha had masterminded the forgery. Due to the circulation of the forged SEBI letter, artificial interest in the scrip was created which resulted in increase in price and volume of the scrip, and as a result, Nirmal Kotecha could off-load 15,05,862 shares on December 22, 2008.

Investigation also revealed that NK was the largest seller of the scrip of PSTL on both BSE and NSE on the said date i.e. Dec 22, 2008. It was further observed that some of the other sellers were entities associated with NK. On December 22, 2008, Nirmal Kotecha off-loaded 8,40,667 shares of PSTL on NSE for a total value of Rs.6,53,82,173.35, at an average sell price of Rs.77.77 per share. On BSE, Nirmal Kotecha off-loaded 6,65,195 shares for a total value Rs.4,88,47,485.25, at an average sell price of Rs.73.43.

4.31. The SCN also alleged that the associated /connected entities have made illegal gains from the sale of shares on December 22, 2008. In the SCN, it is alleged that most of these entities are found to have accumulated PSTL shares between December 16-19, 2008 and had off-loaded most of their holdings on December 22, 2008. Some of these entities have also facilitated the Noticee in creating artificial volumes/ price during the period December 16-19, 2008. SCN also alleged that their trading pattern and relation/ association with the Noticee indicated that they had prior knowledge of the fraud which was being perpetrated on the investors by the Noticee.

Defence / justification of the Noticee on Issue C:-

4.32. In reply to the said allegations, the Noticee *inter alia* submitted that he had been selling shares in PSTL from June 2008 onwards and not only on December 22, 2008 and that he continued to sell shares till January 2009. If it had been the Noticee's intention to take advantage of the "artificially inflated" price, he would have sold his entire shareholding on December 22, 2008. He further submitted that SEBI has sought to place reliance on a purported statement given by one Rakesh Sharma of Adfcators PR Pvt. Ltd., a PR agency, on January 10, 2009 allegedly given in the presence of two SEBI investigating officers. In the said statement,

Rakesh Sharma stated that he met the Noticee along with one Mr. Rajesh Unnikrishnan on December 20, 2008 at which time the Noticee showed them the original of the SEBI letter and requested them to generate media attention for the said letter. The Noticee has submitted that the 'purported statement' ought not to be relied upon for reasons set out hereinafter.

4.33. The Noticee had contended that the purported statement is not a statement in the eyes of law, as it does not meet the requirements prescribed under Section 11C of the SEBI Act, 1992 in relation to obtaining statements. The relevant provisions of Section 11C are as under:

"11C... (5) Any person, directed to make an investigation under sub-section. (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(6)....

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8)....

(9).....

(10)...

(11)...

4.34. The noticee had contended that the 'purported statement' is not signed by Mr. Rakesh Sharma and is only signed by the two SEBI officers purportedly present at the time of the recording of the statement. In view of the provisions of Section 11C(7), as the notes of

examination have not been signed by Mr. Sharma, these would not constitute a statement for the purposes of evidence and cannot be used against him or against the Noticee.

4.35. It was further contended by the Noticee that even though Rakesh Sharma presented a version of events entirely distinct from what is mentioned in the 'purported statement', the SEBI officers did not think it fit to even put these inconsistencies to Rakesh Sharma or ask him why or on what basis he was changing his statement.

4.36. The Noticee further contended that in the Purported Statement, Rakesh Sharma stated that on December 20, 2008, at Hotel Pritam, the Noticee showed them the "original SEBI letter" and asked them to generate press coverage for the said letter. However, this is contradicted by the statement of the Blue Dart employee who stated that the consignment for delivery of the SEBI letter to Mr. Saminathan was booked at around 4:00p.m on December 19, 2008. This is supported by the Airway Bill, which is dated December 19, 2008. Further, the employee of Blue Dart stated that the person who booked the consignment on December 19, 2008 stated that the letter should be delivered only on Monday, December 22, 2008 and not on Saturday, December 20, 2008. Therefore, if the original letter was in the possession of Blue Dart as of December 19, 2008, it would not have been possible for the Noticee to show it to Rakesh Sharma and Rajesh Unnikrishnan on December 20, 2008. It may be noted that SEBI has not offered the said Blue Dart employee for cross-examination.

