

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN THE MATTER OF SUPREME TEX MART LTD. IN RESPECT OF MR. GAUTAM SANJAY Khandelwal. (PAN: AZWPK6632R)

Appearance for Mr. Gautam Sanjay Khandelwal : in person

1. Securities and Exchange Board of India ("SEBI"), after receiving a complaint with respect to stock tips/recommendations through Short Message Service ("SMS") for the scrip - Supreme Tex Mart Ltd. ("STML") conducted a preliminary examination into the trading in the scrip of STML for the period July 01 to October 30, 2016 ("the examination period"). During examination, it was observed that around 17.23 lakh SMSs were sent recommending BUY for STML across different dates during the examination period. It was also observed that the trading volume of the STML scrip on the days on which SMSs were sent was significantly high in comparison to its average daily trading volume during the prior period. As a part of the examination, SEBI obtained SMS data records from the concerned telecom service providers/ SMSs Aggregators through whom SMSs were sent pertaining to STML.
2. On the basis of the records/documents collected with respect to SMSs sent from a stylised number- IM CINRES, the role of one of the senders of SMSs i.e. Mr. Gautam Sanjay Khandelwal (hereinafter referred to as "the Noticee") in making recommendations with regard to the STML scrip was observed. IM CINRES was registered with Idea Cellular Telecom Service provider. It was found that Tanla Solutions Limited (hereinafter referred to as "*Tanla*"), an SMSs Aggregator service provider, was used to send the Bulk SMSs from the number IM-CINRES. It was also found by *Tanla* that the person who had subscribed for the Bulk SMS service was the Noticee. In relation thereto, *Tanla* submitted a copy of the Certificate of registration of the Noticee as BSE registered Authorized Person with the trading member - Comfort Securities Ltd. and a copy of the letter dated 30th August, 2016 from Comfort Securities Ltd, (signed by the Noticee) seeking Bulk SMSs using the stylised number – IM CINRES. It was observed that Specific target price, target dates and specific sender name/websites were mentioned in the SMSs sent.
3. In relation to the aforesaid SMSs sent, the trades of the Noticee in the scrip of STML were also analysed. It was observed that the Noticee traded contrary to the recommendations sent in SMSs. It was found that the Noticee purchased the shares of STML at lower prices before sending the SMSs and he sold the shares at higher prices after sending the SMSs. Once the price decreased, he again purchased shares at lower

prices and resent SMSs with a view to increase the price to further offload his holding at higher prices.

4. Based on the preliminary examination, it was *prima facie* inferred that the Noticee had:
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 - (i) disseminated, through SMSs, information which is not true or which he did not believe to be true relating to STML, to mislead the innocent investors, and which has influenced their decision to invest in STML; and
 - (ii) bought and sold shares in fraudulent manner and devised a scheme to defraud the market.
5. Considering, *inter alia*, the above observations, SEBI, vide an *ad interim ex parte* order dated February 23, 2017, prohibited the Noticee (Mr. Gautam Sanjay Khandelwal) from buying, selling or dealing in securities, directly or indirectly, or in any manner whatsoever, till further directions and also directed him to cease and desist from disseminating news or messages in any form related to the securities market, by any means whatsoever.
6. An opportunity of personal hearing was provided to the Noticee on May 25, 2017 when he appeared in person and made his submissions. The Noticee filed his written submissions in the matter on June 2, 2017. The reply/submissions of the Noticee are, *inter alia*, as under:
 - 1) I deny all the allegations and findings made against me in the interim order except to the extent specifically admitted by me.
 - 2) The said order has been passed in gross violation of the principles of natural justice. The interim order has been passed without any evidence and has an effect of final order. The order has an effect of declaring me guilty without any lawful explanations and without giving me a chance to put forth my arguments & hearing my version on the alleged violation of SEBI Act, SEBI (Research Analysts) Regulations & PFUTP violations.
 - 3) The interim order is in violation of Article 21 of Constitution of India. Passing of an order which has an effect of freezing my demat account has taken away my source of livelihood. This order has also affected my reputation since clients who were mapped under me have also stopped trading through me and my broking income has stopped all at once.
 - 4) I have not been provided all the documents relied upon by SEBI for passing the impugned order, nor has SEBI provided me with a plausible reason for not providing all the documents/records/data. In this regard, reliance is placed on the order of Hon'ble SAT in the matter of Mr. Nitin Kumar Didwani (Appeal No. 41 of 2016. Not providing documents without any lawful justification amounts to "judicial insubordination" and SEBI has acted in gross violation of the order of Hon'ble SAT. I have not been provided with a copy of preliminary findings on the basis of which aforesaid allegations have been levelled against me.

