

WTM/AB/IVD/ID2/7989/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA  
FINAL ORDER**

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

**In respect of:**

<b>Noticee No.</b>	<b>Name of the Noticee</b>	<b>PAN</b>
1.	Mr. Maheshbhai Himatlal Sheth	BOIPS2529R
2.	Mr. Deepak Thakkar	AAAPT5512C
3.	Mr. Raju G. Shah	AZHPS2985G
4.	Ms. Sharda Pujara	ALOPP8823F
5.	M/s. Meet Shares and Stock Services Pvt. Ltd.	AAECM7242H
6.	Ms. Monali Harsh Doshi	AJSPD4944M
7.	Mr. Harsh Doshi	AEKPD5974J
8.	Mr. Mukesh Jain	ACBPJ9682J
9.	Mr. Sanjay Gupta	AAFHS6939H

**In the matter of Pyramid Saimira Theatre Limited**

*The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”.*

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1. On December 21 and 22, 2008, there were several media reports that the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had directed P.S. Saminathan, one of the promoters of Pyramid Saimira Theatre

Limited (hereinafter referred to as “**PSTL**”/ “**the company**”), to make an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”) for an additional 20% stake at a price not less than Rs. 250/- within 14 days, for allegedly violating creeping acquisition norms. With the reports in the media appearing about the impending offer at Rs. 250/-, the price of the shares of the company increased on December 22, 2008, when the stock markets opened for the day. On December 22, 2008, PSTL first informed the BSE Limited (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) in the morning that the company had not received any communication from SEBI regarding the media reports on Open Offer. BSE disseminated the denial by the company at 10:28:04 a.m. on December 22, 2008 on its website and NSE did so at 10:30:00 a.m. on same day.

2. Subsequently, on the same day i.e. December 22, 2008, at around 10:30 a.m., PSTL received the alleged SEBI order directing PSTL to make an open offer, when the courier company, Blue Dart, delivered the purported SEBI letter to the company. P.S. Saminathan informed BSE and NSE on December 23, 2008 about the receipt of the letter from SEBI. In this regard, on December 23, 2008, SEBI issued a Press Release clarifying that the SEBI had neither issued a letter nor an order to P.S. Saminathan for the said open offer and that the said letter was apparently circulated with ulterior motives. SEBI had lodged an FIR with regard to the forgery of the SEBI letter in Bandra Kurla Police Station, Mumbai and also initiated an investigation into the matter.
3. The investigations by SEBI, *prima facie*, revealed that the forgery was done to manipulate the stock price of PSTL and that Nirmal Kotecha, one of the promoters and the then largest shareholder of PSTL, was one of the major beneficiaries of the said manipulation and appeared to have masterminded the forgery. It was further observed that several persons/ entities directly and indirectly related to Nirmal Kotecha had bought PSTL shares on BSE and NSE during December 15-

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

4. Pending investigation, SEBI vide an *ad interim ex parte* order dated April 23, 2009 (hereinafter referred to as “**the interim order**”) issued under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) *inter alia* directed 257 entities and their proprietors/partners/directors who prima facie appear to have played a role in the forgery of the SEBI letter, dissemination of the information contained in the forged letter to the media, misleading the media to believe in the authenticity of the information that was circulated to them, carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining advantage from the forgery and have channeled funds either directly or indirectly in the stock markets for manipulating the scrip of PSTL, not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions.
5. Deepak Thakkar (Noticee no. 2) and Raju G. Shah (Noticee no. 3) were some of the entities against whom such directions were passed vide the interim order. Thereafter, vide confirmatory order dated January 28, 2010, directions issued against Deepak Thakkar (Noticee No. 2) and Raju G. Shah (Noticee No. 3) vide *ad interim ex parte* order dated April 23, 2009, were confirmed.
6. Investigation revealed that besides Noticee No. 2 and Noticee No. 3, there were

several entities that were involved in the manipulation in the scrip of PSTL and associated with Nirmal Kotecha. Accordingly, show cause notices were issued to 44 entities, including to the 9 Noticees herein vide Show Cause Notice dated January 16, 2014 (hereinafter referred to as “**SCN**”). I note that the SCN was issued to 20 entities. 11 out of the 20 entities in the SCN, known as the Shah Group, filed Appeal No. 132 of 2017 before the Hon’ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**Hon’ble SAT**”) against the confirmatory order dated December 14, 2009 whereby SEBI had confirmed the directions given in the ex-parte ad interim order dated April 23, 2009 *qua* the 11 entities forming the Shah Group. In the said appeal, the Hon’ble SAT vide order dated December 21, 2017 directed SEBI to conclude the proceedings against the Appellants by passing a final order within three months from the date of the order. Thereafter, SEBI passed a final order dated March 22, 2018 against the 11 entities forming the Shah Group. Thus, the present proceedings are limited to SCN issued to the remaining 9 Noticees named herein above and are being taken up for consideration.

7. The SCN *inter alia* alleges that:

- a) The Noticees have benefitted from the circulation of the SEBI forged letter;
- b) The Noticees have allegedly created artificial interest in the scrip of PSTL by placing large orders during the month of December, 2008 and had taken advantage of the price rise in PSTL shares on December 22, 2008;
- c) During the period December 15, 2008 to December 19, 2008, Nirmal Kotecha sold shares to persons/entities associated/related to him including the Noticees;
- d) The Noticees had accumulated shares of PSTL between December 16-19, 2008 and off-loaded most of their holdings on December 22, 2008 and were amongst the net sellers in the shares of PSTL;
- e) The Noticees have executed synchronized and reversal trades in PSTL

- shares amongst entities associated with Nirmal Kotecha on various dates resulting in manipulation of the price/volume in the shares of PSTL;
- f) The Noticees have made undue profit from the publication of the forged SEBI letter and the consequent trading interest which got generated enabling them to off-load their substantial holdings in the shares of PSTL;
8. In view of the aforesaid allegations, SCN alleges that the Noticees no. 1 to 6 and 9 have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), Noticee no. 7 has violated Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(e) of PFUTP Regulations and Noticee no. 8 has violated has violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations.
9. The SCN issued to the Noticees, contained relevant findings of the investigation report qua the Noticees, along with certain annexures, list of which is as under:

**Table: 1**

<b>S. No.</b>	<b>Particulars of Document/Annexure</b>
1.	Purported forged SEBI letter dated sent to P S Saminathan.
2.	Statement of Deepak Thakker (Noticee No. 2) dated July 21, 2010.
3.	Relationship of DKG Securities Pvt. Ltd. with Nirmal Kotecha
4.	Statement of Monali Harsh Doshi (Noticee No. 6) dated March 29, 2010
5.	Statement of Harsh Doshi (Noticee No. 7) dated dated March 29, 2010
6.	Statement of Shailesh Jayantilal Shah dated July 02, 2009.
7.	Statement of Nirmal Shah dated July 02, 2009

8.	Letter of Rajesh Shah dated July 27, 2009
9.	Statement of Yatin Shah dated July 27, 2010.
10.	Statement of Sanjay Gupta (Noticee No. 9) dated April 30,2010
11.	Relationship of Inventure Growth & Securities Ltd, Hardik Mithani and SPJ Stock Broker Pvt. Ltd. with Nirmal Kotecha

**Replies, Hearing and Written submissions:**

10. It is to be noted that pending investigation an interim order dated April 23, 2009 was issued to around 257 entities and their proprietors/partners/directors in the present matter of PSTL. Further, confirmatory orders were passed on different dates against some of the entities. Upon completion of the investigation, SCN was issued to 44 entities, including the 10 noticees herein. I note that Adjudication proceedings under Chapter VIA of the SEBI Act, 1992 have also been initiated for some of the entities. The details of the entities to the show cause notices issued are given below in para 26. Since all the entities are alleged to be inter related with one another and connected to Nirmal Kotecha, opportunity of personal hearing were jointly given to all the entities in the matter of PSTL, including the Noticees to the present SCN, on July 27, 2015 and April 30, 2016 by the then Whole Time Member, before whom the proceedings were pending. I note that a separate show cause notice dated December 03, 2013 was issued to Nirmal Kotecha, the alleged mastermind behind the fraud in the scrip of PSTL, who had then filed a miscellaneous application before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") seeking inspection of documents and cross examination of certain entities. The Hon'ble SAT vide its Order dated May 19, 2016 disposed of the application directing that "*It is made clear that on 31.05.2016 the application to be filed by the appellant within one week from today shall be heard first and thereafter the Whole Time Member of SEBI shall proceed to hear the show cause notices subject to granting any short adjournment if any, sought by the appellant*". Subsequently, the Nirmal Kotecha vide various letters sought cross examination of 64 persons, including Noticee no. 1. The then Whole Time

Member heard the matter on May 31, 2016 and passed an order on May 31, 2016 disposing of all applications dated May 26, 2016 filed by Nirmal Kotecha and directed him to file fresh applications by June 24, 2016 with justification as to why inspection of documents, copy of documents/statements/information, and cross examination of 64 persons are required. Subsequently, Nirmal Kotecha filed a fresh application dated June 28, 2016 and an opportunity of inspection of documents/information was granted to the Noticee on August 22, 2016. Further, cross examination of 7 entities (including Noticee no. 1) from the 24 sought by Nirmal Kotecha were granted to him on January 10, 2017. During the course of cross examination, it is noted that Nirmal Kotecha took considerable amount of time to cross examine each person and hence the cross examination of the 7 entities had to be adjourned to separate days for each entity. Nirmal Kotecha vide email dated January 23, 2017, had sought adjournment of the cross examination of Noticee no. 1 which was scheduled for January 24, 2017. Accordingly, cross examination of Noticee no. 1 was granted to Nirmal Kotecha on March 21, 2017, and the same was concluded on the said date. Cross examination of the remaining entities were granted to Nirmal Kotecha on May 03 and 04, 2017. Since 3 entities sought adjournment, cross examination of the 3 entities were granted on May 22, 2017. One of the entities (Yatin B. Shah) sought adjournment and a final opportunity was granted to the entity to appear for cross examination on June 07, 2017. However, on the scheduled date of June 07, 2017, Yatin B Shah sought for an adjournment. Since several opportunities had already been granted, no further adjournment was granted and the cross examination of the said entity was closed. I note that during this period, Nirmal Kotecha had also filled for settlement of proceedings which was subsequently rejected on August 2017 and the proceedings continued against him. Subsequently, the final Order against Nirmal Kotecha was passed on March 22, 2018, which was challenged by Nirmal Kotecha before the Hon'ble SAT. Further, the final order dated March 22, 2018 against Nirmal Kotecha has also been upheld by the Hon'ble SAT vide its order dated March 02, 2020 in Appeal no. 261 of 2018.

11. I note that Rajesh Jayantial Shah and 8 others (hereinafter referred to as the “**Shah Group**”), who are Noticees to Show cause notice dated January 16, 2014, had filed an appeal before the Hon’ble SAT against the confirmatory order dated December 14, 2009 passed against them. The Hon’ble SAT vide its order dated June 30, 2017 directed SEBI to pass a final order with regard to the Shah Group within a period of 6 months from the date of the Order. During this period the matter of PSTL was assigned to another Whole Time Member, due to the end of tenure and retirement of the earlier Whole Time Member to whom it was assigned. Due to the matter being assigned to a new Whole Time Member, following the principles of natural justice, an opportunity of personal hearing was again granted to the Shah Group on November 27, 2017. Thereafter, written submissions were received from the Shah Group on December 04, 2017. A request for extension of time in passing the final order against the Shah Group was made before the Hon’ble SAT and it was pleased to grant a further period of 3 months vide its order dated December 21, 2017. Final order against the Shah Group was passed on March 22, 2018. I note that final order dated March 22, 2018 against the Shah Group has been upheld by the Hon’ble SAT vide its Order dated March 17, 2020 in Appeal no. 179 of 2018.
  
12. The matter of PSTL in respect of the remaining 32 entities was subsequently assigned to the undersigned and accordingly, following the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on August 07, 2019. Noticees no. 1, 4, 5, 8 and 9 appeared on August 07, 2019 and made submissions. Noticee no. 9 sought time to file his written submissions and subsequently, vide letter dated August 27, 2019, filed his written submissions. The advocates for Noticee no. 2 appeared on August 07, 2019, and sought for cross examination of Amol Kokane and Nirmal Kotecha prior to availing the opportunity of hearing. While Noticees no. 6 and 7 sought for an adjournment, Noticee no. 3 did not appear for the hearing on August 07, 2019. Accordingly, another opportunity of hearing was granted to Noticees no. 3, 6 and 7 on September 23, 2019 and cross examination of Nirmal Kotecha and Amol Kokane was granted to

Noticee no. 2 on September 23, 2019. On September 23, 2019, Advocates on behalf of Noticees 6 and 7 appeared for the hearing and made submissions and sought time to file their written submissions. Subsequently, vide letter dated September 25, 2019, Noticees 6 and 7 jointly filed their written submissions. Noticee no. 3 failed to appear for the hearing on September 23, 2019. Further, no request for adjournment or further date of hearing was received from the Noticee no. 3 and since 2 opportunities have been given, hearing for Noticee no. 2 stands concluded. The cross examination of Amol Kokane was conducted by Noticee no. 2 on September 23, 2019. However, Nirmal Kotecha did not appear for the cross examination on September 23, 2019. Upon the request of the Noticee no. 2, a final opportunity of hearing was granted on October 03, 2019, wherein, the advocates for the Noticee appeared and made submissions.

13. As noted above, proceedings were first initiated against the main entity Nirmal Kotecha by issue of interim order dated April 23, 2009. Subsequently, a final order was passed on March 22, 2018 against Nirmal Kotecha. The SEBI order dated March 22, 2018 against Nirmal Kotecha was upheld by the Hon'ble SAT vide its Order dated March 02, 2020 in Appeal no. 261 of 2018. Further, a final order dated March 22, 2018 was also passed against the Shah Group and has been upheld by the Hon'ble SAT vide its Order dated March 17, 2020 in Appeal no. 179 of 2018. Such orders have a bearing on the proceedings given that Nirmal Kotecha was alleged to have masterminded the entire fraud and all the other entities, including the Noticees, were *inter alia* alleged to have colluded with him in manipulating the scrip of PSTL.
14. Subsequently, there was an outbreak of COVID-19 and consequential lock down was imposed. Accordingly, the SCN issued against the Noticees herein after giving an opportunity of personal hearing and filing of written submissions following the principles of natural justice, is being dealt with in the present order with directions in terms of para 106.

**Submissions of the Noticees:**

15. Noticee no. 1 (Maheshbhai Himatlal Sheth) vide letter dated October 05, 2015, *inter alia* submitted that:
- (i) *I am an employee of Tejas Cotton Co. which is a firm owned by the Shah Group family. I have allegedly incorporated a mobile number on the KYC provided to broker J.M. Financial Services Pvt. Ltd. The same phone number has been registered in the name of Mr. Rohitkumar Jayantilal Shah and was used by Mr. Nirmal Rohitbhai Shah. On December 22, 2008, I offloaded 10,000 shares at the average price of Rs. 80/- per share. The above transaction enabled me to earn a profit to the tune of Rs. 1,84,200/-.*
  - (ii) *The number incorporated in the KYC does not belong to me and therefore the same cannot be relied upon to allege violations of the SEBI Regulations.*
  - (iii) *Assuming without accepting, even if it is presumed that the mobile number of Mr. Rohitkumar Shah which was being used by Mr. Nirmal Rohitbhai Shah had anything to do with me, it merely shows that I was connected with Mr. Nirmal Rohitbhai Shah. It does not, however, show that I had anything to do with any Mr. Nirmal Kotecha or the alleged forgery carried out by him.*
  - (iv) *The only alleged fact that has been relied upon to create a liaison between me and Nirmal Kotecha is the said mobile number, which was allegedly incorporated in the KYC by me.*
  - (v) *My demat account statement clearly reflects upon the frequency of my trading activities. I have been regularly trading in the scrip of PSTL since May, 2008. The transaction undertaken by me between December 17, 2008 and December 22, 2008 in the scrip of PSTL is in the normal course of my regular dealings in the securities market.*
  - (vi) *In the present case, no money earned by me as a result of the profit that I made by trading in the scrip of PSTL during the relevant time, was deployed to any member of the Shah family so as to establish any relation or tip off in the matter of the alleged fraud.*

(vii) *Assuming without accepting, that I had the prior knowledge of the fraud that was perpetrated by Mr. Nirmal Kotecha on the investors, I would have offloaded the entire shareholding in the scrip of so as to benefit the most out of the alleged fraud and capitalize on the profit. However, on December 22, 2008, I offloaded only 10,000 shares. I sold another 1089 shares on January 23, 2009. Kindly note that I had offloaded these shares on January 23, 2009 at a price of Rs. 23.12/- per share, which is far less than the price at which I had sold the shares on December 22, 2008. Had it been known to me that the increase in price was due to the alleged forgery, I would have sold all the quantity by me on December 22, 2008 itself.*

16. Noticee no. 2 (Deepak Thakkar) vide letter dated September 19, 2019, *inter alia* submitted that:

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

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

(iii) *It has been alleged that I had never dealt in PSTL shares during the period June 01, 2008 to December 15, 2008 and thereafter, on December 16 & 17, 2008 I had bought 19,758 shares and 80,000 shares respectively at an average cost of Rs. 60.50 per shares. With regard to this, it is out rightly submitted that such a presumption reached by SEBI is without any consideration of fact and evidence. On perusal of the documents it will be seen that I had purchased 65,000 shares of PSTL in the Pre-IPO process in December 2006 and sold them in December from*

20 to 28, 2007.