4.37. The Noticee further contended that though it was within SEBI's knowledge that the letter sent to the Noticee was also forged, which is evident from the fact that the Noticee was informed of this by SEBI, no investigation or examination has been conducted to try

and ascertain as to who sent the said letter to the Noticee, which could have a crucial bearing on determining who sent the letter to Mr. Saminathan.

4.38. It is submitted by the Noticee that SEBI has sought to place reliance on the tower locations linked to the mobile phones of the Noticee and other involved persons and has sought to draw inferences on the basis of this tower location data. The Noticee denied and disputed the veracity of the tower locations and the call data records as provided by SEBI. The Noticee had contended that SEBI has no power to call for such mobile phone records and cannot rely on the same as the concerned service provider is not allowed to be cross-examined. Further, the Noticee had sought to play reliance on an article of December 2010 published by Central Pollution Control Board, which states that the tower location covers a wide area and hence is not reliable.

4.39. The Noticee contended that in the 'purported statement', Rakesh Sharma stated that he mailed the SEBI letter to some of his journalist friends on the afternoon of December 20, 2008 from the Noticee's house in Matunga. As per the Noticee, this is contradicted by Rakesh Sharma's second statement as also the Noticee's statement wherein there is no mention of any such meeting that took place at the Noticee's residence. Further, in the reinvestigation report filed by the BKC Police on January 05, 2015, it is clearly stated that the emails sent by Rakesh Sharma in the afternoon of December 20, 2008 were not sent from the Noticee's residence but rather from a Cyber Café.

4.40. The Noticee had further argued that in the said Charge Sheet, it is expressly recorded that there is no evidence to suggest that the Noticee had master-minded the said fraud and in fact it was concluded that the Noticee was not involved in the said matter. The allegation that the

e-mail containing the said SEBI letter was sent by Rakesh Sharma from the Noticee's residence was specifically rejected and it was stated that the said email was sent from a Cyber Café.

4.41. The Noticee contended that the statement of Ms. Mittal Acharya was coerced and recorded under duress by SEBI's officials and ought not to be relied upon. The Noticee gave the number of "Shah Dharmesh" instead of "Sahu Kanucharan" inadvertently and there was no intention on the part of the Noticee to mislead or impersonate anyone. In fact prior to this, the Noticee had already made available the numbers of Mr. Saminathan as well as the other company secretary of PSTL to Mr. S. Ganesan, which he would not have done if he wanted to offer a false clarification in respect of the letter.

Finding on issue C

4.42. The first contention taken by the Noticee is that the first statement of Rakesh Sharma is not a statement in the eyes of law. Rakesh Sharma was an executive from Adfcators PR Pvt. Ltd., a PR agency, and was an acquaintance and a friend of Rajesh Unnikrishnan, a reporter with the Economic Times, who used to contact the Noticee in connection with the news pertaining to PSTL. Based on SEBI's complaint before BKC police station dated January 1, 2009 regarding forgery of its letter and publication of the forged content in the media, Rakesh Sharma was arrested. The statement of Rakesh Sharma was recorded by SEBI officials on January 10, 2009 while he was in police custody. As the statement recording on that day was done by SEBI in connection with an internal Vigilance Enquiry, as apparent from the statement itself, the procedures prescribed in Section 11(5) and 11(7) were not followed. Subsequently, Rakesh Sharma was examined as part of investigation on two other

occasions, as per the procedure laid down in the provisions. Rakesh Sharma allegedly having played a key role in the forgery, cannot be expected to give two versions to SEBI, on the same issue, even though examined in two different contexts. I also observe that on the second and third occasions, he was not confronted with respect to the contradictions in his stance.

4.43. The Noticee had sought cross-examination of Rakesh Sharma amongst others, so as to adduce evidence on his side through the witness. Even though SEBI granted cross-examination of certain witnesses, Rakesh Sharma was not allowed to be cross-examined. Thus, considering the said fact, I am not placing reliance on the statement of Rakesh Sharma to establish that the Noticee had shown the allegedly forged SEBI letter to Rakesh Sharma, when he was accompanied by Rajesh Unnikrishnan, on December 20, 2008. However, the facts deposed by Rakesh Sharma to the extent that they are corroborated by other documents available on record cannot be dismissed as unreliable.