- 5) The order has been passed on the basis of mere conjectures & surmises without verifying the credibility of the proofs and evidences. I was neither in the past nor currently am the Compliance Officer of Comfort Securities Limited ("CSL"). No independent verification has been carried out by SEBI and they have only relied upon the information given by an unregistered entity. No clarification was sought either from CSL or from me to enable us to give our reply. Further, SEBI has also not verified the veracity of the documents in any manner and reliance has been placed upon the fabricated documents.
- 6) I am a regular investor in the securities market and have my own account maintained with CSL. I am also a registered Authorised Person (AP) of CSL and am affiliated with them since 2012. Further, I am not affiliated with any other Trading Member.
- 7) I have been executing profitable trades not only in STML alone but also in other scrips. I have earned individual as well as overall profits in my trades in other scrips. I invest in scrips on the basis of Corporate Announcements, Annual Reports and also at times on the basis of advices from my friends, relatives, price volume observations, trends observed in particular scrip, market whispers & discussions and analysis with my co-traders. The investments in the various scrips have been my independent decisions which are based on my own volitions.
- 8) I have never sent any SMSs recommending buy/sell in the scrip of STML. I have never given my AP documents to any sub-aggregator for sending bulk SMSs. My AP registration certificate has been misused and I have been unnecessarily made the victim of the circumstances. I have also filed a complaint with Malad Police Station for misuse of my AP certificate vide my letter dated 3rd May, 2017.
- 9) During the course of inspection of documents I have been provided with a copy of complaint received from one investor. The Complaint is pertaining to fake SMSs from MD-CAPVMK/MD-CAPWAY however, the foundation on which the said order has been passed is pertaining to SMSs from some different stylised no. IM CINRES, which contradicts all the findings in the matter. This establishes that the entire investigation has been misdirected towards me and not the actual culprits. The said order does not mention about the action taken by SEBI against the sender of SMSes from stylised no. MD CAPVMK/MD- CAPWAY, although investigation was initiated on the basis of the said complaint.
- 10) The trade log, SMSs recipients data with their respective PANs & the PV Charts are provided in a Compact Disk (CD), however, same is not accompanied with a certificate u/s 65-B of the Indian Evidence Act, 1872. The data is therefore unreliable, and raises questions as to its veracity.
- 11) As per the analysis of graphical data of Price Volume chart for the examination period i.e. from 1st July, 2016 to 30th October, 2016 and after the examination period i.e. from 1st November, 2016 to 31st March, 2017, it is evident that the price was at its peak on 6th September, 2016 i.e. approx. Rs. 12/-. Concurrently, as per the SMSs details given at Para 8 table 3 it is clear that no SMSs were sent on that day i.e. on 6th September, 2016. The price of the scrip was at its peak even though

no SMSs was sent on that day and the last SMSs was sent on 31st August, 2016. The above analysis belies the findings of SEBI that there was a spurt in the price pursuant to the SMSs.

- 12) SEBI did not have the details regarding the procedure for sending SMSes at the time of passing the said order and the details were sought from Tanla Solutions Limited vide their letter dated 23rd March, 2017 only after I demanded the documents during the course of inspection.
- 13) During the relevant period, a total of around 17.23 lakh SMSs were sent, however details of only 8.40 lakh SMSs are given in the order
- 14) The scrip had been evidencing rise and fall in prices at regular intervals even before the period of investigation. Thus, it is very much evident that sending SMSs did not have any effect whatsoever on the price or the volume of the scrip. It was the inherent quality of the scrip and no other reason for the rise and fall of the price. Without prejudice to the foregoing, even if the SMSs were sent by me, there is no apparent surge in the volume during the SMSs period in comparison to Pre SMSs period.
- 15) No justification has been provided for selecting the period of examination Table 2 of the interim order refers to the SMSs period as 26-July, 2016 to 04 Oct, 2016, whereas the first SMSs was sent on 30th August, 2016 and not on 26th July, 2016. Thus, the entire investigation has been carried out with a prejudiced mind of concluding me guilty by all means possible.
- 16) It appears that information about only those investors who had received the SMSs and have also opted to act on them has been provided to me.
- 17) The entire data of SMS recipients is not provided by SEBI, so as to make a comparative study as to the number of investors who has actually received the SMSs and has acted on it and the number of investors who have although received the SMSs, but have opted not to act on it.
- 18) I have not been provided the entire trade log and order logs of all the trades executed in STML. No documents have been provided to me by SEBI which would confirm that I had subscribed to send the SMSs. I would request SEBI to allow me to cross-examine the concerned officials of *Tanla* who had carried out the KYC.
- 19) It is SEBI's own case and evident from the table 4 of the interim order that I have not traded on the days when clearly enunciates that I had no knowledge whatsoever about the SMSs being sent and no pattern is emerging wherein I have traded only on the days of sending SMSs, SMSs were sent.
- 20) Even if I had sent the SMSs, more than 90% of my sale of shares got matched with the entities who have not received the SMSs. This implies that even if I have sent the SMSs it didn't have any major impact on the trading in the scrip of STML. Further, the total turnover of SMSs recipient is a negligible percentage of total traded turnover i.e. 0.16% which demolishes the charge that I sold the shares after sending the SMSs for buy or there was spurt in trading activity pursuant to my SMSs.
- 21) My trades in comparison to the total traded volume in the market is a miniscule percentage i.e. 1.13% for Buy side and 1.20% for Sell side.