- (iv) *The allegation in para 49 of the Notice is that at 10:27:04 am Nirmal Kotecha placed a sell order for 40,000 shares at a price of Rs. 60/- per share. Subsequently, at 10:49:26 am I placed a buy order of 5000 shares at the price of Rs. 60/- which got matched vide trade no. 785 at 10:49:26 am. The allegation itself does not make out a case of synchronized trading. Firstly, there is difference of approximately 22 minutes in the distinct orders placed Nirmal Kotecha and me. It is settled law that trading can be considered synchronized only in the event that trades match in under 60 seconds of them being placed on the terminal. It is a fact that the trades matched only after a duration of 22 minutes.*
- (v) *In fact, it is clear from my submissions that the transactions in my account were executed by Mr. Nirmal Kotecha on my instructions. Had there been any meeting of minds between me and him and the objective would have been to synchronize trades there would not have been gap of 22 minutes in the trades and that Mr. Kotecha could have either simultaneously or one after another placed order so as to match each other. The same is missing and hence the trades cannot be said to be synchronized.*
- (vi) *I had opened a trading account with Kotak sometime in or around March 2005. At the time of opening my trading account, I was routinely required to travel for my shipping and clearing related work.*
- (vii) *I gave an authority letter to Kotak in favor of my nephew Mr. Nirmal Kotecha to issue directions to Kotak.*
- (viii) *Subsequent to issue of this Letter of Authority, all instructions relating to trades were to be routed through Nirmal Kotecha.*
- (ix) *The trading decisions taken on December 16, 17 and 22, 2008 as well as all other trade related decisions calls in various securities have always been my independent calls. These were merely routed through Nirmal Kotecha for the sake of convenience and cannot in any manner be considered as his own investment or investments made on his advice.*
- (x) *With regard to the financial dealing of me and Nirmal Kotechas grandfather, it is submitted that I have stated in my statement dated July 21, 2010, that Mr. Manilal*

*Kotecha is father in law of my sister and the said loan would have been given to my sister for some time and the same has been returned back to her.*

- (xi) *With regard to the transaction between DKG Securities Pvt. Ltd, it is submitted that I had issued a cheque to DKG Securities Pvt. Ltd. worth Rs. 2,00,00,000/- but since the interest rate was high for them, they had subsequently returned the money to me. No adverse inference of any kind should be drawn based on this transaction, since it was a normal business transaction devoid of any manipulative intent.*
- (xii) *With regard to the allegations of call to Ms. Meera Venugopal Shah by me, it is submitted that for the first time in the Notice, a case has been made that I had made a solitary call to the number 9847298213 belonging to one Ms. Meera Venugopal from the number 9820041135 belonging to me at 21:11 on December 20, 2008 for a duration of approximately 245 seconds. It is further submitted that the said alleged call was made by me 4 years ago it is impractical for me to recall as to why the call was made and what communications were exchanged between us. I vaguely remember that the call might have been made to enquire about travel packages because Mrs. Meera Venugopal Shah is a travel agent and there is a high probability that a call was made to her to examine the available travel packages since I was planning a holiday at the same time period.*
- (xiii) *Thus, it is humbly submitted that, no information was ever exchanged between Mr. Nirmal Kotecha and me, which in turn ever influenced my decision to invest in the shares of any scrips including in the scrip of PSTL. Pertinently, the SCN altogether fails to take into consideration the fact that I bought shares of PSTL several weeks before the events detailed in the SCN took place. This totally belies the allegation I traded in PSTL shares on the basis of information provided by Mr. Nirmal Kotecha and/or with a view to assist Mr. Nirmal Kotecha in his allegedly fraudulent endeavors.*

17. Noticee no. 3 (Raju G. Shah) vide letter dated March 19, 2014, *inter alia* submitted that:

- (i) At the outset the notice denies all and singular observations, averments, statements and allegations made in the show cause notice issued in respect of the scrip Pyramid Saimira Theater Ltd. which are contrary to or inconsistent there with.*
- (ii) The Noticee further, clarifies that the dealing in the market of the Noticee are basically day trading/jobbing or availing arbitrage opportunities between two Exchanges i.e. NSE and BSE. Hence the allegations or purported connection being drawn either directly or indirectly as alleged in this para by the Learned Officer are basically incorrect, false allegations and without any basis and having any material evidence on record to prove the association with the promoter of Company PSTL or person, entities who has brought PSTL shares.*
- (iii) On perusal it would be observed that there is no reference to the name of the Noticee in any of the tables indicating the relationship with Nirmal Kotecha and other persons/entities save and except in Table 20 on page 12 of the SCN. In this table 20 against the name of the Noticee it is stated that “.....” The Noticee submits that the learned Officer has miserably erred in relying on the statement dated July 27, 2010 of Mr. Yatin B. Shah. Further, it is a fact that, the Noticee had carried out dealings in the scrip PSTL along with other scrips on 19<sup>th</sup> December 2008, which, dealings are in the nature of jobbing and/or availing arbitrage opportunity in the scrip PSTL in NSE/BSE on 19<sup>th</sup> December 2008 and consequently, the Noticee has suffered net loss of Rs. 9,946.30 in the market on that day. Apart from this fact there is no other material evidence showing any relationship/connection with Nirmal Kotecha and other person/entities as indicated in this para.*
- (iv) Mr. Yatin B. Shah who had given a statement to SEBI during the period of investigation and based on the said alleged statement of Mr. Yatin Shah, the Noticee has been drawn into the alleged trap of relationship with Mr. Nirmal Kotecha indirectly through Mr. Yatin B. Shah, only on the premise that the Noticee is the cousin brother of Mr. Yatin B. Shah. This is a natural fact and based on such natural fact of noticee being cousin brother of Mr. Yatin B. Shah cannot be concluded negatively against the Noticee without any direct evidence. The Noticee was not aware of the alleged conversations and alleged friendly relationship of Mr.*

*Yatin B. Shah with Mr. Nirmal Kotecha and other persons/entities. Further, the Learned Officer has not indicated or relied on the evidence about there being conversation with the Noticee on 19<sup>th</sup> and 22<sup>nd</sup> December 2008 between the Mr. Yatin B. Shah and the Noticee. In the absence of this crucial nexus/evidence not on record, the Noticee relationship with Mr. Yatin B. Shah as cousin brother cannot be exploited by the Learned Officer for nailing the Noticee and giving a colour of association with other entities such as Nirmal Kotecha and others as mentioned in the present SCN.*

- (v) The Noticee further submits that the Learned Officer has erred and drawn an incorrect adverse inference based on certain alleged financial dealings in the form of certain loan between Mr. Nirmal Kotecha and Mr. Yatin B. Shah, which dealings appear to be some time in 2007 more than a year before the dealings in the stock market by the Noticee in the scrip PSTL.*
- (vi) Further, the Noticee submits that on examining the orders of the Noticee post transactions and drawing inference of connection/association with other person/entities is incorrect inference and bad in law and also the fact remains that the SCN clearly indicates about the dealings on December 19, 2008 of the Noticee and there is no reference to dealings on any other day in the SCN. Merely based on a single dealing on NSE and BSE the charge of violating the provisions of the PFUTP Regulations 2003 is grossly incorrect.*
- (vii) The Noticee submits that on perusal of the above summary of the contract note, it is clear that the Noticee has earned a jobbing net profit of Rs. 928.63 paise on December 19, 2008 after deducting the Jobbing STT charges and Service Tax paid to the statutory authorities and Transaction fees paid to the Exchange. This important material fact has been ignored by the Learned Officer and also the transactions on 19<sup>th</sup> December 2008 have been examined in piece meal and not in totality by the Learned Officer.*
- (viii) Further, on perusal of the other statements on oath of other persons/entity, it can be observed that those persons/entities have not given any adverse statements against the Noticee nor there is any comment against the Noticee. Save and except of Mr. Yatin B. Shah who had only stated that the Noticee is his*

*cousin brother and there are no comments against the Noticee.*

- (ix) *Further, the Learned Officer has tried to justify the alleged synchronize reversal trades by allegedly referring to the call data records of Mr. Nirmal Kotecha's and Mr. Amol Kokane number on December 19, 2008 on the mobile number of Mr. Yatin B. Shah who is the cousin brother of the Noticee. The Noticee submits that it is farfetched inference being drawn and applied to the Noticee transactions on December 19, 2008. It is not the case that the Noticee has spoken to either Mr. Nirmal Kotecha or Mr. Amol Kokane or Mr. Yatin B. Shah on December 19, 2008, in the absence of any phone calls made or received by the Noticee, adverse inference cannot be drawn against the Noticee merely on the pretext that the Noticee is a cousin brother of Mr. Yatin B. Shah.*

18. Noticee no. 4 (Sharda Pujara) vide letter dated April 02, 2014, *inter alia* submitted that:

- (i) *At the outset I clarify that I was not directly or indirectly connected with Shri Nirmal Kotecha nor our trading volume of 22.12.2008 – not a single trade has been considered as objectionable. Para 72 to 79 of Show Cause Notice which deals with 'Examination of Trading in PSTL shares on December 22, 2008' do not mention/contain our name. Further our name does not appear in the list of 14 noticees who had taken the benefit of the fraud and earned a profit of Rs. 47,07,761.41.*
- (ii) *I am an investor in the stock market and based on my view on the market, I used to trade (intra day as well as delivery based) in the various scrips at the relevant time. I am wrongly connected, bunched, lumped, included and tied to Mr. Nirmal Kotecha. The basis for making me a part of the said Nirmal Kotecha group is erroneous and flawed. I therefore deny and do not accept that I belonged to the Nirmal Kotecha Group as alleged or otherwise, or to any group for that matter.*
- (iii) *It is pertinent to mention that I was neither asked to furnish any information nor was I called for recording my statement etc. in the at the time of investigation proceedings. It appears that I am included in the group only on the basis of some*

*bald statements made by one Mr. Yatin Shah. And Mr. Yatin Shah is not even made a part of the alleged group in the SCN. Moreover, I was not even given an opportunity to cross examine Mr. Yatin Shah. I do not accept any of the statements of Mr. Shah, made qua me and it appears that his statements have been twisted to rope me in the matter.*

- (iv) My son Chirag Pujara had nothing to do with my trades. Further, I did not give any power of attorney nor was he my agent in any manner. My trades were separate, independent and standalone and belonged to me. I did not consult Mr. Mahesh Pujara to take my business/commercial decisions. The connection sought to be established with Mr. Nirmal Kotecha through Mr. Yatin Shah who was introduced by Mahesh Pujara who is the uncle of my son, Chirag Pujara, is incorrect, irrelevant and farfetched.*
- (v) The investigating officer has given a colour of reversal/synchronized trades to my intra trades on both the Exchanges on 8.12.2008. In other words, normal matching of orders too has been treated as synchronized trades. Moreover, there is no connection established between me, Mr. Hardik Mithani, Inventure Growth & Securities Ltd. either inter se or with Mr. Nirmal Kotecha. There is a complete disconnect between/among these parties in the SCN. The group of 20 people has no relationship with each other inter se or intra se in terms of reversal or synchronized trades.*
- (vi) The investigating officer has grossly failed to establish the connection or any sort whatsoever between me and Mr. Kotecha. It is pertinent to mention that not a single order/trade of mine matched with SPJ Stock Brokers Pvt. Ltd. and M/s Meet Shares and Stock Services Ltd and only 500 shares got matched with Inventure Growth and Securities Ltd. If the orders were predecided between me and Mr. Hardik Mithani as alleged then there has to be prior meeting of minds, prior collaboration and the minds ought to have been on same wavelength which is not the case here. The Noticee doesn't even know who Mr. Hardik Mithani is. Hon'ble Investigating Officer has not even whispered about any connection between me and Mr. Mithani in the SCN. The Adjudicating Officer has given a colour of reversal/synchronized trades to my intraday trades on both the Exchanges on*

*8.12.2008. In other words, normal matching or orders through price time matching algorithm too has been treated as synchronized trades.*

19. Noticee no. 5 (Meet Shares and Stock Services Pvt. Ltd.) vide letter dated August 02, 2015, *inter alia* submitted that:

- (i) At the outset we clarify that we were not directly or indirectly connected with Shri Nirmal Kotecha nor our trading volume of 22.12.2008 – not a single trade has been considered as objectionable. Para 72 to 79 of Show Cause Notice which deals with ‘Examination of Trading in PSTL shares on December 22, 2008’ do not mention/contain our name. Further our name does not appear in the list of 14 noticees who had taken the benefit of the fraud and earned a profit of Rs. 47,07,761.41.*
- (ii) We were an investor/trader in the stock market. We used to trade (intraday as well as delivery based) in the various scrips at the relevant time. We am wrongly connected, bunched, lumped, included and tied to Mr. Nirmal Kotecha. The very basis for making us a part of the said Nirmal Kotecha group is erroneous and flawed. We therefore deny and do not accept that we belonged to the Nirmal Kotecha Group as alleged or otherwise, or to any group for that matter.*
- (iii) It is pertinent to mention that we were neither asked to furnish any information nor were we called for recording our statement etc. in the course of investigation proceedings. It appears that we are included in the group only on the basis of some bald statements made by one Mr. Yatin Shah. Moreover, we were not even given an opportunity to cross examine Mr. Yatin Shah. I do not accept any of the statements of Mr. Shah, made qua us and it appears that his statements have been twisted to rope us in the matter.*
- (iv) It is pertinent to mention that the investigation in the scrip of PSTL is divided into three periods, viz. December 1-12, 2008, December 15-19, 2008 and December 22, 2008. We traded only on one day (i.e. 08.12.2008) during the first period (December 1-12, 2008), we did not carry out a single transaction during the second period (December 15-19, 2008) and our trades in the third period i.e. of*

*December 22, 2008 is not considered objectionable.*

- (v) We clarify that, we were not aware about counter party Inventure Growth & Securities Pvt. Ltd. – its name of client (end client) is not even furnished nor any nexus established between us and Inventure Growth & Securities Pvt. Ltd. and / or its end client in the matter of 18,233 shares sold to us and 8,156 shares (allegedly bought from us. We deny the charge of ‘reversal transactions’ between us and Inventure Growth & Securities Limited. No relationship is established without any evidence. We did trades in our name through our broker while Inventure Growth & Securities Pvt. Ltd. is a broker itself (who may have traded for themselves or for their client and no particulars have been furnished.)*
- (vi) Similarly, our selling of 12,367 shares to Mr. Hardik M. Mithani (who is he?) and buying back 15,800 shares from him on BSE and NSE cannot be considered objectionable inter alia for the reasons given the above paragraph. This charge of reversal transactions is denied. We have no connection with the said Mr. Mithani and none is established.*
- (vii) We did not consult Mr. CN Pujara while taking our business/commercial decisions. The tri-partite agreement dated 18.12.2006 was a SEBI prescribed legal requirement. Further, Mr. Chirag Pujara had no role, involvement and participation into our business affairs. We take strong objection to the family relationship being bought in the matter of business dealing in a circuitous manner. Such extraneous and irrelevant manner to ultimately connect us to Mr. Nirmal Kotecha is wrong and absurd and perverse. Had we been associated with Mr. Nirmal Kotecha as alleged, then we would have traded throughout the month of December 2008 and not on few days only and our pattern of trading would have been different and would have been similar to those who were directly connected with him and who made profits through such pattern. Further our trades of 22.12.2008 have not been considered objectionable. The connection sought to be established with Mr. Nirmal Kotecha on the basis of some loose, vague, irrelevant, non-germane statements of Mr. Yatin Shah, is farfetched substanceless, a far cry and misconceived.*
- (viii) The Noticee states that the trade data furnished on the SCN was that part of order which got converted into trades. The said data log did not include*