4.44. Another factual discrepancy that the Noticee pointed out was that the Blue Dart employee stated that the consignment of delivery was booked at 4 PM on December 19, 2008 and therefore it is not correct that the same letter was shown by the Noticee on December 20, 2008 to Rakesh Sharma and Rajesh Unnikrishnan. I note that the Noticee has nowhere denied his association or acquaintance with Rakesh Sharma and Rajesh Unnikrishnan. The noticee has at best, advanced a plea of alibi, that he was not at the place of the alleged illegality when it was stated to have happened, i.e. at the time of passing of the information to Rakesh Sharma and Rajesh Unnikrishnan from Hotel Pritam, Dadar on December 20, 2008. His case is that he was at Ghatkopar attending marriage preparations of his relative. Further, the argument that the original letter could not have been shown by the Noticee to others when it had already been

couriered is specious and does not have substance as no great extra effort would have been required for a similar letter to be prepared on a SEBI letter head, once it has already been done.

4.45. The noticee has also tried to rely on the investigation report of BKC Police to show that Rakesh Sharma had sent it from a cyber café and not from the Noticee's residence. Though I note that BKC station report states that the e-mail was sent by Rakesh Sharma from a cyber café it does not state where the cyber café was situated. However, all records (CDR, Tower Location details etc.) corroborate that the Noticee, Rakesh Sharma and Rajesh Unnikrishnan were at Dadar and subsequently at Matunga (E) on that day, during that time as elaborated hereafter.

4.46. The tower locations of the Noticee's Amol Kokane's 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 through Rakesh Sharma's contacts in the media. The tower location details indicate that Nirmal Kotecha was at Matunga (E) (from 1:12 p.m. to 2:27 p.m.). Similarly, the tower location details show that Rajesh Unnikrishnan was also at Matunga (E) between 12:57 p.m. and 1:44 p.m. I find that the tower location details indicate that Rakesh Sharma too was at Maheshwari Udyan, Matunga at 1:52 p.m. and King Circle at 1:53 p.m. The Tower Location of the Noticee and the two associates with the approximate distance from the towers is shown in the chart hereunder:-