7. I have considered the allegations against the Noticee, his reply and the material available on record. I note that in the instant case, the directions issued against the Noticee are *interim* in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide the *interim order* in the matter in order to protect the interests of investors in the securities market. Detailed investigation in the matter is still in progress. Thus, the issue for consideration at this stage is whether the interim directions, issued against the Noticee vide the *interim order* need to be confirmed, vacated or modified in any manner, during pendency of investigation in the matter.
8. The Noticee has contended that the *interim order* has been passed in disregard of the principles of natural justice as no opportunity of hearing was provided to him by SEBI before passing the *interim order*. In this regard, I note that the *interim order* has been passed on the basis of *prima facie* findings observed during the preliminary examination/inquiry undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order*. The *interim order* has also been issued in the nature of a show cause notice affording the Noticee a post decisional opportunity of hearing. I also note that the power of SEBI to pass interim orders flows from sections 11 and 11B of the SEBI Act, which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

9. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned"*. Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

"It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

10. Further, the Hon'ble High Court of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

"...Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The

case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also..."

11. In view of the above, I find that the *interim order* passed by SEBI was in compliance with the principles of natural justice since, reasons for passing the *interim order* have been clearly stated in the *interim order* and, in accordance with the settled law, the Noticee was afforded a post-decisional opportunity to file his reply and avail an opportunity of personal hearing. I, therefore, reject the contention of the Noticee in this regard.
12. The Noticee has also sought to rely on the observations of Hon'ble SAT in the cases of *Zenith Infotech Limited* (order dated 23.07.2013) and *Pancard Clubs Ltd.* (order dated 17.09.2014) to emphasize upon the requirement for SEBI to adhere to the principles of natural justice. In this regard, I have already observed that the principles of natural justice have been complied with in the present case since after passing of the reasoned *interim order*, a post decisional opportunity of hearing has also been provided to the Noticee. I am, therefore, of the view that the Noticee's reliance on the above mentioned orders of Hon'ble SAT is misplaced.
13. Another contention of the Noticee is that the *interim order* has deprived him of his livelihood and is in violation of Article 21 of the Constitution of India. In this regard, it is noted that Article 21 has been interpreted by Courts to include right to livelihood by means which are not illegal, immoral or opposed to public policy. In the present case, the acts of the Noticee discussed in detail in the *interim order* have been *prima facie* found to be in violation of provisions of SEBI Act, SEBI (Research Analyst) Regulations and SEBI (PFUTP) Regulations. Also, the action that has been taken against the Noticee by way of the *interim order* is in accordance with the procedure established by law. Securities and Exchange Board of India Act, 1992 is a special Act enacted by the Parliament conferring on SEBI the duty to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. In the present case, the restraint order has been passed by SEBI in exercise of the powers conferred upon it by law and towards fulfilment of the duties cast under the SEBI Act. As noted in the *interim order*, the conduct of the Noticee has been found to be *prima facie* fraudulent and therefore directions have been issued against the Noticee. It is a settled law that while exercising his constitutional rights a person cannot commit an act which is forbidden by law. In view of the above, I find that the restraint order against the Noticee is not in violation of Article 21 of the Constitution

of India.