*unexecuted orders, modified orders and cancelled orders. On account of not making available these orders data, the analysis of data furnished would remain one sided, incomplete, incorrect and hence the answers to the charges could not be proper, complete thus resulting into violations of principles of natural justice. Executed/unexecuted/modified/cancelled orders would throw light on the total number of orders keyed into the system and the history of each order that got eventually fully executed into trades, partly executed and not executed at all. In order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders and executed within the group and executed outside the group.*

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

20. Noticee no. 6 (Monali Harsh Doshi) and 7 (Harsh Doshi) vide letters dated August 31, 2019 and September 25, 2019, *inter alia* submitted that:

*(i) When I purchased and sold a total of 2,000 shares of PSTL on behalf of my wife in December 2008, I did not have any prior knowledge of the fraud allegedly perpetrated by Mr. Nirmal Kotecha. The said trades were executed in my capacity as an ordinary individual investor, in the normal course of my family investment activities.*

- (ii) *It is true that my wife and Ms. Viral Doshi (Mr. Nirmal Kotecha's wife), are sisters. It is also true that Mr. Nirmal Kotecha and I regularly speak on the phone, exchange messages, emails and other communication as well as meet personally on occasions. However, none of my trades were ever based on any inputs or information and/or of any tip and/or any unpublished price sensitive information be it from Mr. Nirmal Kotecha or otherwise. It is most humbly submitted that, till date Mr. Kotecha and I do not have any monetary transaction.*
- (iii) *In paragraph 62 of the SCN, it is specifically stated that the criteria adopted for the purpose of Last Traded price ("LTP") analysis during the period December 15 to 19, 2008 was those buy orders which resulted in cumulative traded quantity of 5,000 shares or more along with a cumulative positive price impact of Rs. 0.25 or more as compared to the LTP. The trades conducted by me on behalf of my wife on December 17, 2008 do not match the aforesaid criteria. On behalf of my wife I purchased merely 1,000 shares (which is less than the minimum criteria adopted). It is pertinent to note that on the day of the transaction, there was a balance of Rs. 1,76,000 in my wifes saving A/c but we invested only Rs. 62,000 to buy 1000 shares. It is submitted that this act signifies that I had done the investment in good faith as an investor with an objective to average the cost of investment on family portfolio basis.*
- (iv) *In paragraph 74 of the SCN, it is specifically stated that the criteria adopted for the purpose of examining trading in PSTL shares on December 22, 2008 was 15,000 shares or more sold on December 22, 2008 on net basis, on BSE and NSE taken together, before 10:30 am was considered. The trades conducted by me on behalf of my wife on December 22, 2008 do not match the aforesaid criteria. I sold merely 2,000 shares (which is less than the minimum criteria adopted). Further, I did not sell the shares before 10:30 am. On the contrary, I first purchased 1,000 shares at 10:31 am (i.e. after 10:30 am)(taking the aggregate shareholding of my wife in PSTL shares to 2,000) and then sold all the 2,000 shares later that day i.e. after 10:30 am. Consequently, there is absolutely no examination or analysis of my trades in the SCN, wherein other qualifying trades appear to have been examined. At the very least, my trades as examined in the SCN are erroneously examined,*

*and altogether fail to take into consideration the fact that I bought 1,000 shares of PSTL on December 22, 2008 at 10:31 am unlike the major counterparties who sold shares in the morning of December 22, 2008.*

- (v) *In paragraph 75 of the SCN, SEBI's entire case on the basis of which it has concluded that the Noticees had prior knowledge of the alleged fraud has been summarized as under: "The explanations revealed... Specifically, it was observed that these 11 major net sellers had accumulated PSTL shares in huge quantity on December 16, 17, 18 and/or 19, 2008 and they had offloaded most of these accumulated holdings on December 22, 2008 before 10:30 am. Hence it is alleged that the entities might have had prior knowledge of the fraud which was being perpetrated on investors by Mr. Nirmal Kotecha." (Emphasis supplied.) the SCN altogether fails and/or neglects to take into consideration the fact that my trading pattern was materially distinct from the trades examined, in as much as on December 22, 2008, I bought 1,000 shares of PSTL after 10:30 am unlike the other major sellers who sold/bought shares before 10:30 am. Eventually, I sold 2,000 shares of PSTL on December 22, 2008 at 12:06 pm. thus my complete transaction in the scrip was well after the news of the alleged fraud had become public.*
- (vi) *Further, there is not even a single allegation in the SCN that my trades qualify as circular trades and/or reversal transactions and/or synchronized trades. None of the data and information set out in the SCN, whether in the trade analysis set out in the various charts and tables or otherwise, reveals that my trades matched with the major trading clients who were related to Mr. Nirmal Kotecha, or with Mr. Nirmal Kotecha directly for that matter. It is therefore apparent that there is nothing which is per se illegal in the trades carried out by me.*
- (vii) *The only allegations against my wife and me is that we never dealt in PSTL shares during the period from June 01, 2008 to December 16, 2008; and that we bought 1,000 shares of PSTL ON December 17, 2008 which we sold on December 22, 2008 and earned a profit of Rs. 8,100 (see para 14(a) and (b) at page 81 of the SCN); and that this shows that we had knowledge of the fraudulent SEBI letter. It is pertinent to note that I had bought 1000 shares additional shares*

*on December 22, 2008, which was sold at a loss of Rs. 4,000. Therefore the net profit was Rs. 8,000 (Rs. 12,000 – Rs. 4,000).*

*(viii) We deny the insinuation in the SCN that Mr. Nirmal Kotecha had informed us about the alleged forged SEBI letter as Mr. Nirmal Kotecha has never shares any unpublished, price sensitive information with me.*

21. Noticee no. 8 (Mukesh Jain) vide letters dated October 29, 2012, August 05, 2019 and August 07, 2019, *inter alia* submitted that:

*(i) It has specifically been clarified by my client that he is no way related to the entire issue raised qua one 'Mukesh Jain' in the present case. In the show cause notice dated 20.01.2012 served upon my client, reference has been made of one Mr. Mukesh Jain who was a director of Bihar Tubes Ltd. It is clarified that my client Mr. Mukesh Jain, PAN: ACBPJ9682J was never a director of Bihar Tubes Ltd. From an inspection of the records of Ministry of Corporate Affairs, my client has already placed on record that fact that the Mukesh Jain referred to in your notice is a completely different and independent person from my client. The 'Mukesh Jain' who was a director in Bihar Tubes had the following parentage & address (as inspected from MCA records.)*

*Mukesh Jain S/o Hari Chand Jain, R/o 5/103, Gajju Katha, Shahdara, Delhi-110032.*

*My name, parentage, address & PAN are as under:*

*Mukesh Jain S/o Jai Prakash Jain, R/o D-213, Vivek Vihar, New Delhi-1100095, PAN: ACBPJ9682J*

*(ii) My client had previously received a show cause notice bearing no. EFD/DRA-II/GVK/ASG/19638/2015 dated 14.07.2015 for a hearing to be held on 27.07.2015. I have personally attended the hearing on behalf of my client on 27.07.2015 and clarified that my client did not purchase any shares of Pyramid Saimira Theatres Ltd. (PSTL) scrip on 22.12.2008, which is the date alleged in the show cause notice. Rather, my client had purchased shares in PSTL SVIP on 16.12.2008 and 17.12.2008 from the open market and sold the shares in the market at a heavy*

*loss of Rs. 15,42,451/- (Rupees fifteen lacs, forty two thousand, four hundred and fifty one only) on account of his tradings in the PSTL scrip.*

- (iii) It is evident from the above that my client has actually suffered a loss in his dealing in the PSTL scrip. Moreover, as already indicated my client as no cause or connection with PSTL and is different 'Mukesh Jain' from the Mukesh Jain referred by you in your notice.*
- (iv) That the allegations of synchronized trading made in Paras 46 and 47 of the show cause notice are false and frivolous on face of it. My client had purchased the shares on 16.12.2008 through its broker and was unaware as to the seller of the said shares. It is submitted that the shares in the market are usually between the strangers as per the demand and supply in the market. It is submitted that a buy order placed is matched with the best sale offer subject to the minimum of the buy order and the sale order and the transactions are finalized on the basis of the matched prices. The transactions are merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business.*
- (v) My client as per SEBI's own case had placed a purchase order of 90,000 shares on 16.12.2008 out of which, as per the said show cause notice itself, 48,991 got matched with the sale order of Shri Nirmal Kotecha and the balance 41,009 got matched with the sale orders of various third parties through 81 trades. By no stretch of fact or law can the said transaction be treated as synchronized transactions. The said transactions are merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business. It is pertinent to mention here that my client was unaware of the seller of the said shares and only through the notice under reply came to know that the seller of certain shares purchased by him was on Mr. Nirmal Kotecha.*
- (vi) My client had traded in the said scrip bonafidely in the hope that he shall reap benefits from the same and as such had placed order in the said scrip at prices higher than LTP. It is a normal practice of the market to buy place orders at process higher than LTP in case any person is interest in buying a scrip so as*

*there are more chances of the said transaction being completed. A bare perusal of the transactions stated in para 69(3) reveals that the order for 25,000 shares was placed at the price lower than LTP.*

22. Noticee no. 9 (Sanjay Gupta) vide letters dated May 30<sup>th</sup>, 2019 and August 27, 2019, *inter alia* submitted that:

- (i) Before making detailed submissions w.r.t. trading by APL Infra, it is pertinent to note here that I had not traded a single share in the scrip of PSTL and there was no allegation against me in my individual capacity. The only allegation in the present SCN was pertaining to trades executed by APL Infra in which I hold the position as the director of the company. That APL Infra has already been served by the SCN for the alleged transaction and APL Infra has further submitted its replies to the SCN for the alleged transactions.*
- (ii) In APL Infra also, as a managing director in the company, I am responsible for major decisions relating to business growth and development and not deal with day to day affairs. I am also associated with other 10 companies and it is practically impossible for me to get indulge in day to day affairs of each company.*
- (iii) The same had been explained in the statement recorded before your good office Annexed as Annexure-10 of your SCN wherein I had stated that such investment decisions were taken by the experts on their own understanding of market which were Mr. Pankaj Gupta was the head of accounts department and Mr. Ajay Gard was the General Manager for Purchase and Accounts department of the Company. Further, Mr. Pankaj Gupta used to generally place the order with the broker and I was not involved in placing the order with the broker.*
- (iv) In this regard it is utmost pertinent to bring out that Mr. Mukesh Jain who has traded in the scrip of PSTL is not the Mukesh Jain who was appointed as the director of Bihar Tubes Limited herein referred as 'BTL' in April 2009. This can further be substantiated from the PAN no. of Mr. Mukesh Jain i.e. AAQPJ3637G. Copy of PAN card of Mr. Mukesh Jain is enclosed herewith as Annexure-A. I do not possess the PAN details of Mr. Jain who had traded in the scrip although your*

*good office can verify the same from your records. That Mr. Mukesh Jain was appointed as the director in BTL on 30.04.2009 and due to his death ceased from holding directorship of BTL w.e.f. 02.07.2010. That as submitted above Mukesh Jain who was the Director in BTL is now deceased, and to my knowledge had never traded in the scrip of PSTL.*

- (v) Further, as to the alleged list of phone calls and SMS between me and NK, it is herein submitted that your good office had not provided the call recordings and content of SMS and hence reliance cannot be made on merely the logs as available. Moreover, it is also pertinent to note herein that the call log record is only available for the period from November 2008 to December 2008. Wherein I was in touch with Mr. Kotecha on and off on various occasions during the period prior and after.*
- (vi) It is also put forth herein that it is undisputed that Bihar Tubes is an entity associated with APL Infra and that there are no allegations made against Bihar Tubes Limited in the SCN and the trading by Bihar Tubes had been even much lesser than that by APL Infra. It is hence submitted herein that it is unfair to make any erroneous allegations of association against Bihar Tubes which is not a party to the SCN.*
- (vii) Time difference between buy and sell orders placed: It is pertinent to note here that one of the very important factors to call any trade synchronized is that must be perfect matching of time between the orders placed by the two parties. Herein as explained above, there is as much as more than 13 minutes time gap between the two orders in each of the alleged case as explained in Table H.*
- (viii) It is pertinent to state that it is not the case herein that the order so placed by APL Infra completely got transacted with Mr. Kotecha; on the contrary only the part of APL Infra orders have transacted with Mr. Kotecha and remaining parts have been transacted with other counter parties, as also elaborated in the Table-K above. This again is substantiating the contention that the trades under question cannot be said to be “structured” or “synchronized”. All the above facts show that market forces were in play and not tampered in any manner.*

**Consideration of Issues, Submissions and Findings:**

23. I have perused the SCN dated January 16, 2014, along with its annexures, the replies and written submissions filed by the Noticees and submissions made during the course of personal hearing. The issue for consideration in these proceedings is whether the Noticees have have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCN.
24. Before considering the above issues and dealing with the various contentions raised by the Noticees, the relevant provisions of law applicable in the matter, which are necessary to advert to, are extracted hereunder:

**Relevant extract of provisions of 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 recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

*(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder”*

**Relevant extract of provisions of PFUTP Regulations:**

***“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;*

.....

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

.....”

25. As noted above, an order dated March 22, 2018 was passed against Nirmal Kotecha for violating provisions of the SEBI Act and PFUTP Regulations. The same was upheld by the Hon'ble SAT vide its order dated March 02, 2020. Hence, before dealing with the allegations against the Noticees, it would be appropriate to discuss the role of Nirmal Kotecha who was one of the promoters and the then largest shareholder of PSTL. I note that Nirmal Kotecha was one of the major beneficiaries of the said manipulation and was found to have masterminded the forgery of the SEBI Letter. Nirmal Kotecha had caused to publish a false media report on December 20 and 21, 2008 that on December 19, 2008, SEBI had issued a letter to P. S. Saminathan, one of the promoters of PSTL to make an open offer under the SAST Regulations, for an additional 20% stake at a price not less than Rs. 250/-, for violating creeping acquisition norms. It was observed that during the period June 2008 to December 2008, persons/ entities directly and indirectly related to Nirmal Kotecha were found to have had significant market presence in the scrip of PSTL in BSE and NSE. Further, several persons/ entities directly and indirectly related to Nirmal Kotecha had bought PSTL shares on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008 i.e. after the price rise in the shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. It was also found that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price rise which occurred due to the publication of the forged SEBI letter as well as the price fall which occurred due to a clarification on media reports on Open Offer provided by P.S. Saminathan to the stock exchanges that he had not received any communication directing P. S. Saminathan to make open offer. In view of this SEBI had passed a final order against Nirmal Kotecha on March 22, 2018. The said SEBI order was challenged by Nirmal Kotecha by filing an Appeal No. 261 of 2018 before Hon'ble SAT which was dismissed by Hon'ble SAT vide its order dated March 02, 2020. Thus, the role of Nirmal Kotecha in devising a scheme to

manipulate the scrip of PSTL stands established.