Chart 1

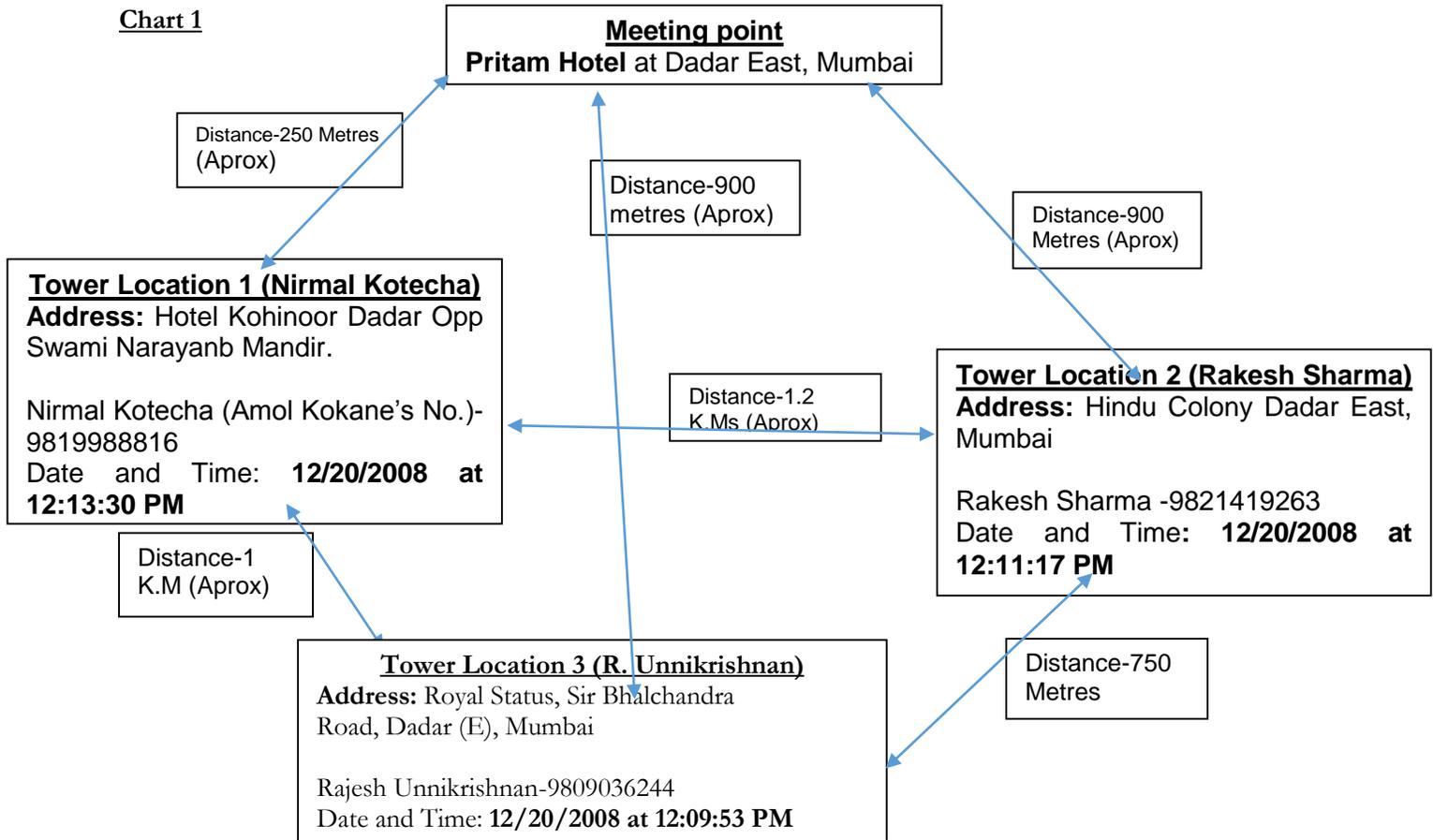
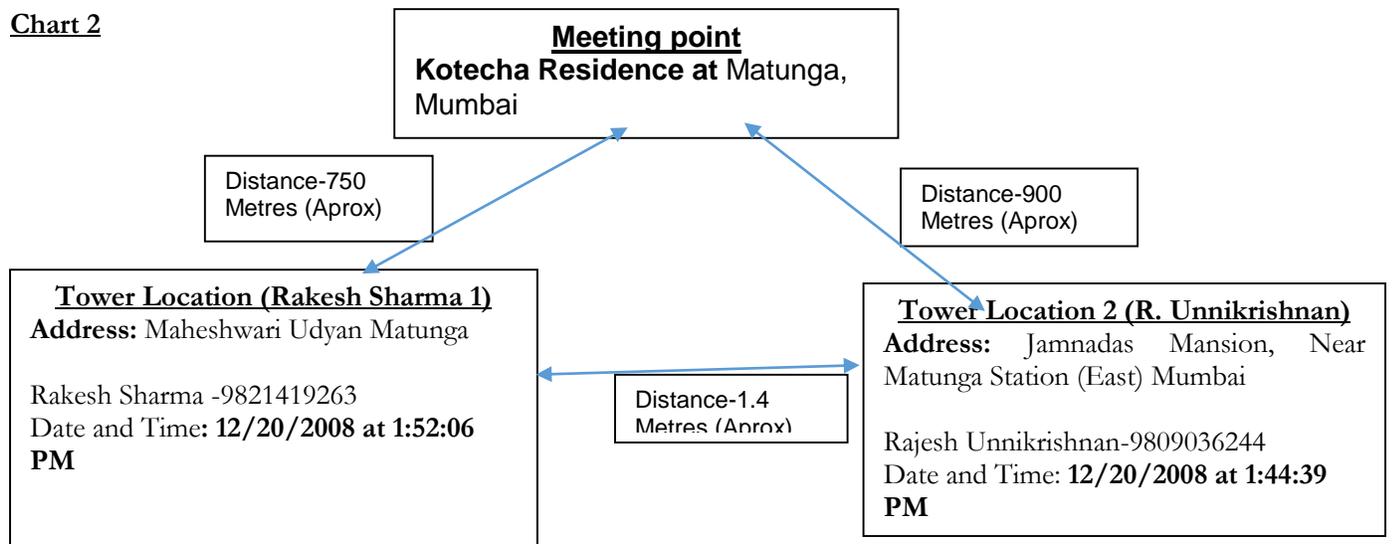