14. The Noticee has also raised a contention that the trade log, SMS' recipients data with their respective PANs and the PV Charts have been provided in a Compact Disk (CD), however, the same is not accompanied with a certificate u/s 65-B of the Indian Evidence Act, 1872 because of which the data is unreliable, and its veracity is questionable. In this regard, it is noted that section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to "*all judicial proceedings in or before any Court*". As regards the present proceedings before SEBI, it is noted that the same are quasi-judicial in nature and hence the Indian Evidence Act does not apply thereto. Accordingly, section 65B which relates to admissibility of electronic records before a Court of Law, is not applicable to proceedings before SEBI. With regard to the present case, it is noted that the data was provided to the Noticee in a CD for his convenience considering that the data was voluminous. It is important to mention that the Noticee has raised a general question as to the veracity and reliability of the data without pointing out even a single infirmity with the data. In view of the above, I do not find any merit in the aforesaid contention of the Noticee and reject the same.
15. The Noticee has raised an objection that he has not been provided with all the documents related to the matter including the complete trade logs, order logs and the SMSs details. He has also submitted that the preliminary objection report has also not been provided to him by SEBI. With regard to the above, it is noted that no separate examination report was prepared in the matter before passing of the *interim order*. The analysis of the entire data and information relied upon by SEBI and SEBI's findings were brought out in the *interim order*. As regards non-provision of the SMSs data, it is noted that during the examination period a total of 17.23 lakh SMSs were sent using different stylised IDs out of which 8.4 lakh SMSs were sent from the ID IM-CINRES which was *prima facie* found to have been used by the Noticee. It is noted that complete SMSs data related to IM-CINRES was provided to the Noticee by SEBI vide letter dated April 13, 2017 along with the phone numbers and PANs of the SMS-recipients with whom trades of the Noticee had matched. Further, SEBI had relied upon the trade log of the Noticee during the examination period which was provided to him in entirety vide letter dated April 13, 2017. In view of the above, I note from the record that the entire data/information relied upon by SEBI before passing the *interim order* was provided to the Noticee and thus, his objections in his regard are unfounded and not tenable.
16. The Noticee has submitted that the examination period for the purpose of the *interim order* has been arbitrarily selected by SEBI as July 01 to October 30, 2016 while as per the *interim order*, the first SMS was sent on August 30, 2016. He has further submitted that the *Pre-SMS period*, *SMSs period* and *Post-SMS period* have also been wrongly selected by SEBI. According to the Noticee, the entire examination has been carried out with a prejudiced mind of concluding him guilty by all means possible. In this regard, it is noted that SEBI had taken up the examination in the scrip of STML pursuant to receipt of complaint regarding the receipt of SMSs from certain stylised numbers. In

order to examine the impact of the SMSs and the reaction of the market to these SMSs, a broad time frame was taken up for examination, which would cover the period before, during and after the sending of the SMSs. The division of examination period into *Pre-SMSs period*, *SMSs period* and *Post-SMSs period* was done only for the purpose of understanding the patterns of trading involved therein. Such division was in no manner aimed at arriving at specific conclusions against any specific entity including the Noticee. In view of the above, I find that the above submissions of the Noticee are without any basis and cannot be accepted.

17. Noticee has further submitted that the *interim order* has been passed by SEBI on the basis of conjectures and surmises, without any evidence and without verification of the documents which were provided by a third party. He has also submitted that no documents have been provided to him by SEBI which would confirm that he had subscribed to send the SMSs. Further, he also submitted that he should be allowed to cross-examine the officials of *Tanla* who carried out the KYC. In this regard, it is noted that the *interim order* is only based on a *prima facie* view and a detailed investigation in the matter is already in progress. The *interim order* has been passed against the Noticee because in view of the facts and circumstances discussed therein, the Noticee has *prima facie* been found to be in violation of the provisions of SEBI Act, SEBI (Research Analyst) Regulations and PFUTP Regulations. Further, the *interim order* is based on the holistic examination of all the facts and circumstances mentioned in the *interim order* and does not rely solely on the documents which were obtained from the SMS aggregator. It is also pertinent to mention here that the Noticee has failed to explain how the copy of his Authorized Person (AP) Certificate was in possession of the SMS Aggregator who provided the same to SEBI. As regards the request of cross-examination of officials of *Tanla*, it is noted that the documents that were submitted by *Tanla* to SEBI were provided to the Noticee. Further, the interim order does not reply upon any statement of any official of *Tanla*. Thus, the issue of cross-examination of any official of *Tanla* does not arise. In view of the above, I do not find any merit in the submissions of the Noticee in this regard and reject the same.
18. Another submission made by the Noticee is that he is a regular investor in the securities market and has in the past made profitable transactions in many scrips other than STML. Further, the investments made in various scrips including STML were his independent decisions based on his own volition and had no relation to any SMS-recommendations. In this regard, I note that the transactions executed by the Noticee during the *examination period* are mentioned at table 4 of the *interim order*. As has been noted in the table 4, the Noticee had sold shares of STML after SMSs recommending "BUY" with specific target prices and stop losses were sent (mentioned in table 3 of the *interim order*). Also, apart from specific price targets, few SMSs had target dates for the target prices to be achieved thereby indicating that the SMSs related to price targets to be achieved in subsequent days and not only intra-day. It is pertinent to mention that there is a visible pattern in the transactions of the Noticee as he would sell either on the