26. As noted above, SEBI conducted an investigation in the manipulation in the scrip of PSTL and initiated several proceedings vide separate show cause notices against the various entities found to be involved in the fraudulent scheme devised by Nirmal Kotecha. The details of the proceedings initiated by SEBI where orders have been passed is as follows:

<b>Sr. No</b>	<b>Name of the entity</b>	<b>Date of SEBI Order</b>	<b>Date of SAT Order</b>
1.	SCN dated 03.12.2013  Nirmal Kotecha	Final Order under Section 11 and 11B of SEBI Act dated March 22, 2018	SEBI Order was upheld by the SAT Order dated March 02, 2020
2.	SCN dated 16.01.2014 Shah Group  1. Mr. Rajesh Jayantilal Shah 2. Mr. Shailesh Jayantilal Shah 3. Mr. Nirmal Rohitbhai Shah 4. Mr. Devang R Shah 5. Ms. Ritaben Rohitkumar Shah 6. Mr. Jayantilal Ratilal Shah 7. Ms. Binaben Shaileshkumar Shah 8. Ms. Namitaben Sachinkumar Shah 9. Mr. Sachin Jayantilal Shah 10. Ms. Manishaben Rajeshkumar Shah 11. Ms. Jinny Nirmal Shah	Final Order under Section 11 and 11B of SEBI Act dated March 22, 2018	SEBI Order was upheld by the SAT Order dated March 17, 2020

3.	SCN dated 02.12.2015  1. Mr. Rakesh Sharma 2. Mr. Rajesh Unnikrishnan 3. Mr. Dharmesh Shah	Final Order dated June 23, 2020 passed by SEBI under Sections 11 and 11B of the SEBI Act, 1992.	
4.	SCN dated 30.04.2015  4. Mr. Amol Anand Konkane 5. Mr. Falguni Jayesh Shah 6. Mr. Hardik Mithani 7. Ms. Priyanka Darshan Desai 8. Inventure Growth & Securities Limited 9. SPJ Stock Broker Pvt. Ltd. 10. Mr. Ankit Girishkumar Vasani 11. DKG Securities Pvt. Ltd. 12. APL Infrastructure Ltd. 13. Mr. Milanbhai Mithani	Final Order dated June 23, 2020 passed by SEBI under Sections 11 and 11B of the SEBI Act, 1992.	
5.	SCN dated 02.12.2015  1. Mr. Darshan Desai 2. Mr. Nitin Goradia 3. Mr. Amit N. Joshi 4. Nikhil Securities Ltd. 5. Mr. Yatin B. Shah 6. Mr. Jayesh Shah 7. Mr. Rajesh Jani 8. Dynamic Stock Broking Pvt. Ltd. 9. Mr. Nimesh Chitalia	Final Order dated June 23, 2020 passed by SEBI under Sections 11 and 11B of the SEBI Act, 1992.	
6.	SCN dated 07.12.2015	Final Order dated	

	P.S. Saminathan	June 23, 2020 passed by SEBI under Sections 11 and 11B of the SEBI Act, 1992.	
7.	SCN dated 16.01.2014	Present Proceedings	

27. I observe that in the SCN, the alleged connection of the Noticees with Nirmal Kotecha have been made through certain entities who were close conduits and associates of Nirmal Kotecha but are not Noticees in this SCN. I note that Yatin B. Shah is one such entity against whom separate proceedings have been initiated, vide show cause notice dated December 02, 2015. I note that in his statement recorded on July 27, 2010, Yatin B. Shah has stated that Nirmal Kotecha is his friend and that he has known him for the past 5 to 6 years. He has stated that he knew Nirmal Kotecha as he was trading through ILF&S, and, at that point of time, he was introduced to Nirmal Kotecha by his friend Mahesh Pujara. He has also stated that he was previously in touch with Nirmal Kotecha for market information since he was an HNI trader. As per the Schedule of Loans and Advances as on March 31, 2007 made available by Nirmal Kotecha, it is seen that Nirmal Kotecha had given a loan of Rs. 20 lacs to Yatin B. Shah. I note that vide SEBI Order dated March 22, 2018 against Nirmal Kotecha, it was held that Yatin Shah is the connecting link between Nirmal Kotecha and Hardik Milanbhai Mithani, SPJ Stock Brokers Pvt. Limited etc. The said SEBI order was upheld by the Hon'ble SAT vide its order dated March 02, 2020. Hence, it is an established fact that Yatin B. Shah was a close conduit and associate of Nirmal Kotecha.

28. I observe that the SCN alleges that during the period from December 1, 2008 to December 12, 2008, Nirmal Kotecha sold 1,02,007 shares of PSTL on BSE and NSE. Thereafter, during the period from December 15, 2008 to December 19, 2008, Nirmal Kotecha sold 4,85,276 shares of PSTL on BSE and NSE out of which he sold more than 4,20,000 shares to persons / entities related / associated

with him including the Noticees. Subsequently, on December 22, 2008, Nirmal Kotecha off-loaded a total of 15,05,862 shares of PSTL on BSE and NSE. I note that the SCN refers to the examination of the trading in PSTL shares for the following time periods:

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

<b>No</b>	<b>Name Of Entity</b>	<b>Gross Traded Quantity on BSE</b>	<b>Gross Traded Quantity on NSE</b>	<b>Gross Traded Quantity of the entity on BSE and NSE</b>	<b>Market Gross Traded Quantity on BSE and NSE</b>	<b>% contribution to the market</b>
1	Hardik M. Mithani	90,000	1,59,096	2,49,096	28,15,598	8.85%
2	SPJ Stock Broker Pvt Ltd	1,15,368	0	1,15,368	28,15,598	4.10%
3	Inventure Growth & Securities	1,37,384	1,30,974	2,68,358	28,15,598	9.53%

	Ltd					
4	Skyles & Ray Equities (I) Ltd	42,806	46,136	88,942	28,15,598	3.16%
5	Sharda Pujara	35,000	30,000	65,000	28,15,598	2.31%
6	Meet Shares and Stocks Services P. Ltd.	0	1,12,410	1,12,410	28,15,598	3.99%
	<b>Total</b>	<b>4,20,558</b>	<b>4,78,616</b>	<b>8,99,174</b>		<b>31.94%</b>

From the above table, it is noted that Noticee no. 5 (Meet Shares and Stocks Services Pvt. Ltd.) and Noticee no. 4 (Sharda C. Pujara) were part of the top six trading clients on December 08, 2008 along with Nirmal Kotecha associated entities like Hardik Mithani, SPJ Stock Broker Pvt. Ltd. and Inventure Growth & Securities Ltd.

- b) **December 15-19, 2008:** The gross market traded quantity during the period from December 15, 2008 to December 19, 2008 was 68,12,966 shares. The top three trading dates during the above period were December 16, 2008, December 17, 2008 and December 19, 2008. The traded quantity in PSTL shares on the aforesaid three trading dates viz. December 16, 17 and 19, 2008 constituted as much as 78.02% of the traded quantity during period from December 15, 2008 to December 19, 2008. Therefore, trading in the scrip of PSTL on December 16, 2008, December 17, 2008 and December 19, 2008 were examined. It was observed that Noticee no. 8 (Mukesh Jain) and Bihar Tubes Ltd, along with Nirmal Kotecha entities such as APL Infrastructure Pvt. Ltd and Inventure Growth and Securities Ltd were the top five buyers of PSTL shares on BSE and NSE on December 16, 2008.

c) **December 22, 2008:** On December 22, 2008, the price of PSTL shares on BSE and NSE opened higher at Rs. 82.90 when compared to the closing price of Rs.75.40 on December 19, 2008 i.e. the scrip price opened at a price of 10% more than the previous trading day's close price on account of the news that SEBI had issued a direction to P.S. Swaminathan allegedly directing him to make an open offer at Rs.250.00 per share. There was significant increase in the trading volume in the scrip with 32,02,228 shares being traded on BSE and 40,29,254 shares being traded on NSE. The price of scrip witnessed significant intra – day fall and the scrip closed at Rs.67.90 on BSE. For identifying such clients who had traded on December 22, 2008 the criteria of 15,000 shares or more sold on December 22, 2008 on net basis on BSE & NSE taken together before 10:30 a.m. was considered and it was revealed that 11 major net sellers (other than Nirmal Kotecha) who had accumulated PSTL shares in huge quantities on December 16, 17, 18 and 19, 2008 and off-loaded most of the accumulated shares on December 22, 2008 before 10:30 am. Noticee no. 2 (Deepak Thakkar) was amongst the 11 major net sellers who had off-loaded shares of PSTL on December 22, 2008 and were found to be associated/related to Nirmal Kotecha.

29. **Maheshbhai Himatlal Sheth (Noticee no. 1):** I observe that Maheshbhai Himatlal Sheth (hereinafter referred to as “**Maheshbhai**”) has submitted that he was an employee of Tejas Cotton Co. which is a firm owned by the Shah Group family. Maheshbhai has vide reply dated October 05, 2015 submitted that the phone number mentioned in his KYC documents does not belong to him and therefore, the same cannot be relied upon to allege violations of the SEBI Regulations. He further submitted that assuming without accepting, even if it is presumed that the mobile number of Rohitkumar Shah was being used by Nirmal Rohitbhai Shah had anything to do with him, it merely shows that he was connected with Nirmal Rohitbhai Shah and that it does not show that he had anything to do with any Nirmal Kotecha or the alleged forgery carried out by him.

30. In this regard, I observe that Maheshbhai was an employee of a company owned by the Shah Group family and the mobile number on his KYC with J.M Financial Services Pvt. Ltd. was used by Nirmal Rohitbhai Shah, one of the Shah Group entities. I observed that the Shah group was associated with Nirmal Kotecha who was a registered client of JM Financials through its sub-broker Shailesh Jayantilal Shah, who is a Shah Group entity. The Call Data Records of Nirmal Shah revealed that Nirmal Kotecha (through his mobile number 9819988816) was in close touch with Nirmal Shah's mobile number 9879018555, registered in the name of Rohitkumar Jayantilal Shah. Further, the Call Data Records during the period December 15-19 and for the morning of December 22, 2008, revealed that Nirmal Kotecha was in close touch with Nirmal Shah.
31. Further, I observe that Shailesh Jayantilal Shah, vide his statements dated July 02, 2009, has stated that Nirmal Kotecha had given him a loan of Rs. 10 lacs as a friendly loan without interest for a period of 3 months. Further, it has been brought out in the SCN that the Shah group had several financial transactions with Nirmal Kotecha. I also note that in the order dated March 22, 2018 passed by SEBI against the Shah group entities (who were also Noticees in the present SCN) the relationship of the Shah group with Nirmal Kotecha has been established and the Shah group was found to have violated the provisions of the SEBI Act and Regulations for colluding with Nirmal Kotecha in manipulating the scrip of PSTL. The said order passed by SEBI has also been upheld by Hon'ble SAT vide its order dated March 17, 2020.
32. Hence, given the association of the Shah group with Nirmal Kotecha and the fact that Maheshbhai was an employee under the Shah group and his number was being used by a Shah group entity, I find that the relationship of Maheshbhai is established with Nirmal Kotecha.
33. With regard to his trading, the dealings of Maheshbhai in PSTL shares during the period June – December 19, 2008 is summarized below:

**Table:**

<b>Date</b>	<b>Buy BSE</b>	<b>Sell BSE</b>	<b>Net BSE</b>	<b>Buy NSE</b>	<b>Sell NSE</b>	<b>Net NSE</b>	<b>Net BSE and NSE</b>
2-Jun-08	3,000	3,000	-	-	-	-	-
9-Jun-08	-	-	-	500	-	500	500
11-Jun-08	500	500	-	-	-	-	-
13-Jun-08	-	500	(500)	-	300	(300)	(800)
16-Jun-08	-	300	(300)	100	100	-	(300)
20-Jun-08	-	100	(100)	-	1,100	(1,100)	(1,200)
15-Jul-08	-	-	-	-	27	(27)	(27)
11-Aug-08	1,500	-	1,500	-	-	-	1,500
28-Aug-08	-	300	(300)	-	-	-	(300)
30-Sep-08	381	-	381	1,000	-	1,000	1,381
1-Oct-08	-	-	-	1,500	-	1,500	1,500
19-Nov-08	-	100	(100)	-	-	-	(100)
28-Nov-	-	-	-	-	3,000	(3,000)	(3,000)

08							
8-Dec-08	-	981	(981)	-	-	-	(981)
11-Dec-08	-	-	-	10,220	-	10,220	10,220
12-Dec-08	-	3,463	(3,463)	100	1,268	(1,168)	(4,631)
15-Dec-08	-	-	-	5,000	-	5,000	5,000
16-Dec-08	-	-	-	-	10,000	(10,000)	(10,000)
17-Dec-08	10,000	5,000	5,000	5,000	-	5,000	10,000
19-Dec-08	-	-	-	500	-	500	500
<b>Grand Total</b>	<b>15,381</b>	<b>14,244</b>	<b>1,137</b>	<b>23,920</b>	<b>15,920</b>	<b>8,125</b>	<b>9,262</b>

34. From the above table, it is observed that Maheshbhai had traded in the shares of PSTL during the period June to December 2008 in the shares of PSTL. However, it is noted that from June to November, he had traded in small amounts and then suddenly increased his trades in December, 2008. Maheshbhai had bought 10,000 shares on December 17, 2008 and 500 shares on December 19, 2008 at an average price of Rs. 61.58 per share. He offloaded 10,000 shares on December 22, 2008 at an average rate of Rs. 80.00 per share thereby earning a profit of Rs. 1,84,200/-.

35. Maheshbhai vide his reply dated October 05, 2015, has submitted that he has been regularly trading in the scrip of PSTL since May, 2008 and the transaction undertaken by him between December 17, 2008 and December 22, 2008 in the scrip of PSTL is in the normal course of his regular dealings in the securities

market. Further, that assuming without accepting, that he had prior knowledge of the fraud that was perpetrated by Nirmal Kotecha on the investors, he would have offloaded the entire shareholding in the scrip of so as to benefit the most out of the alleged fraud and capitalize on the profit. However, that on December 22, 2008, he offloaded only 10,000 shares and sold another 1089 shares on January 23, 2009 at a price of Rs. 23.12/- per share, which is far less than the price at which he had sold the shares on December 22, 2008. That had it been known to him that the increase in price was due to the alleged forgery, he would have sold all the quantity on December 22, 2008 itself. Also that no money earned by him as a result of the profit he made by trading in the scrip of PSTL during the relevant time, was deployed to any member of the Shah family so as to establish any relation or tip off in the matter of the alleged fraud.

36. I find that Maheshbhai has failed to explain the sudden and noticeable change in his trading pattern in the month of December, 2008 in the shares of PSTL. The only explanation, in this regard, furnished by him is that had he been aware of the manipulation, he would have sold all his shares in PSTL on December 22, 2008 instead of selling remaining 1089 shares on January 23, 2009. The said explanation does not explain why he sold 10,000 shares of PSTL on December 22, 2008. The selling 1089 shares of PSTL may well be a device to give an impression that he was not part of the fraudulent scheme of Nirmal Kotecha. Given that he is an employee of the Shah Group family, it is probable that he had information to the perpetrated fraud by Nirmal Kotecha. The Noticee has contended that as per SCN, investigation considered only those related or associated parties who sold 15,000 or more shares of PSTL on December 22, 2008 before 10:30 AM, and hence, as the criteria of sell of 15,000 or more shares of PSTL has been considered for issue of SCN, therefore, the Noticee no. 1 who had sold only 10,000 shares, should also be given the benefit of cut off of 15,000 shares. In this regard, firstly, it is noted that the threshold of sell of 15,000 or more shares of PSTL on December 22, 2008, as adopted by the investigating authority is not a benefit rather it was a parameter adopted to make a focused investigation,

therefore, benefit claimed by the Noticee no. 1 on the basis of such threshold adopted by investigation is misplaced. I further note that number of shares sold on December 22, 2008 could have been a criteria during the investigation for further examining the role of the sellers, however, it does not mean that SCN cannot be issued to a person who sold less than the threshold determined for further examination even when there are other evidences of involvement of such person. In the present case, as discussed above, there are other evidences of involvement of Noticee no. 1. Therefore, I find that contention of Noticee no.1 in this regard is misplaced and that the Noticee no.1 has benefitted from the information available to him through his employers, the Shah Group, who vide SEBI Order dated March 22, 2018, were held to have violated provisions of the SEBI Act and PFUTP Regulations for having prior knowledge of the fraud perpetrated by Nirmal Kotecha and thereby accumulating PSTL shares between December 17 to 19, 2008 and off-loaded most of their holdings on December 22, 2008, solely with a view to make profits. I find that the same was upheld by the Hon'ble SAT vide its Order dated March 17, 2020.

37. In view of the above, I find that the Noticee no. 1, through his employers, the Shah Group, had prior knowledge of the fraud perpetrated by Nirmal Kotecha and thereby accumulated shares of PSTL during December and off-loaded majority of his holdings on December 22, 2008, solely with a view to make profits. Thus, I find that Noticee no. 1 (Maheshbhai Himatlal Sheth) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.
  