Chart 2



4.47. Rakesh Sharma, forwarded the scanned copy of the forged SEBI letter from his own personal e-mail ID to his media contacts including one Partha Sinha of TOI. The copies of the e-mail submitted to SEBI by the reporters, reveals that the e-mail to Partha Sinha was sent at 1:43 p.m. i.e. around the time when the tower location for all three of them as seen in the data was Matunga (East)/ King Circle. Kotecha's residence is also at Matunga (East)/ King Circle. The e-mail details furnished by Ashish Rukhaiyar of Economic Times shows that the e-mail was sent by Rakesh Sharma from his personal e-mail ID to Rukhaiyar's personal e-mail ID at 3:03 p.m.

4.48. SCN also alleges that Rakesh Sharma forwarded the forged SEBI letter by e-mail to Dheer Kothari (one of his ex-colleagues in Adfactors who is based in Kolkata). From the copy of the e-mail made available by Dheer Kothari, I observe that Rakesh Sharma had forwarded the e-mail to him at 1:43 p.m. on December 20, 2008 i.e. again at a time when all three of them were at Matunga.

4.49. Further, Rakesh Sharma was in constant touch with Dheer Kothari on December 20, 2008 from about 12.30 p.m. in the afternoon right up to around 10.00 p.m. at night. Dheer Kothari disseminated the information to three newspapers – Business Standard, Telegraph and Hindu Business Line and received a Rs. 10,000 from Rakesh Sharma. The trail of the funds indicate that the funds were transferred from Rakesh Sharma's account with HDFC Bank, Borivali (West) branch, which was opened in July 2008. Rakesh Sharma submitted that Dheer Kothari had insisted for some financial help and it is for this reason that he had paid him from his personal HDFC account and had got nothing to do with the letter. It is observed from the Call Data Records of Rakesh Sharma's number 9821419263 that during the entire month of December 2008, he had called Dheer Kothari on his mobile

number 9831113474 only on December 20, 2008 and then again on December 23, 2008. In fact, there are 11 outgoing calls by Rakesh Sharma to Dheer Kothari on December 20, 2008 and one call on December 23, 2008. Further, there are two incoming calls from Dheer Kothari to Rakesh Sharma on December 20, 2008 and a couple of incoming calls from Dheer Kothari to Rakesh Sharma on December 22, 23 and 24, 2008. It is seen from call data records that, out of the 11 outgoing calls by Rakesh Sharma to Dheer Kothari, 5 outgoing calls are between 13:52 to 14:46 i.e. immediately after the forged letter was e-mailed to him by Rakesh Sharma at 13.43 p.m. on December 20, 2008.

4.50. The second contention taken by the Noticee is that Rakesh Sharma retracted from his earlier statement, but the same was not questioned by SEBI in the second statement recording. The Noticee has further tried to show contradictions between the statement of Rakesh Sharma's first statement and his second statement. I note that the investigating officer had taken some leads for deciding the scope and direction of the investigation from the first statement of Rakesh Sharma. However, as no cross-examination of Rakesh Sharma was given to the Noticee, I do not intend to rely on the subsequent statements, unless the same is corroborated by other supporting evidence. For the purpose of this order, the tower location of the Noticee corroborated with the call data records of Rakesh Sharma and Rajesh Unikrishanan along with the emails and other surrounding factors are taken into consideration, though the Noticee has questioned its accuracy.