38. **Deepak Thakkar (Noticee no. 2):** It is observed that Deepak Thakkar is the maternal uncle of Nirmal Kotecha. Deepak Thakkar vide his reply dated September 19, 2019, submitted that he had opened a trading account with Kotak sometime in or around March 2005 and he gave an authority letter to Kotak in favor of his nephew Nirmal Kotecha to issue directions to Kotak. Subsequent to issue of this Letter of Authority, all instructions relating to his trades were to be

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

39. It is noted that Deepak Thakkar never traded in the shares of PSTL during the period June 01, 2008 to December 15, 2008. On December 16 & 17, 2008 he bought large quantity i.e. 19,758 shares and 80,000 shares, respectively, at an average cost of Rs.60.50 per share. He offloaded all these shares (99,758 shares) on December 22, 2008 at an average rate of Rs.81.31 per share thereby earning a profit of Rs. 2,075,858.50. Further, it is observed that Deepak Thakkar entered into synchronized trades with Nirmal Kotecha on December 17, 2008. On December 17, 2008, Nirmal Kotecha sold 128,262 shares to APL Infrastructure Pvt. Ltd. and 5000 shares to Deepak Thakkar on BSE. As per SCN, examination of the said trades on December 17, 2008 revealed that:

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

- f) Thereafter, at 10:40:21 AM, APL Infrastructure Pvt. Ltd. placed its second buy order through the broker Religare Securities Ltd. for 40,000 shares at Rs. 60.00 per share.
  - g) At 10:40:21 AM., the second buy order of APL Infrastructure Pvt. Ltd. got matched with the balance quantity of Nirmal Kotecha's first sell order (i.e. 6,898 shares) at a price of Rs. 60.00 per share
  - h) At 10:40:21 AM., out of the balance portion of the second buy order of APL Infrastructure Pvt. Ltd., 28,262 shares got matched with second sell order of Nirmal Kotecha at a price of Rs. 69.00 per share.
  - i) The balance portion of the second buy order of APL Infrastructure Pvt. Ltd. (i.e. 4,840 shares) got traded with various third parties through eight trades.
  - j) At 10:49:26 AM. Deepak Thakkar placed buy order of 5,000 shares at a price of Rs. 60.00 per share.
  - k) Out of the balance portion of second sell order of Nirmal Kotecha, 5,000 shares got matched with Deepak Thakkar's aforesaid buy order at a price of Rs. 60.00 per share.
  - l) The balance portion of the second sell order of Nirmal Kotecha (i.e. 67,387) got traded with various third parties through 13 trades.
40. In this regard, Deepak Thakkar vide his reply dated September 19, 2019 has submitted that at 10:27:04 am, Nirmal Kotecha placed a sell order for 40,000 shares at a price of Rs. 60/- per share. Subsequently, at 10:49:26 am he had placed a buy order of 5000 shares at the price of Rs. 60/- which got matched vide trade no. 785 at 10:49:26 am. He has contended that the allegation itself does not make out a case of synchronized trading as there is difference of approximately 22 minutes in the distinct orders placed by Nirmal Kotecha and him and it is settled law that trading can be considered synchronized only in the event that trades match in under 60 seconds of them being placed on the terminal. Further, that had there been any meeting of minds between him and Nirmal Kotecha, and the objective would have been to synchronize trades there would not have been gap of 22 minutes in the trades and that Nirmal Kotecha could have either

simultaneously or one after another placed order so as to match each other. That the same is missing and hence, the trades cannot be said to be synchronized.

41. I observed that there has been a time gap of approximately 22 minutes between the orders placed by Nirmal Kotecha and Deepak Thakkar and in normal circumstances, transaction with such a time gap in placement of buy and sell order, would not constitute as a synchronized transaction. However, in the present case, Deepak Thakkar has admitted to the fact that he had authorized Nirmal Kotecha to place orders on his behalf with the broker. Therefore, it is evident that Nirmal Kotecha was placing both the sell and buy order for the trades between himself and Deepak Thakkar and hence, his contention that there was no meeting of minds between him and Nirmal Kotecha is untenable. Further, in a scenario where Nirmal Kotecha was placing orders for himself and also for Deepak Thakkar, he could see that his sell order for 40000 shares of PSTL was unexecuted in the order book for 22 minutes and thus placed a buy order of 5000 shares for Deepak Thakkar. Further, I find that Deepak Thakkar has failed to explain the sudden and noticeable change in his trading pattern in the month of December, 2008 in the shares of PSTL, as it is observed that he did not trade at all in the scrip of PSTL from June 01 to December 15, 2008 and suddenly traded in huge quantity on December 16 and 17, 2008 and offloaded the entire shareholding in PSTL on December 22, 2008 before 10:30 am, thereby making a profit of Rs. 2,075,858.50.
42. I note that Deepak Thakkar had cross examined Amol Kokane on September 23, 2019 and though Amol Kokane had stated that he knew Deepak Thakkar, he denied that he had ever met or communicated with Deepak Thakkar and that he has never discussed PSTL scrip with him. However, I find that statements of Amol Kokane are not relevant to establish the relationship of Deepak Thakkar with Nirmal Kotecha. Further, I note that it was Nirmal Kotecha who had traded through the account of Amol Kokane as well as from the account of Deepak Thakkar and hence, the absence of relationship of Deepak Thakkar with Amol Kokane does not

bear any relevance to the allegations against Deepak Thakkar. Further, with regard to the contention on his dealings with Manilal Kotecha, the grandfather of Nirmal Kotecha and with Meera Venugopal, the wife of Dharmesh Shah, I find that it is irrelevant to deal with the same as his relationship with Nirmal Kotecha is clearly established by the fact that he is the maternal uncle of Nirmal Kotecha and he had authorized Nirmal Kotecha to place orders on his behalf, with Kotak.

43. I find that in the given circumstances of the matter where Nirmal Kotecha was the mastermind of the entire fraud as held in the SEBI Order dated March 22, 2018 and upheld by the Hon'ble SAT vide its Order dated March 02, 2020, it is difficult to accept that the trading by the Noticee in the scrip of PSTL was independently made by the Noticee when he had authorized Nirmal Kotecha, the mastermind, to place orders with his broker. One cannot deny the obvious inference that the trades of the Noticee were either placed by Nirmal Kotecha or placed on the advice of Nirmal Kotecha in such a situation. Hence, in view of these facts and circumstances, I find that Deepak Thakkar, in connivance with Nirmal Kotecha, had in fact accumulated shares of PSTL, from December 16, 2008 to December 17, 2008 and sold all of these shares on December 22, 2008, with a view to make profits. Therefore, I find that Noticee no. 2 (Deepak Thakkar), has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.
44. **Raju G. Shah (Noticee no. 3):** I observe that the SCN alleges that Raju G. Shah is the cousin of Yatin B. Shah and hence, he was associated with Nirmal Kotecha through Yatin B. Shah who was a close friend of Nirmal Kotecha and had made various calls to Nirmal Kotecha during the period when Raju G. Shah traded in the shares of PSTL. In this regard, Raju G. Shah vide his reply dated March 19, 2014 has submitted that the SCN has miserably erred in relying on the statement dated July 27, 2010 of Yatin B. Shah. That this is a natural fact and based on such natural fact of him being the cousin brother of Yatin B. Shah cannot be concluded negatively against him without any direct evidence. Raju G. Shah submitted that

he was not aware of the alleged conversations and alleged friendly relationship of Yatin B. Shah with Nirmal Kotecha and other persons/entities. Further, that the SCN has not indicated or relied on the evidence about there being conversation with the Noticee on 19<sup>th</sup> and 22<sup>nd</sup> December 2008 between the Yatin B. Shah and him and in the absence of this crucial nexus/evidence not on record, his relationship with Yatin B. Shah as cousin brother cannot be exploited in the SCN for nailing him and giving a colour of association with other entities such as Nirmal Kotecha and others as mentioned in the present SCN.

45. I note that Yatin B Shah is not a party or entity in the present SCN. However, as noted in the aforesaid paras, it has been established that Yatin B. Shah is a close conduit and associate of Nirmal Kotecha vide SEBI Order dated March 22, 2018 against Nirmal Kotecha. Further, separate proceedings vide show cause notice dated December 02, 2015, have been initiated against him in the matter as he was one of the main conduits of Nirmal Kotecha through whom various entities were connected to Nirmal Kotecha. I find the submissions of Raju G. Shah that there is no evidence to prove his association with Nirmal Kotecha as untenable as it is noted that Raju G. Shah was financially dependent on Yatin B. Shah who had employed him. Vide the statement dated July 27, 2010 of Yatin B. Shah, it is observed that Yatin B. Shah was giving his cousin Raju G. Shah approx. Rs. 10,000/- p.m. to Rs. 11,000/- p.m. for the last 3-4 years. Hence, given that Raju G. Shah was employed with Yatin B. Shah and was financially dependent on him, gives rise to a reasonable inference that there was communication between the two.
46. Further, from the trading of the Noticee as brought out in the SCN, it is observed that Raju G. Shah was the top buyer and seller on gross basis on BSE and NSE on December 19, 2008. It is observed that on December 19, 2008, Raju G. Shah had entered into synchronized trades with SPJ Stock Broker Pvt. Ltd. On December 19, 2008, the Noticee sold 25,000 shares to SPJ Stock Broker Pvt. Ltd. vide trade no. 2040 at 10:51:31 AM. As per SCN, examination of the order related

to the said trade executed on December 19, 2008, revealed that:

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

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

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

48. I find from the above trade analysis that Raju G. Shah had entered into synchronized reversal transactions with SPJ Stock Broker Pvt. Ltd. Further, the call data records of Nirmal Kotecha show that Nirmal Kotecha was in touch with Yatin B. Shah, the cousin brother of Raju G. Shah on December 19, 2008, just prior to the execution of trades by the Noticee with SPJ Stock Broker Pvt. Ltd. The

details of the calls have been brought out in the SCN and it is observed that Nirmal Kotecha had *inter alia* made calls to Yatin B. Shah on December 19, 2008 at 10:18 and Yatin Shah had *inter alia* made calls to Nirmal Kotecha at 11:07. In view of the above, I find that Raju G. Shah was in fact a front for Yatin B. Shah and had indulged in synchronized trades with SPJ Stock Broker Pvt. Ltd in the scrip of PSTL. Further, with regard to his contention that he had suffered a net loss of Rs. 9,946.30 on December 19, 2008, I find that the same is irrelevant to the findings that Raju G. Shah had indulged in manipulative trades as a loss per se is not a factor to prove that he was not involved in the fraudulent activity. The fraudulent intention of Raju G. Shah has been established from the relationship of the Noticee with Nirmal Kotecha and through their conduct i.e. manipulative trading activity in the scrip of PSTL.

49. Further, with regard to the allegations on last traded price (LTP), I observe that during the period December 15 to 19, 2008, there was significant rise in the price of the scrip of PSTL on three trading days, i.e. December 19, 2008 (price rise of Rs. 9.40), December 16, 2008 (price rise of Rs. 7.70) and December 15, 2008 (price rise of Rs. 6.30). I note that for the purpose of LTP analysis, the buy orders which resulted in the cumulative traded quantity of 5,000 shares or more along with a cumulative positive price impact of 25 paise or more as compared to the last traded price was taken in the SCN.
50. I observe that on December 19, 2008 on BSE, there were 19 buy orders which caused a positive LTP impact of Rs. 11.60 and resulted in a cumulative traded quantity of 197,022 shares. From these 19 buy orders, it is seen that there were four trading clients who are directly or indirectly related to Nirmal Kotecha. Raju G. Shah was one of the four trading clients who are alleged to have cumulatively traded 25,000 shares at a cumulative LTP difference of Rs. 1.65. With regard to the said allegations, Raju G. Shah has submitted that the order numbers given in the Tables in the SCN and the corresponding quantities along with LTP difference does not belong to him and even the total quantity indicated is more than the

quantity traded by him. In this regard, as contended by the Noticee, I find that the order numbers and corresponding quantities along with LTP difference pertaining to his trades on December 19, 2008 on BSE, as given in different tables in the SCN, do not match and appear to differ in each table. Further, I find that no trade logs or additional evidence has been provided in the SCN to verify the correct details. Hence, I find that the said allegation of LTP on December 19, 2008 on BSE in the SCN is not made out as the details pertaining to Raju G. Shah as given in the SCN appear to be incorrect and there is no further evidence in the SCN to hold the charge.

51. Further, I observe that on December 19, 2008 on NSE, there were 10 buy orders which caused a positive LTP impact of Rs. 8.10 and resulted in a cumulative traded quantity of 73,045 shares. It is observed that Raju G. Shah was one of the trading clients who had placed buy orders for 5,000 shares at a price of Rs. 2.05 more than the last traded price and this order got fully executed. I find that Raju G. Sheth had placed 12 buy orders on December 19, 2008 on NSE and only two out of the 12 orders were placed above LTP. Hence, having regard to the total number of buy orders placed by the Noticee, as compared to number of buy orders placed above LTP, I find that the charge of LTP manipulation on December 19, 2008 on NSE by the Noticee as alleged in the SCN is not made out.
52. I note that vide order dated June 23, 2020 Yatin B. Shah has been found to have violated provisions of the SEBI Act and the PFUTP Regulations, 2003 for colluding with Nirmal Kotecha in manipulating the scrip of PSTL. Further, vide order dated June 23, 2020 SPJ Stock Broker Pvt. Ltd has also been found to have violated provisions of the SEBI Act and the PFUTP Regulations, 2003 for colluding with Nirmal Kotecha in manipulating the scrip of PSTL.
53. In view of the above, I find that Noticee no. 3 (Raju G. Shah) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

54. **Sharda Pujara (Noticee no. 4):** I observe that Sharda Pujara is the mother of Chirag Pujara who is known to Yatin B. Shah. Yatin B Shah, vide his statement dated July 27, 2010 stated that he knew Chirag Pujara, the nephew of Mahesh Pujara. He further stated that he was in touch with Chirag Pujara and Mahesh Pujara and that Chirag Pujara had bought a flat for his company. He further stated that he used to call Mahesh Pujara and Chirag Pujara on their respective mobile numbers 9820402025 and 9892110440. Further, I note that Yatin B. Shah has stated that he was introduced to Nirmal Kotech by Mahesh Pujara. As noted in the aforesaid para, Yatin B. Shah was a close associate of Nirmal Kotecha and has been instrumental in the entire scheme of the fraud in the scrip of PSTL.
55. The Noticee vide her reply dated April 02, 2014, submitted that she is wrongly connected and tied to Nirmal Kotecha and the basis for making her a part of the said Nirmal Kotecha group is erroneous and flawed. That she was neither asked to furnish any information nor was she called for recording her statement at the time of investigation. That it appears that she is included in the group only on the basis of the statements made by one Yatin B. Shah who is not even part of the alleged group in the SCN. Moreover, that she was not even given an opportunity to cross examine Yatin B. Shah. Hence, she does not accept any of the statements of Yatin Shah, made qua her and contends that his statements have been twisted to rope her in the matter.
56. In this regard, I observe that no proceedings have been initiated against Chirag Pujara and Mahesh Pujara nor have their statements been taken and provided for in the SCN. However, that the Noticees relationship has been based on the statement of Yatin B. Shah on his relationship with Chirag Pujara and Mahesh Pujara. Hence, I agree with the views of the Noticee that her association, as alleged in the SCN, is based solely on the statement made by Yatin Shah who is neither part of the SCN and nor are Chirag Pujara and Mahesh Pujara through whom the relationship of the Noticee with Yatin B. Shah is alleged to be established. Therefore, since the relationship of the Noticee with Yatin Shah is not clear and not substantiated with further evidence in the SCN, the Noticees

relationship with Nirmal Kotecha, which is based on Yatin Shah's statement, does not appear to be certain. Further, since cross examination of Yatin Shah was not granted to the Noticee, I find that the statements made by Yatin B. Shah is not tenable and thus, the relationship of Sharda Pujara with Nirmal Kotecha through Yatin B. Shah, as alleged in the SCN, is not established.

57. Be that as it may, I find that Sharda Pujara has entered into various trades with entities who are associated with Nirmal Kotecha. In this regard, I note that on December 08, 2008, Sharda Pujara was on one of the top five trading clients on BSE and NSE and had grossly traded 35,000 shares constituting 3.13% of the market traded quantity on BSE and grossly traded 30,000 shares constituting 1.77% of the market traded quantity on NSE. In this regard, it is observed that Sharda Pujara entered into reversal trades with entities who were associated with Nirmal Kotecha. As per SCN, the details of the reversal trades are as under:
- a) On December 8, 2008, Sharda Pujara sold 10,000 shares of PSTL to Hardik M Mithani and Sharda Pujara bought back 20,074 shares from Hardik.M. Mithani on BSE and NSE taken together.
  - b) On December 8, 2008, Sharda Pujara sold 1,588 shares of PSTL to SPJ Stock Broker Ltd. and Sharda Pujara bought back 1,000 shares from SPJ Stock broker Pvt. Ltd. on BSE and NSE taken together.
  - c) On December 8, 2008, Sharda Pujara sold 3,726 shares of PSTL to Inventure Growth & Securities Ltd. and Sharda Pujara bought back 2,423 shares from Inventure Growth & Securities Ltd. on BSE and NSE taken together.
58. I note that the SCN alleges that Sharda Pujara entered into synchronized trades with entities associated with Nirmal Kotecha. The details of the trades are as under:

- a) On December 08, 2008, Sharda Pujara purchased 7,900 shares vide trade no. 4422 from Hardik M. Mithani on BSE. Examination of the orders relating to the aforesaid trade revealed that
- (i) At.,1:27:35 P.M., Sharda Pujara placed a buy order through the broker SPS Share Brokers Pvt. Ltd. for 10,000 shares at Rs. 51.35 per share.
  - (ii) At 1:33:22 P.M., Hardik M. Mithani placed a sell order through the broker Arcadia Shares and Stock for 8,000 shares at Rs. 51.80 per share
  - (iii) At 1:33:55 P.M., (i.e. 33 seconds later) Sharda Pujara revised her buy order rate at Rs. 52.00 per share
  - (iv) At 1:33:56 P.M., the aforesaid buy and sell orders got matched at the passive order rate (i.e. 51.80 per share) for 7,900 shares vide trade no. 4422.
  - (v) The balance portion of Sharda Purjara's sell order (i.e., 2,100 shares) got traded as under
    - a) At 1:34:07 P.M., Inventure growth and Securities Ltd. placed a sell order of 500 shares at a price of Rs. 52.00 per share. This order was got matched with sell order of Sharda Pujara for 500 shares at a price of Rs. 52.00 per share vide trade no. 4436
    - b) At 1:34:13 P.M., Inventure Growth and Securities Ltd. placed another sell order of 500 shares at a price of Rs. 52.00 per share. This order was got matched with sell order of Sharda Pujara for 212 shares at a price of Rs. 52.00 per share vide trade no. 4438. Out of the balance sell order of Inventure Growth and Securities Ltd., 2 shares got traded with two third parties. At 1:19 P.M., Inventure Growth and Securities Ltd. deleted unexecuted portion of his sell order (i.e. 286 shares = 500 – 214)

- c) The balance portion of sell order of Sharda Pujara (i.e. 1,388 shares) got matched with various third parties through 18 trades.
- (vi) The balance portion of buy order of Hardik M. Mithani, i.e. 100 shares (8,000 minus 7900), got traded with third parties which had revised its sell order price to Rs. 52.00 at 1:33:55 P.M. (the same time when Sharda Pujara revised her buy order rate).
- (vii) SCN alleges that the sell order was placed earlier than the buy order. Therefore, the sell order became the passive order in the order book of the stock exchange and the buy order which was placed later was the active order. I note that as per the order matching mechanism of BSE (as well as NSE), if the active order is placed at a better rate than the passive order, the orders get matched and the trade gets executed at the passive order rate. Thus, in the instant case, though the buy order was placed at a rate higher than the sell order, the trade allegedly got executed at the passive order rate. Therefore, it was observed that the parties Sharda Pujara and Hardik Mithani tried to hoodwink the surveillance mechanism of the stock exchange by placing the buy order and sell order at different rates and at the same time attempted to ensure that their orders got matched with each other by using the order matching logic of the stock exchange to their advantage
- b) On December 8, 2008, Sharda Pujara purchased 12,126 shares vide trade no. 2008120834005307 and another 48 shares vide trade no. 20081208005303 from Hardik M Mithani on NSE. Examination of the orders relating to the aforesaid trades revealed that

- (i) At 12:11:24 P.M., Hardik M Mithani placed a sell order through the broker Arcadia Share & Stock Broker Pvt. Ltd., for 13,474 shares at Rs. 51.50 per share.
  - (ii) At 12:12:15 P.M. (after 51 seconds) Sharda Pujara placed a buy order through the broker SP Share Brokers Pvt. Ltd. for 15,000 shares at Rs. 51.50 per share.
  - (iii) At 12:12:5 P.M., the aforesaid buy and sell orders got matched at the common order rate (i.e. 51.50 per share) for trade quantity of 12,174 shares.
  - (iv) The balance portion of Sharda Pujara's buy order got executed as under:
    - a) At 12:12:45 P.M., Inventure Growth & Securities Ltd. placed a sell order through the broker Inventure Growth & Securities Ltd., for 500 shares at Rs. 51.65 per share. At 12:13:24 P.M. Inventure Growth & Securities Ltd. revised the price of the sell order to Rs. 51.50 per share.
    - b) At 12:13:24 P.M., this sell order got matched with buy order of Sharda Pujara for 500 shares at the common order rate of Rs.51.50 per share.
    - c) The balance portion of Sharda Pujara's buy order (i.e. 2326 shares) got matched with various third parties through 10 trades.
  - (v) The balance portion of Hardik Mithani's sell order (i.e, 1,300 shares) got matched with various third parties through 19 trades.
- c) On December 08. 2008, Hardik M. Mithani purchased 10,000 shares vide trade no. 3545 from Sharda Pujara on BSE. Examination of the orders relating to the aforesaid trade revealed that:

- (i) At 12:20:42 P.M. Sharda Pujara placed a sell order through the broker SPJ Share Brokers Pvt. Ltd. for 10,000 shares at Rs. 51.70 per share.
- (ii) At 12:21:06 P.M., (after 24 Seconds) Hardik M. Mithani placed a buy order through the broker Arcadia Shares and Stock for 12,000 shares at Rs. 52.00 per share
- (iii) At 12:21:07 P.M., the foresaid buy and sell orders got matched at the passive order rate (i.e. Rs. 51.70 per share) for trade quantity of 10,000 shares.
- (iv) The balance portion of Hardik M. Mithani's buy order (i.e. 2,000 shares) got executed as under:
  - a) At 12:20:28 P.M., SPJ Stock Broker Pvt. Ltd. placed a sell order through the broker Arcadia Shares and Stock for 500 shares at Rs. 51.80 per share. The aforesaid sell order got matched with the buy order of Hardik M. Mithani's for 500 shares at the passive order rate (i.e. Rs. 51.80 per share).
  - b) At 12:08:29 P.M., Inventure Growth & Securities Ltd. placed a sell order in its proprietary account for 1,000 shares at Rs. 52:00 per share. At 12:18:21 P.M., Inventure Growth & Securities Ltd. revised the price to Rs. 51.85 per share. At 12:18:24 P.M., Inventure Growth & Securities Ltd. increased the sell order quantity by 200 shares. At 12:20:50 P.M., Inventure Growth & Securities Ltd. revised the price to 51.95 per share. At 12:21:07 the aforesaid sell order of Inventure Growth & Securities Ltd. got matched with the buy order of Hardik M. Mithani's for 1,191 shares at the passive order rate (i.e 51.95 per share). Thereafter, at 12:30:51 pm., Inventure Growth & Securities Ltd. deleted the unexecuted portion of its sell order.

- c) The balance portion of Hardik M. Mithani's buy order (i.e. 309 shares) got matched with various third parties through 12 trades.
  
  - (v) It is observed that that the parties again tried to hoodwink the surveillance mechanism of the stock exchange by placing the buy order and sell order at different rates and at the same time attempted to ensure that their orders got matched with each other by using the order matching logic of the stock exchange to their advantage.
59. With regard to the above allegations of reversal trades and synchronized trades, Sharda Pujara vide her reply dated April 02, 2014, has submitted that if the orders were predecided between her and Hardik Mithani as alleged then there has to be prior meeting of minds, prior collaboration and the minds ought to have been on the same wavelength which is not the case here. The Noticee contended that she doesn't even know who Hardik Mithani is and there is no connection between her and Hardik Mithani in the SCN. Further, that normal matching of orders through price time matching algorithm too has been treated as synchronized trades.
60. However, in this regard, I find the submissions of Sharda Pujara untenable as from the transactions entered into between her and entities associated with Nirmal Kotecha, it is evident that she was connected with the counter party as she had executed multiple number of synchronized trades. As noted above, she was one of the top five trading clients on BSE and NSE and had grossly traded 35,000 shares on December 08, 2008. Further, I find that the execution of trades by Sharda Pujara was not an isolated instance but multiple number of such transactions were carried out with multiple entities associated with Nirmal Kotecha, which clearly establishes the malafide intent of the Noticee and her association with Nirmal Kotecha group. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL which leads to the malafide intention of the Noticee.

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

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

61. Further, I note that direct evidence is rarely forthcoming in cases of synchronized trades and the evidence must be based on the facts and circumstances of each case. In this regard, I place reference on the Order of the Hon'ble Supreme Court, in the matter **SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368** wherein, it had held that:

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

62. In view of the above, I find that Noticee no. 4 (Sharda Pujara) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.

63. **Meet Shares and Stock Service Pvt. Ltd. (Noticee no. 5):** It has been alleged that Meet Shares and Stocks Services Pvt. Ltd. (hereinafter referred to as “**MSSSPL**”) had given trading authorization on December 18, 2006 to C.N. Pujara whereby C.N. Pujara was appointed and authorized to place orders on behalf of the Noticee, who had entered into a tripartite agreement on December 18, 2006

with SPS Share Brokers Pvt. Ltd. (broker) and C.N Pujara (sub broker). I note that C.N. Pujara is the husband of Sharda Pujara and the father of Chirag Pujara, who is connected to Nirmal Kotecha through Yatin B. Shah. MSSSPL vide its reply dated April 04, 2014, has submitted that they were neither asked to furnish any information nor were they called for recording their statement in the course of investigation. That they are included in the group only on the basis of some bald statements made by one Yatin Shah and that they were not given an opportunity to cross examine Yatin Shah and hence, do not accept any of the statements of Yatin Shah, made qua them as it appears that his statements have been twisted to rope them in the matter. They also submitted that they did not consult CN Pujara while taking their business/commercial decisions. That the tri-partite agreement dated December 18, 2006 was a SEBI prescribed legal requirement and Chirag Pujara had no role, involvement and participation into their business affairs.

64. In this regard, I observe that the relationship/association of MSSSPL is sought to be established through its sub-broker CN Pujara who is the husband of Sharda Pujara and father of Chirag Pujara, and through Mahesh Pujara who is the uncle of Chirag Pujara. I observe that no proceedings have been initiated against C.N. Pujara, Chirag Pujara and Mahesh Pujara nor have their statements been taken and provided for in the SCN. However, MSSSPL's relationship is based on the statement of Yatin B. Shah on his relationship with Chirag Pujara and Mahesh Pujara. Hence, I agree with the views of MSSSPL that their association, as alleged in the SCN, is based solely their relationship with their sub-broker CN Pujara, whose wife is associated with Nirmal Kotecha on the basis of the statement made by Yatin Shah who is not part of the SCN. Therefore, since the relationship of MSSSPL with Yatin Shah is not clear and not substantiated with further evidence in the SCN, the Noticees relationship with Nirmal Kotecha does not appear to be certain. Further, since cross examination of Yatin Shah was not granted to MSSSPL, I find that the statements made by Yatin B. Shah is not tenable and thus, the relationship of MSSSPL with Nirmal Kotecha through associates known to Yatin B. Shah, as alleged in the SCN, is not established.

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

- a) On December 8, 2008, Inventure Growth & Securities Ltd. sold 18,233 shares of PSTL to MSSSPL and Inventure Growth & Securities Ltd. bought back 8,158 shares from MSSSPL on BSE and NSE taken together.
- b) On December 8, 2008 MSSSPL sold 12,367 shares of PSTL to Hardik M. Mithani and MSSSPL bought back 15,800 shares from Hardik M Mithani on BSE and NSE taken together.

66. It was also observed that MSSSPL had entered into synchronized trades with entities associated with Nirmal Kotecha. The details of the trades are as under:

- a) On December 8, 2008, MSSSPL sold 900 shares to Hardik M. Mithani vide trade no. 2008120833773316 and 6,171 shares vide trade no. 2008720833773319 on NSE. Examination of the orders relating to the aforesaid trade revealed that
  - (i) At 11:07:07 A.M., MSSSPL placed a sell order through the broker SPS Share Brokers Pvt. Ltd. for 9,000 shares at Rs. 49.85 per share.
  - (ii) At 11:07:19 AM., Inventure Growth & Securities Ltd. placed a sell order in its proprietary account for 500 shares at Rs. 49 as per share
  - (iii) At 11:07:42 AM., Inventure Growth & Securities Ltd. placed another sell order for 200 shares at Rs. 49.80 per share.

- (iv) At 11:08:01, A.M., (after 54 seconds) Hardik M. Mithani placed a buy order through the broker Arcadia shares and Stock Broker Pvt. Ltd. for 10,000 shares at Rs. 59.00 per share
  - (v) The aforesaid buy and sell orders got matched and traded as under:
    - a) The buy order of Hardik M Mithani and sell order of Inventure Growth & Securities Ltd. got matched for traded quantity of 200 shares at 11:07:19 A.M. and another 500 shares at 11:07:42 AM. vide trade no. 2008120833773310 and vide trade no. 2008120833773317 respectively.
    - b) Further, the buy order of Hardik. M Mithani and sell order of MSSSPL got matched for 6,171 shares and 900 shares vide trade no 2008120833773319 and vide trade no. 2008120833773316 respectively at 11:08:01 A.M.
  - (vi) Out of the balance portion of MSSSPL's sell order (i.e. 1,929 shares), 1,200 shares got matched with three third parties at a price range of Rs. 49.85 per share to Rs. 50.00 per share. The balance portion of Hardik M Mithani's buy order (i.e. 300 shares) got matched with a third party for 300 shares at a price of Rs. 49.60 per share.
67. On December 8, 2008, MSSSPL purchased 5,000 shares from Hardik M. Mithani vide trade no.2008120833804285 on NSE. Examination of the orders relating to the aforesaid trade revealed that:
- (i) At 11:15:51 AM., Hardik M Mithani placed a sell order for 5,000 shares at Rs. 50.60 per share.
  - (ii) At 11:16:25 AM., MSSSPL placed a buy order for 10,000 shares at Rs. 50.70 per share.
  - (iii) At 11:16:25 AM., the aforesaid buy and sell order matched vide trade no. 2008120833804285 at the passive order rate (i.e. Rs. 50.60 per share) for trade quantity of 5,000 shares.

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

- a) At 11:15:09 AM., Inventure Growth & Securities Ltd. placed a sell order for 100 shares at Rs. 50.70 per share.
- b) At 11:16:29 A.M., Inventure Growth & Securities Ltd. placed another sell order for 500 shares at Rs. 50.50 per share.
- c) At 11:16:29 AM., Inventure Growth & Securities Ltd placed another sell order for 500 shares at Rs. 50.70 per share.
- d) At 11:16:29 AM., Inventure Growth & Securities Ltd. placed another sell order for 170 shares at Rs. 50.70 per share.

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

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

69. With regard to the aforesaid reversal and synchronized transactions, MSSSPL has submitted that they do not know who Inventure Growth & Securities Pvt. Ltd or Hardik M. Mithani is and that no relationship has been established with these entities in the SCN. MSSSPL has also contended that the trade data furnished in the SCN did not include unexecuted orders, modified orders and cancelled orders,

which would throw light on the total number of orders keyed into the system and show the history of how each order eventually got fully executed into trades. That in order to establish meeting of minds, one has to consider executed, non-executed (pending, modified, deleted) orders and executed within the group and executed outside the group. Further, MSSSPL contended that the alleged synchronized/reversal trades of one day were just normal intraday trades and cannot be considered as fraudulent/fictitious trades. MSSSPL also contended that some stray, partial market orders of theirs that got converted into trades with some parties who may have been associated with Nirmal Kotecha cannot relate them to Nirmal Kotecha.