4.51. In this regard, the test for consideration is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned and not of proof beyond reasonable doubt. Even if it is presumed that there can be a possibility of error in reading the mobile location

for one mobile number, the probability of having three wrong readings for three different mobile numbers at the same point of time is negligible and remote. Moreover, the strict rules of Evidence Law cannot be made applicable in the instant proceedings, it being quasi-judicial in nature. I am inclined to give due credence to the call data record and Tower Location sheet, if the same coincides with other persons contacted from a mobile number in and around a particular time band, repetitive calls made/ received to or from the same person, the previous call history of the person etc. Thus I find that the Noticee and two others had worked in close concert and meticulously planned the dissemination of the news through a few others in the media and the securities market, whom they knew otherwise. The email sent from Rakesh Sharma's personal email ID is also a part of the record.

4.52. The next contention raised by the Noticee is that the police after investigation has given him a clean chit about the forged letter and held Rakesh Sharma responsible for the same in the Charge sheet. Considering the documents submitted by the Noticee during the hearing, I am not inclined to give any credence to the said Police report for the following reasons:-

- i. SEBI filed its complaint on January 1, 2009, but it is noted that the email of cybercell Mumbai Police requesting the details regarding 'Login' for email ID rakesh2605@gmail.com, belonging to Rakesh Sharma used for sending the information regarding the open offer to his media colleagues, was requested from Google on March 13, 2009. Google in its response dated March 13, 2009 submitted that they maintain such details only for 4 weeks. Hence nothing material transpired from the response.

ii. The email sent by cyber cell Mumbai police states *“This office is enquiring into a complaint wherein hacked, defamatory and abusive mail was sent from the said Email ID rakesh2605@gmail.com. You are hereby requested to provide us the following information (1) Login and Logout details for email ID from 15/12/2008 to 25/12/2008....”*. Thus it is noted from the above email that the police went ahead on the premise that the aforesaid email was hacked, whereas Rakesh Sharma himself never had such a case.

4.53. The Noticee has further contended that SEBI had without investigating into the forgery of the letter sent to him is proceeding against him on the basis of his sale of shares on December 22, 2008. The Noticee had further submitted that on Saturday he was busy with the preparations for the wedding of one of his relatives, which was scheduled for Sunday and he was at his in-law’s place at Ghatkopar. Vide the aforesaid statement, Nirmal Kotecha had claimed that he had left home at 1:00 pm on Saturday, December 20, 2008 and was there at his in-laws place at Ghatkopar the whole day and was not at his home and had returned home from his in-laws place in Ghatkopar only on Sunday evening. He further stated that the SEBI letter addressed to him was received by his wife at around 3:00 pm on Saturday, December 20, 2008. However, the tower location of Nirmal Kotecha’s Amol Kokane number revealed that on December 20, 2008 from 13:12:06 to 19:19:40, he was at Matunga (East), after which he left from there and reached Ghatkopar only around 21:00:29, which is completely at variance with his own contention that he moved to Ghatkopar at 1 PM. Clearly, the attempts of the Noticee to build up a case of alibi have been rendered hollow by the tower location details. The Noticee had failed to submit the cover and details of courier agency which delivered the forged letter at his residence and submitted that the cover was misplaced at his residence.

4.54. The SCN alleged that the Noticee gave the contact number of one " Dharmesh Shah", stating it to be that of the Company Secretary of PSTL, to Rakesh Sharma, for furnishing the same to the media persons, for their verification of the genuineness of the contents of the SEBI letter before publication. In response to this allegation, the Noticee submitted that he gave the number of "Shah Dharmesh" instead of "Sahu Kanucharan" inadvertently and there was no intention on the part of the Noticee to mislead or impersonate anyone. He further stated that having given the correct number of Saminathan and S Ganesan, the Company Secretary of PSTL to Rakesh Sharma, there was no need for him to give a false clarification. I find the conduct of the Noticee in the situation very suspect as there was no need for him to have supplied anybody's contact number for a second confirmation. The very fact that he tried to give an alternate number proves that he had an interest in making the reporters believe that the contents of the SEBI letter was true so that the pre-planned idea of publication is not affected. The investigation also revealed that Dharmesh Shah was his childhood friend. I find that the conduct of the Noticee in all the instances, during the period of investigation, is motivated and suspect, bordering on to being deceptive, right from the point of acquiring the mobile number of AK, opening of trading account and transfer of funds to various front entities, execution of self-trades and cross-deals in the scrip for substantial quantities as part of market manipulation and attempting to mislead the investors through false disclosures etc. and would indicate that the inadvertent mistake claimed in the numbers exchanged cannot be taken on its face value.