70. In this regard, I note that the SCN does not expressly state or establish the relationship between MSSSPL with Inventure Growth & Securities Pvt. Ltd or Hardik M. Mithani, who are entities associated with Nirmal Kotecha. However, from the transactions entered into between MSSSPL and entities associated with Nirmal Kotecha, I find it evident that MSSSPL had connection with the counter party as it had executed large number of synchronized trades. As noted above, it was one of the top five trading clients on NSE and the percentage contribution of MSSSPL was 6.62% of the market traded quantity on December 08, 2008. Further, I find that the execution of trades by MSSSPL was not an isolated instance but multiple number of such transactions were carried out with multiple entities associated with Nirmal Kotecha, which clearly establishes the malafide intent of MSSSPL and its association with the Nirmal Kotecha group. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL which leads to the malafide intention of MSSSPL. In this regard, I place reference on the Order of the Hon'ble Supreme Court, in the matter **SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368** wherein, it had held that:

*".....While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of*

*preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.*

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

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

72. Thus, from the aforesaid transactions, I find that MSSSPL had entered into reversal and synchronized transactions with Hardik M. Mithani and Inventure Growth and Securities Ltd., who were entities associated with Nirmal Kotecha. In view of the above, I find that Noticee no. 5 (Meet Shares and Stocks Services Pvt. Ltd.) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.
73. **Monali Harsh Doshi (Noticee no. 6) and Harsh (Doshi Noticee no. 7):** I observed that Monali Doshi is the sister of Viral Dinesh Doshi, the wife of Nirmal Kotecha. Monali Doshi in her statement to SEBI has stated that her husband Harsh Doshi looks into all the Investments, funds and trading. Harsh Doshi in his statement to SEBI has confirmed that he used to do the trading and give orders for any transaction in the account of Monali Doshi to the broker HDFC Securities. He has also confirmed that he has done trading on behalf of his wife Monali Doshi in the scrip of PSTL and had bought and sold 1,000 shares of PSTL in the month of December 2008 in her name. Further, he has admitted that he used to regularly speak to Nirmal Kotecha on the phone, exchange messages, emails and other communication as well as meet him personally occasionally.
74. I observed that Monali Doshi had never dealt in the shares of PSTL during the period from June 01, 2008 to December 16, 2008. Thereafter, on December 17, 2008 she had bought 1,000 shares at Rs. 62 per share and on December 22, 2008, sold the 1,000 shares at an average rate of Rs. 70.19 per share, thereby earning a profit of Rs. 8,100/-.
75. In this regard, Monali Harsh Doshi and Harsh Doshi have submitted that it is specifically stated in the SCN that the criteria adopted for the purpose of examining trading in PSTL shares on December 22, 2008 was 15,000 shares or more sold on December 22, 2008 on net basis, on BSE and NSE taken together, before 10:30 am. That the trades conducted by Harsh Doshi on behalf of his wife

on December 22, 2008 do not match the aforesaid criteria as he sold merely 2,000 shares (which is less than the minimum criteria adopted). Further, he did not sell the shares before 10:30 am, but on the contrary, he first purchased 1,000 shares at 10:31 am (i.e. after 10:30 am) taking the aggregate shareholding of his wife in PSTL shares to 2,000, and then sold all the 2,000 shares later that day i.e. after 10:30 am. He has also submitted that there is no examination or analysis of his trades in the SCN, wherein other qualifying trades appear to have been examined and the SCN has failed to take into consideration the fact that he bought 1,000 shares of PSTL on December 22, 2008 at 10:31 and unlike the major counterparties who sold shares in the morning of December 22, 2008 and hence, his trading pattern was materially distinct from the other trades examined. That he eventually sold the 2,000 shares of PSTL on December 22, 2008 at 12:06 pm. and thus his complete transaction in the scrip was well after the news of the alleged fraud had become public. Harsh Doshi has also contended that there is not even a single allegation in the SCN that his trades qualify as circular trades and/or reversal transactions and/or synchronized trades or that his trades were matched with entities associated with Nirmal Kotecha.

76. In this regard, I find that there are no allegations of reversal or synchronized trades in the SCN against Monali Harsh Doshi or that any of her trades were matched with entities associated with Nirmal Kotecha. Further, I find merit in their submissions as their trades do not match the criteria specified in the SCN to categorize them as major net sellers that off loaded their holdings on December 22, 2008 before 10:30 AM. Even without looking at the criteria adopted, on examining the trading pattern of Noticee as alleged in the SCN, I find that Monali Harsh Doshi had bought only 1000 shares on December 17, 2008 and another 1000 shares on December 22, 2008 that too after 10:30 AM and thereafter, sold the 2000 shares at 12:06 PM i.e. after 10:30 AM on December 22, 2008. Hence, the only premise of the allegation appears to be that Monali Doshi is the sister of the wife of Nirmal Kotecha and had traded in the shares of PSTL. In view of the above, I find that the purchase of shares of PSTL by Monali Harsh Doshi and

selling it on December 22, 2008, were not manipulative and does not satisfy the allegations in the SCN against Monali Harsh Doshi and hence, I find that Noticee no. 6 (Monali Harsh Doshi) and Noticee no. 7 (Harsh Doshi) are not in violation of the provisions of the SEBI Act and PFTUP Regulations, as alleged in the SCN.

77. **Mukesh Jain (Noticee no. 8):** I observe that the SCN has alleged that one “Mukesh Jain”, who was a director of Bihar Tubes Limited was the top buyer of PSTL shares on December 16, 2008 on BSE and NSE. Further, it was alleged that as per the UCC database of BSE the contact no. of Mukesh Jain was 22373437, which is also the contact no. of APL Infrastructure Private Ltd, a company which is associated with Nirmal Kotecha through its director Sanjay Gupta. Sanjay Gupta, vide his statement dated April 30, 2010 has submitted that he was the Managing Director of Bihar Tubes Ltd. and Director of APL Infrastructure Ltd and that Mukesh Jain was the new director in their company Bihar Tubes Ltd. Investigation revealed that Sanjay Gupta was in constant touch with Nirmal Kotecha. Hence, Mukesh Jain was alleged to have been associated with Nirmal Kotecha through Sanjay Gupta.
78. However, I observe that the Mukesh Jain, upon whom the SCN was served, vide letters dated October 29, 2012, August 05, 2019 and August 07, 2019, submitted that he is in no way related to the entire issue raised qua one “Mukesh Jain” in the present case. That he is not the director of Bihar Tubes Limited as alleged in the SCN. That he has examined the records of the Ministry of Corporate Affairs and that the details of ‘Mukesh Jain’ who is the director of Bihar Tubes Ltd is “*Mukesh Jain S/o Hari Chand Jain, R/o 5/103, Gajju Katha, Shahdara, Delhi-110032*”. However, his details are “*Mukesh Jain S/o Jai Prakash Jain, R/o D-213, Vivek Vihar, New Delhi-1100095, PAN: ACBPJ9682J*”. Further, that from the Form 32 of the records with the Ministry of Corporate Affairs, ‘Mukesh Jain’, the director of Bihar Tubes Ltd. had ceased to be the director of the company with effect from July 02, 2010 due to his unfortunate demise. I note that Noticee no. 9 (Sanjay Gupta), vide his reply dated May 30<sup>th</sup>, 2019 and August 27, 2019, has also

submitted that the Mukesh Jain who was appointed as the director of Bihar Tubes Limited is not the Mukesh Jain who has traded in the scrip of PSTL. That the Mukesh Jain, who was a director of Bihar Tubes Limited was appointed as the director on April 30, 2009 and due to his death ceased from holding directorship of Bihar Tubes Ltd. w.e.f. July 02, 2010 and his PAN no. is AAQPJ3637G.

79. Hence, it appears that the Mukesh Jain who has been issued the SCN is the person who has actually traded in the scrip of PSTL, however, that his relation to Nirmal Kotecha in the SCN has been mistaken for another Mukesh Jain, who was a director of Bihar Tubes Ltd. and is now deceased. Accordingly, I observed that the SCN has been served upon the right Mukesh Jain who has traded in the scrip of PSTL, however, that his relationship or connection with Nirmal Kotecha has been incorrectly made in the SCN.
80. Be that as it may, I observed that on December 16, 2008, the total traded volume on BSE and NSE was 10,19,838 shares and 10,03,863 shares respectively in the scrip of PSTL. I observe that the Noticee Mukesh Jain was the top buying client in the scrip of PSTL on December 16, 2008 and had bought 1,50,000 shares on BSE and 1,40,000 shares on NSE, which was 14.33% of the total traded quantity. I note that on December 16, 2008, the Noticee had purchased 45,114 shares vide trade no. 3661 and further purchased 3,877 shares vide trade no. 3675 from 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., Mukesh Jain placed a buy order, through the broker Integrated Master Securities for 50,000 shares at, Rs. 60.00 per share.
  - b) At 2:57:41 P.M., Nirmal Kotecha placed a sell order through the broker JM Financial Services Pvt. Ltd for 50,000 shares at Rs. 60.00 per share.
  - c) At 2:57:41 P.M., the aforesaid buy and sell orders got matched at the Common order rate (i.e. 60.00 per share) for trade quantity of 45,114 shares.

- d) The balance Mukesh Jain order (i.e. 4,886 shares) got matched with various third parties through 16 trades.
  - e) At 2:57:52 P.M., Mukesh Jain placed a second buy order, through the broker Integrated Master Securities for 40,000 shares at price of, Rs. 60.00 per share.
  - f) At 2:57:52 P.M., Mukesh Jain's second buy order got matched with balance portion of Mr. Nirmal Kotecha sell order for 3,877 shares at the common order rate at Rs. 60.00 per.
  - g) The balance of portion of Nirmal Kotecha's sell order (i.e. 1,009 shares) got matched with third parties.
  - h) The balance portion of Mukesh Jain's second buy order (i.e. 36,123) got traded with various third parties through 65 trades.
81. From the above, Mukesh Jain is observed to have purchased 45,114 shares and further 3,877 shares from Nirmal Kotecha at Rs.60.00 per share at 14:57:41 and 14:57:52 respectively through the above synchronized trades. In this regard, Mukesh Jain has contended that the allegations of synchronized trading against him in the SCN are false and frivolous and that he was unaware as to the seller of the shares on December 16, 2008. That the transactions were merely on account of probability, law of random numbers, law of averages, a sheer coincidence and a transaction in the ordinary course of business.
82. In this regard, I note that the SCN had mistakenly alleged that the Noticee was the director of Bihar Tubes Limited and associated him to Nirmal Kotecha through Sanjay Gupta. However, from the transactions entered into between the Noticee with Nirmal Kotecha, I find it evident that the Noticee was connected with Nirmal Kotecha as he had executed large number of synchronized trades. As noted above, he was the top trading client on NSE and BSE and the percentage contribution of the Noticee was 14.33% of the total traded quantity on December 16, 2008. Further, I find that the execution of trades by the Noticee was not an isolated instance but multiple number of such transactions were carried out with

none other than Nirmal Kotecha himself, which clearly establishes the malafide intent of the Noticee and its association with the Nirmal Kotecha. I find that the trading pattern created artificial volume and artificial price rise in the scrip of PSTL which leads to the malafide intention of the Noticee. In this regard, I place reference to the Order of the Hon'ble Supreme Court in the matter of **SEBI Vs. Kishore R. Ajmera** (Supra), wherein, it was held that the test to establish the meeting of minds is on the preponderance of probabilities, which in my opinion, has been established from the trading pattern of the Noticee.

83. Hence, I find that the malafide intention of the Noticee to manipulate the scrip of PSTL is evident from the attending circumstances of the case that the Noticee entered into multiple synchronized transactions with Nirmal Kotecha, the mastermind of the fraud. Further, considering the matching of quantity, price and time and sale in the said transactions, it would be too naïve to hold that such transactions of the Noticee with Nirmal Kotecha were by mere coincidence. Further, with regard to the Noticees contention that he had suffered a loss on account of his trading in PSTL, I find that the same is irrelevant to the findings that the Noticee had indulged in manipulative trades as a loss per se is not a factor to prove that he was not involved in the fraudulent activity. Thus, the intention of the Noticee has been established from the relationship of the Noticee with Nirmal Kotecha through their manipulative trading activity in the scrip of PSTL.
84. Further, with regard to allegations of LTP, the buy orders which resulted in cumulative traded quantity of 5,000 shares or more along with a cumulative price impact of 25 paisa or more as compared to the LTP were examined and it was revealed that the Noticee had placed 5 buy orders in PSTL shares on December 16, 2008 for quantities of 5,000 shares or more, as detailed in the SCN. I observe that out of the five buy orders placed by the Noticee, three buy orders were placed above LTP for 1,00,000 shares. I observe that one of the buy orders was placed for 10,000 shares at a price of Rs.0.70 more than the last traded price and this order got fully executed. The other two orders above LTP were also fully executed

and these orders caused a positive impact on the traded price of PSTL shares on BSE on December 19, 2008. Further, I note that he had placed two buy orders below LTP for 25,000 shares each and these orders got fully executed. In this regard, the Noticee has contended that it is a normal practice of the market to place buy orders at process higher than LTP in case any person is interested in buying a scrip, as there are more chances of the said transaction being completed. However, I find the contention untenable as he has placed orders above LTP and also below LTP on December 16, 2008. Given the circumstances that the Noticee has entered into multiple synchronized transactions with Nirmal Kotecha, the malafide intent of the Noticee is further resonated with his actions to place buy orders above LTP for 1,00,000 shares which caused a positive impact on the trading price of PSTL shares. In this regard, I place reference to the order dated March 21, 2014 of the Hon'ble SAT in the matter of **Saumil Bhavanagari v/s SEBI**, wherein it was held that:

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

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

85. In view of the above, I find that the Noticee no. 8 (Mukesh Jain) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003.

86. **Sanjay Gupta (Noticee no. 9):** I observe that Sanjay Gupta is the Managing Director of APL Infrastructure Ltd. and Bihar Tubes Ltd. I note that he has not traded in the scrip of PSTL in his individual capacity and the allegations in the SCN are with regard to his role as the Managing Director of APL Infrastructure Ltd. and Bihar Tubes Ltd, which were also alleged to have entered into manipulative trades in the scrip of PSTL.
87. In this regard, I note that Bihar Tubes Ltd is not a Noticee in the present SCN and no proceedings have been initiated against it in the present matter. With regard to APL Infrastructure Ltd, I note that a separate show cause notice dated April 30, 2015 was issued to APL Infrastructure Ltd and vide order dated June 23, 2020, it was *inter alia* held that APL Infrastructure Ltd. had entered into synchronized trades with Nirmal Kotecha and colluded with Nirmal Kotecha and his associates in creating artificial volumes in the scrip of PSTL and thereby, was found to have violated relevant provisions of the SEBI Act, 1992 and PFUTP Regulations.
88. Hence, I find that there is no requirement to delve into the details of alleged violations of APL Infrastructure Ltd. as it has already been decided upon. However, I shall highlight upon the synchronized trades entered into by the Company with Nirmal Kotecha as alleged in the present SCN. In this regard, I note that on December 17, 2008 APL Infrastructure Pvt. Ltd. was the largest buying client and Nirmal Kotecha was the largest selling client on BSE and NSE. APL Infrastructure Pvt. Ltd. had purchased 2,80,000 shares, i.e. 21.52% of the total traded quantity in the scrip of PSTL on December 17, 2008. Examination of the trades had revealed that APL Infrastructure Pvt. Ltd. and Nirmal Kotecha were the counterparties to each other. On December 17, 2008, Nirmal Kotecha sold 128,262 shares to APL Infrastructure Pvt. Ltd. and 5,000 Shares to Deepak Thakkar on **BSE**. Examination of the orders relating to the aforesaid trade revealed that:
- a) At 10:25:41 AM., Nirmal Kotecha placed a sell order, though the broker Kotak Securities Ltd for 1,00,000 shares at Rs. 60.00 per share with a

disclosed quantity of 14,000 shares.

- b) At 10:27:04 AM. Nirmal Kotecha placed second sell order, through the broker Kotak Securities Ltd. for 40,000 shares at Rs. 60.00 per share
- c) At 10:38:49 AM., APL Infrastructure Pvt. Ltd placed buy order through the broker Religare Securities Ltd. for 99,000 shares at Rs. 60.00 per share.
- d) At 10:38:50 A.M the first sell order of Nirmal Kotecha and the buy order of APL Infrastructure Pvt. Ltd. got matched at the common order rate (i.e. Rs. 60.00 per share) for trade quantity 93,102 shares.
- e) The balance portion of buy order of APL infrastructure Pvt. Ltd. (i.e. 5,898 shares) got traded with various third parties through 25 trades.
- f) Thereafter at 10:40:21A.M., APL Infrastructure Pvt. Ltd. placed its second buy order through the broker Religare Securities Ltd. for 40,000 shares at Rs. 60.00 per share.
- g) At 10:40:21 AM., the second buy order of APL Infrastructure Pvt. Ltd. got matched with the balance quantity of Nirmal Kotecha's first sell order (i.e. 6,898 shares) at a price of Rs. 60.00 per share
- h) At 10:40:21 AM., out of the balance portion of the second buy order of APL Infrastructure Pvt. Ltd., 28,262 shares got matched with second sell order of Nirmal Kotecha at a price of Rs. 69.00 per share.
- i) The balance portion of the second buy order of APL Infrastructure Pvt. Ltd. (i.e. 4,840 shares) got traded with various third parties through eight trades.
- j) At 10:49:26 A.M. Deepak Thakkar placed buy order of 5,000 shares at a price of Rs. 60.00 per share
- k) Out of the balance portion of second sell order of Mr. Nirmal Kotecha, 5,000 shares were got matched with Deepak Thakkar's aforesaid buy order at a price of Rs. 60.00 per share
- l) The balance portion of the second sell order of Nirmal Kotecha (i.e. 67,387) got traded with various third parties through 13 trades.

89. It is observed that there was a time difference of 13:08 minutes between the placing of APL Infrastructure Pvt. Ltd.'s buy order and the placing of Nirmal

Kotecha's sell order (i.e. 10:38:49 AM minus 10:25:41 AM). However, examination of trade logs of PSTL shares on December 17, 2008 revealed as follows:

- a) At 10:25:41 A.M., when Nirmal Kotecha placed his sell order at Rs. 60.00 per share, the last traded price was 58.15. Thus Nirmal Kotecha had placed a sell order at a price which was higher than the last traded price by Rs. 1.85 per share.
- b) During the time period between 10:25:41 AM and 10:38:49 AM (i.e. between the placing of Nirmal Kotecha's sell order and the placing of APL Infrastructure Pvt. Ltd.'s buy order), PSTL shares were being traded on BSE at price range of Rs. 58.40 per share to 59.20 per share
- c) Therefore the sell order of Nirmal Kotecha remained unexecuted in the order book of the stock exchange.
- d) Thereafter at 10:38:49 A.M, APL Infrastructure Pvt Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of Nirmal Kotecha which was pending in the Order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share
- e) Thus the trade between Mr. Nirmal Kotecha and APL Infrastructure Pvt. Ltd. resulted in an increase in the traded price of PSTL on BSE on December 17, 2008 and the market traded price of PSTL became Rs. 60.00 per share.

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

- a) At 10:27:25 A.M., Nirmal Kotecha placed sell order for 1,40,000 shares at Rs. 60.00 per share with a revealed quantity of 14,000 shares.
- b) At 10:44:04 A.M., APL infrastructure Pvt. Ltd. placed a buy order for 99000 shares at Rs.60.00 per share.
- c) Thereafter, at 10:44:30 A.M., APL infrastructure Pvt. Ltd. placed another buy order for 1,000 shares at Rs. 60.00 per share.

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

- a) 14000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M vide trade no.2008121733689162.
- b) 14,000 shares got matched at Rs. 60.00 per share at 10:44:04AM. Vide trade no. 2008121733689179.
- c) 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 AM vide trade no. 2008121733689185.
- d) 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 AM vide trade no. 2008121733689190.
- e) 14,000 shares got matched at Rs.60.00 per share at 10:44:04 AM vide trade no. 2008121733689195.
- f) 14,000 shares got matched at Rs.60.00 per share at 10:44:04 AM vide trade no. 2008121733689200.
- g) 11,928 shares got matched at Rs.60.00 per share at 10:44:04 AM vide trade no. 200812173368920.
- h) 121 shares got matched at Rs. 60.00 per share at 10:44:30 AM vide trade no. 2008121733692260.
- i) The balance portion of buy order of APL Infrastructure Pvt. Ltd. (i.e. 3,951 shares) got matched with various third parties through 50 trades.
- j) The Balance portion of sell order of Nirmal Kotecha (i.e. 808 shares) got matched with various 'third parties through seven trades. Further, at 10:48:35 AM. Nirmal Kotecha deleted the unexecuted portion of his sell order (i.e. 43,143 shares).

91. It was observed that there was a time difference of 16:39 minutes between APL Infrastructure Pvt. Ltd.'s aforesaid buy order placement time and Nirmal Kotecha's sell order placement time (i.e. 10:44:04 A.M minus 10:27:25 A.M.). However, examination of the trade logs for the aforesaid period revealed as follows:

- a) At 10:27:25 A.M., when Nirmal Kotecha placed his sell order at Rs. 60.00 per share, the last traded price was Rs. 58.75. Thus Nirmal Kotecha had

placed a sell order at a price which was higher than the last traded price by Rs. 1.25 per share

- b) During the time period between 10:27:25 A.M and 10:44:04 A.M (i.e. between the placing of Nirmal Kotecha's sell order and the placing of APL Infrastructure Pvt. Ltd.'s buy order, PSTL shares were being traded on NSE at price range of Rs. 58.00 per share to Rs. 59.50 per share.
- c) Therefore the sell order of Nirmal Kotecha remained unexecuted in the order book of the stock exchange.
- d) Thereafter at 10:44:04 AM APL Infrastructure Pvt. Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of Nirmal Kotecha which was pending in the order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share

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

- 92. From the above transactions, it is evident that APL Infrastructure Pvt. Ltd. had entered into synchronized trades with Nirmal Kotecha. Considering the matching of quantity, price and time and sale in the said transactions, it would be naïve to hold that such transactions were by mere coincidence. Hence, I observe that APL Infrastructure Pvt. Ltd. had entered into synchronized trades with Nirmal Kotecha and colluded with Nirmal Kotecha and his associates in creating artificial volumes in the scrip of PSTL. In light of the above, I will now proceed to examine the role of Sanjay Gupta as a Managing Director of APL Infrastructure Ltd. and whether he is responsible and liable for the violations committed by APL Infrastructure Ltd. in the scrip of PSTL.
- 93. Sanjay Gupta, vide his reply dated May 30th, 2019 and August 27, 2019, has submitted that, as already explained in his statements dated April 30, 2010 made

before SEBI, investment decisions were taken by the experts in the company on their own understanding of the market and he did not deal with the day to day affairs of the Company. That the experts of the company were Pankaj Gupta, the head of accounts department and Ajay Garg, the General Manager for Purchase and Accounts department of the Company. Further, Pankaj Gupta used to generally place the order with the broker and he was not involved in placing the order with the broker.

94. In this regard, I observe that as per his statements dated April 30, 2010, placed as Annexure 10 to the SCN, on being asked who takes the decision to purchase and sell in the shares of PSTL in the name of Bihar Tubes and APL Infra, Sanjay Gupta has stated that for purchase, the decision is taken by Ajay Garg and Pankaj Gupta and for sale he also takes the decision. Further, with regard to the query on whether Ajay Garg and Pankaj Gupta would take his approval before taking any investment decisions, he has stated that "*sometimes before, sometimes after investment*". Hence, I find that investments decisions in the company were taken in the companies either with the approval of Sanjay Gupta or by himself. Thus, I find that Sanjay Gupta, in his own statements before SEBI as managing director of the company, admitted that he took investment and trading decisions for the company, APL Infrastructure Ltd. It appears that his denial of such decisions in his replies is an afterthought.
95. Further, from the call data records of Nirmal Kotecha, it was observed that Nirmal Kotecha was in touch with Sanjay Gupta through calls and SMSs just prior to the execution of synchronized trades with APL Infrastructure Ltd. on December 17, 2008. The relevant extract of Nirmal Kotecha's (9819988816 which belonged to Amol Kokane) call data records with Sanjay Gupta (9810096439) is given below:

<b>Called No</b>	<b>Calling No</b>	<b>Type</b>	<b>Duration</b>	<b>Date and Time</b>
9810096439	9819988816	OUT	163	12/17/2008 9:29
9810096439	9819988816	SMS	1	12/17/2008 9:50

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

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

after only adds to the inference that he was a close associate of Nirmal Kotecha. With regard to the submissions of Sanjay Gupta on Mukesh Jain, I have already dealt with the same in the aforesaid paras and find that it is not relevant to the allegations against the Noticee.

97. Further, I find that as the Managing Director of APL Infrastructure Pvt. Ltd, Sanjay Gupta cannot escape liability by contending that he did not deal with the day to day affairs of the company. I have already established that the Noticee was admittedly part of the investment making decisions and has thus played a key role in the actions of APL Infrastructure Pvt. Ltd while trading in the scrip of PSTL.
98. In view of the above, I find that Noticee no. 9 (Sanjay Gupta) has violated Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003.
99. As regards the quantum of profits made by the Noticees, it is alleged in the SCN that the Noticees made a profit of Rs. 2,268,158.50 as follows:

<b>No</b>	<b>Name</b>	<b>No. of Shares sold on Dec 22, 2008 and/ or Bought on Dec 16-19, 2008</b>	<b>Buy rate</b>	<b>Sale Rate</b>	<b>Difference in Buy and Sell rate</b>	<b>Undue Profit made (Rs.)</b>
1	Deepak Thakkar	99,758	60.50	81.31	20.81	20,75,858.50
2	Maheshbhai Himatlal Sheth	10,000	61.58	80.00	18.42	184,200.00
3	Monali Harsh	1,000	62.00	70.10	8.10	8,100.00

	Doshi					
	<b>Total</b>	<b>110,758</b>				<b>22,68,158.50</b>

100. As found in the aforesaid paras, Noticee no. 1 (Maheshbhai Himatlal Shah) and Noticee no. 2 (Deepak Thakkar) have been found to have violated provisions of securities laws i.e. SEBI Act, 1992 and PFUTP Regulations, 2003 and have made unlawful gains by violating the provisions of securities laws. Therefore, in my view these Noticees are liable to disgorge the amount of unlawful gains made by them. However, with regard to Noticee no. 7 (Monali Harsh Doshi), I have found that the allegation of violation of provisions of securities laws, as alleged in the SCN, has not been proved against Noticee no. 7, therefore, gains made by her cannot be termed as unlawful gains.

101. I observe that some of the Noticees have, in their submissions, placed reliance on certain judgements in order to establish that for the charge of fraud, cogent and compelling evidence is required. The Noticees have *inter alia* relied upon the findings in the following cases to buttress their argument that when fraud is alleged, mere concern or probability is not sufficient to prove the charge of fraud and it must be based on cogent evidence:

- (i) *Sterlite Industries vs. SEBI (SAT Appeal no. 20/2001 dated Oct 22, 2001)*
- (ii) *M.S. Bindra vs U.O.I. (1998) 7 SCC 310*
- (iii) *Nandikishore Prasad vs. State of Bihar (1978) 3 SCC 366.*
- (iv) *Union of India vs. Chaturbhai M. Patel (AIR 1976 SC 712)*
- (v) *Union of India vs. H.C. Goel (AIR 1964 SC 364)*
- (vi) *L.D. Jaisinghani vs. Naraindas N. Pinjabi (1976) 1 SCC 354*
- (vii) *R.K. Global Shares and Securities Ltd vs. SEBI in Appeal No. 158 of 2008,*
- (viii) *Premchand Shah & Ors vs. SEBI (Date of decision 21/02/2011)*
- (ix) *Smitaben N. Shah vs. SEBI (SAT Appeal no. 37/2010 dated 30/07/2010)*
- (x) *Razikram vs. J.S. Chauhan – AIR 1875 SC 667*
- (xi) *Ambalal vs. Union of India, AIR 1961 SC 264.*

- (xii) *Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734)*
- (xiii) *Bareilly Electric Supply Co. Ltd vs. Workman & Ors. AIR 1872 SC 330*
- (xiv) *Videocon International vs. SEBI (2002) 4 CLJ 402*
- (xv) *Varanasaya Sanskrit Vishwa Vidyalyaya & Anr vs. Dr. Rajkishore Tripathi & Anr.*
- (xvi) *Hansraj Gupta vs. Dehra Dun Mussoorie Electric Tramway Ltd. (AIR 1940 Privy Council 98),*
- (xvii) *A.N. Parasuraman Etc. VS. State of Tamil Nadu (AIR 1990) SC 40*
- (xviii) *State of Kerala vs. M.K. Krishnan Nair (AIR 1978 SC 747)*
- (xix) *British Airways vs. Union of India (AIR 1978 SC 747)*
- (xx) *Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*
- (xxi) *P.G. Electroplast Ltd. and Ors. Vs. SEBI (SAT Appeal no. 281/2017 dated August 02, 2019)*
- (xxii) *Parsoli Corporation Ltd. vs. SEBI (SAT Order dated August 12, 2011)*

102. Most of the cases are not relevant to the facts and circumstances and the proceedings with respect to PFUTP Regulations. As regards the relevance placed on some of the case laws with reference to the standard of proof, I find that the standard of proof in matters of fraud arising out of violation of the SEBI Act or the provisions of the Regulations framed thereunder, is the test of preponderance of probability, as has been clearly laid down in the following recent judgments of the Hon'ble Supreme Court, as relied upon in the aforementioned paras, wherein, it was held that:

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

***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)

103. I have considered the submissions of the Noticees and the various judgments relied upon by the Noticees to substantiate their arguments that there is not enough evidence to hold them in violation of manipulating the scrip of PSTL. I find the submissions untenable as sufficient evidence has been put forward in the above paras for each Noticee as to how they have resorted to artificial inflation of the trading volumes and stock prices in the scrip of PSTL by entering into circular trades, synchronized trades, reversal trades and self-trades, primarily among themselves in order to manipulate the price of PSTL shares to facilitate Nirmal Kotecha to off load his stake in PSTL at higher prices. I find that the test of preponderance of probability as held in **SEBI Vs. Rakhi Trading Pvt. Limited** has been established for each Noticee in view of the findings in the aforementioned paras against Noticees no. 1, 2, 3, 4, 5, 8 and 9.
104. In view of the findings as given in the above paras 29 to 103, I conclude that the Noticees no. 1, 2, 3, 4, 5 and 9 have contravened Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003, and Noticee no. 8 has contravened Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003
105. I note that the Noticees no. 2 and 3 have already undergone debarment from the securities market for a period of more than 10 years pursuant to SEBI's ad interim order dated April 23, 2009. All things considered, I find that the period of restraint or prohibition already undergone by the Noticees no. 2 and 3 is commensurate with the violations committed by them. Therefore, I am of the considered view that

no further period of restraint or prohibition is required in the instant case against the Noticees no. 2 and 3.

106. With regard to Noticees no. 6 and 7, for the reasons stated in the above para 76, I am of the view that the Noticees no. 6 and 7 have not violated the provisions of the SEBI Act and PFUTP Regulations as alleged against him in the SCN. Accordingly, allegations in the SCN dated December 02, 2015 issued qua the Noticees no. 6 and 7 are disposed of accordingly.

107. With regard to Noticees no. 4, 5, 8 and 9, the facts have indicated that the Noticees as associates of Nirmal Kotecha have indulged in fraudulent trade practices with respect to the scrip of PSTL. I note that the violations have taken place in 2008 and the SCN was issued on January 16, 2014 and that a considerable amount of time has lapsed since the act of the Noticees took place. I also note that adjudication proceedings under Chapter VIA of the SEBI Act, 1992 for imposition of monetary penalty have been initiated against the Noticees no. 4, 5, 8 and 9 for violation of the provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003, in the matter of PSTL. However, having regard to the nature of violations and conduct of the Noticees no. 4, 5, 8 and 9, issue of directions under Sections 11 and 11B of the SEBI Act, 1992 are called for in the present matter as given in para 108.

**DIRECTIONS:-**

108. In view of the above, I, in exercise of the powers conferred upon me under Section 11, 11(4) and 11B read with Section 19 of the SEBI Act, 1992, and Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 hereby, issue the following directions:

- a) Noticee no. 1 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any

manner whatsoever, either directly or indirectly, for a period of 1 (one) year from the date of the order. Further, Noticee no. 1 is directed to disgorge an amount of Rs. 1,84,200/-, as ascertained in para 99 above, along with interest calculated at the rate of 12% per annum from December 22, 2008 till the date of actual payment, within a period of 45 (forty five) days from the date of this order.

- b) Revoke the directions passed against Noticee no. 2 and 3, vide interim order dated April 23, 2009 with immediate effect, for the reasons stated in para 105. However, Noticee no. 2 is directed to disgorge an amount of Rs. 20,75,858.50, as ascertained in para 99 above, along with interest calculated at the rate of 12% per annum from December 22, 2008 till the date of actual payment, within a period of 45 (forty five) days from the date of this order.
- c) Noticees no. 4, 5, 8 and 9 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of 2 (two) years.
- d) Dispose of the proceedings against Noticees no. 6 and 7 for the reasons stated in para 106.
- e) The Noticee no. 1 and 2 shall pay the amount directed to be disgorged by them either by way of demand draft drawn in favor of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment to SEBI as detailed below:

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

	Branch		Exchange Board of India	
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\*Notices 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 with order details):	

- f) Obligation of the aforesaid Noticees, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid Noticees in the F&O segment of the stock exchange, are directed to be squared off, irrespective of the restraint/prohibition imposed by this Order.

109. This order shall come into force with immediate effect.

110. A copy of this order shall also be sent to all the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/

**Place: Mumbai**

**ANANTA BARUA**

**Date: June 23, 2020**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**