4.55. In my view the handwriting of Mittal Acharya on the envelope of the forged letter is a vital piece of evidence. Admittedly, Mittal Acharya was working in the office of the noticee at the relevant point of time and in cross examination also she identified her handwriting on the envelope. The noticee had contended that her statement was taken by investigating officer

under coercion and the same should not be considered. Even though the witness stated that she was coerced, the fact remains that she confirmed that it was her handwriting even in cross-examination. The Noticee had further relied on the statement of Ghanshyam Yadav who submitted that Rakesh Sharma had visited the Noticee's office in Nariman Point and that on that day in the presence of Ghanshyam Yadav, he had requested Mittal Acharya to write address on the envelope on his behalf. I note that when Mittal Acharya was confronted with Ghanshyam's statement, by the Noticee's Counsel during her cross examination, she stated that she did not remember who gave her the envelope. As far as the credibility of statements is concerned, I am inclined to go by the statement of Ms. Acharya because her answers, by and large, are close to truth and supported by the evidence adduced during cross-examination. She has also stated in her statement dated 7th January 2010 that she used to write addresses on the envelopes whenever Nirmal Kotecha told her to do so.

4.56. The Noticee had also contended that SEBI had failed to find out who forged the letter. This issue is outside the scope of my enquiry in the instant proceedings. Further, this question becomes irrelevant so long as it is established that the letter in question was forged and that it was the Noticee who had used the forged letter for making illegal gains. The facts and circumstances detailed above, makes it clear that Nirmal Kotecha was the master mind behind the circulation forged letter in order to offload his stake in PSTL. The Noticee in its reply has also relied on the case laws of Hari Charan Kurmi V. State of Bihar [AIR 1964 SC 1184] and Kiriti Pal V State of West Bengal [(2015)11SCC178] dealing with relevance of confessional statement of co-accused

and suspicion respectively. However, I find that these case laws are in the realm of criminal jurisprudence and therefore are not relevant to the present proceedings.

4.57. Thus, on an analysis of the undisputed facts, I find that Rakesh Sharma, an acquaintance of the Noticee had sent emails to certain media entities disseminating the alleged news. The tower location shows that the Noticee's case that he was at Ghatkopar at 1 PM on December 20, 2008 is untrue and is merely a ruse set up as an afterthought. I also note that the tower location of all the three persons was at Dadar and Matunga (E) and since they knew each other, the preponderance would show that they had a meeting after which the alleged dissemination of information took place. I also observe that all the persons connected to the Noticee ultimately retracted from their statements and the Noticee advanced the argument that by mistake he had given the number of Dharmesh Shah to Rakesh Sharma for verification. That too was done in between the marriage function in the family in an undue haste. The CDR details, as analyzed, are again crucial. Last and the most vital piece of information which is the handwriting of the Noticee's employee Mittal Acharya on the envelope of the letter that was received by Saminathan. The noticee's identifiable interest in this scrip from the time of acquisition in 2006 onwards and his move to manipulate volumes of trades in the scrip at both NSE and BSE also assumes significance while ascertaining the charge of public dissemination of the forged letter. The continued motive of the Noticee to exit from the scrip is evident from the market manipulation brought out under issues A and B above. Factors such as Noticee's connections with associated entities and the media, his constant habit of switching stance on various issues before the Regulator and acting in an inexplicably dubious manner, by using mobile number that was not his own, using his employees for trading in identified scrips, extending interest

free loans to various entities in the market etc. only confirm that the forgery was master minded by him.

D. In case, issues above are answered in the affirmative, what is the quantum of unlawful profits earned by the Noticee?

Allegation in the SCN on issue D :-

4.58. In the SCN, it is alleged that the Noticee made undue profit of about Rs. 10 crore from the publication of forged SEBI letter and the consequent trading interest which got generated enabling him and his associates (related entities) to off-load substantial holdings in PSTL shares.

Defence / justification of the Noticee on issue D :-

4.59. In his reply, the Noticee had submitted that the average cost of acquisition considered by SEBI does not include the purchases made by the Noticee in January 2008. The noticee had purchased 2,26,554 equity shares at the rate of Rs. 335 on January 25, 2008.

4.60. SEBI has considered the entire sale made on December 22, 2008 for arriving at the calculation of undue gains made by the Noticee. It is however submitted that it is SEBI's own case that on December 22, 2008 at 10:28 and 10:30 a.m. respectively, P. S. Saminathan had declared to the public at large through BSE and NSE respectively, that he has not received any direction from SEBI to make an open offer and therefore the public shareholders were well informed that there was no direction of open offer on P.S Saminathan.

4.61. Therefore any purchase made by any public shareholder after 10:30 a.m. would be presumptively with the knowledge that no direction of open offer was given to P.S. Saminathan. In fact, Mr. Saminathan had made it known to the public at large about the

receipt of the purported letter asking him to make the open offer only on December 23, 2008 when SEBI had itself clarified that it had not issued any such directions.

4.62. Therefore the alleged undue gain, if any, would only be the difference between the closing price on December 19, 2008 and the average price at which the shares were sold on December 22, 2008 before 10:30 a.m. i.e. Rs. 80.78. Therefore the total alleged undue gain would be the average number of shares sold before 10:30 a.m. i.e. 6,54,101 shares multiplied by the difference in the closing price on December 19, 2008 and the average price at which the shares were sold on December 22, 2008 before 10:30 a.m. i.e. Rs. 4.97/- being the difference between close price of 80.39 before 10.30 am and Rs. 75.42/-close price on December 19, 2008.

Findings on issue D :-

4.63. I have considered the submissions of the Noticee regarding the computation of illegal gains. I find that in the instant case, the allegation of making illegal gains is dependent on the Media publication of the false news in the market, based on the forged letter. Even though, the SCN had brought out artificial volume creation under Issue C, the illegal gain derived by the Noticee out of his trades executed on December 22, 2008 is solely related to the alleged dissemination of the spurious news fully knowing that the same is stemming out of a forged letter. Hence, the submission of the Noticee that it is the closing price of the day prior to the alleged manipulation that should be counted as the basis for determining disgorgement appears to be reasonable. Accordingly, the profit computation has been reworked as shown in the table below:-

Total no. shares Sold as on December 22, 2008 before 10.30 am (A)	654101
Average price of the shares (in Rs.) -(B)	80.39
Close Price of the shares as on December 19, 2008 (in Rs.) - (C)	75.42
Price before 10:30 am on December 22 - Close price on December 19 (D= B-C)	4.97
If Ill-gotten profit that is purported to have been made is*	
D*A 654101X 5.761	32,50,882

Thus the Noticee had made a unlawful gain of Rs 38,74,981.

- Thus, from the above, I conclude that the Noticee, Nirmal Kotecha has contravened the provisions of section Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) 4(2)(a), (b), (d), (e), (f), (g), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

Directions:-

- Considering the above, I, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with section 11, 11(4) and 11B of the SEBI Act, and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 hereby restrain the Nirmal Kotecha, from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 14 years. The said period of 14 years of debarment would stand reduced by the period already undergone by the Noticee vide order dated April 23, 2009.

7. Nirmal Kotecha shall pay an amount of ₹ 32,50,882, as ascertained in paragraph 4.63 above along with interest calculated at the rate of 12% per annum from December 22, 2008 onwards, within a period of 45 days from the date of the order. The Noticee shall pay the said amount either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment * to SEBI account as detailed below:

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

*Noticee who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details:	

8. The above directions shall come into force with immediate effect.

9. A copy of this order shall be served upon the stock exchanges and the depositories for necessary action and compliance.

Date: March 22, 2018

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**