same day when the price of STML moved in an upward trend pursuant to sending of SMSs or he would sell when the impact of the SMSs, sent earlier on the price and volume of STML, became apparent. It does not appear to reason how on each and every occasion the Noticee ended up earning profits while selling the scrip of STML. Considering the above, the transactions of the Noticee do not *prima facie* appear to be regular transactions and therefore, I am unable to agree with his submissions in this regard.

19. The Noticee has submitted that even if it is assumed that he was responsible for sending the SMSs, it did not have any effect whatsoever on the price or the volume of the scrip since it was the inherent quality of the scrip of STML and there was no other reason for the rise and fall of the price. With regard to these submissions, it is noted that table 2 of the *interim order* clearly brings out that the average daily volume of shares had risen substantially during the SMS period in comparison to the pre-SMS period. It is important to mention that one of the reasons for taking up a wider period of examination was to analyse the impact of SMSs on the price and volume of the scrip. It is evident from table 4 of the *interim order* that after sending of SMSs, the price of the scrip of STML increased and at that increased price, the Noticee sold his shares. Further table 6 of the *interim order* also highlights that the recipients of SMSs contributed 10.63% of the total buy volume and 7.17% of the total sell volume during the period - August 30, 2016 to October 17, 2016 and the Noticee has not refuted the findings of the said table. Thus, in my view, the submission of the Noticee that sending of the SMSs did not have any impact on the price and volume of the scrip of STML does not appear to be factually correct and is not acceptable.
20. The Noticee has also submitted that his trading in comparison to the total market volume during the period - August 30, 2016 to October 17, 2016 was miniscule (around 1%) and the trades of his counterparties who received SMSs is only 0.16% of the total market volume. In this regard, I find it pertinent to highlight that the role of the Noticee in the present matter is to be seen not only in terms of the volume of his transactions as a percentage of the total market volume or in terms of the percentage volume of his counterparties who received the SMSs. The initial impact of the SMSs, which were sent by the Noticee, was building of initial momentum in the trading in the scrip of STML and later on many unsuspecting investors were induced into trading in the scrip of STML because of the said momentum. It would be correct to say that sending of SMSs by the Noticee had a snowball effect on the trading in the scrip of STML. Further, the quantum of Noticee's trading as a percentage of the total turnover and the direct attribution to SMS recipients is also irrelevant in light of the fact that SMSs sent by him clearly induced many investors, which is evident from the fact that SMS recipients contributed 10.63% of the total buy volume and 7.17% of the total sell volume during the period - August 30, 2016 to October 17, 2016. In view of the above, I do not find merit in the above submissions of the Noticee and reject the same.

21. The Noticee has made a submission that the Complaint, which has been referred in the *interim order*, is pertaining to fake SMSs from MD-CAPVMK/MD-CAPWAY however, the foundation on which the said order has been passed is pertaining to SMSs from some different stylised no. IM CINRES. In this regard, it is noted that the complaint which has been referred in the *interim order* was merely the starting point for initiation of preliminary examination into the transactions in the scrip of STML. Analysis of all the SMSs which were sent with regard to the scrip of STML was carried out. *Interim order* against the Noticee was passed because he was *prima facie* observed as the sender of the SMSs through the ID – IM-CINRES and had repeatedly carried out transactions whereby he traded contrary to the recommendations sent through SMSs. As regards the stylised IDs MD-CAPVMK/MD-CAPWAY, the sender of the SMSs was not identified during the preliminary examination and detailed investigation in that regard is in progress. In view of the above, I do not find any merit in the contention of the Noticee in this regard.
22. After considering the above, I am of the view that the Noticee at this stage has failed to give any plausible reasoning/ explanation for the allegations levelled against him in the *interim order*, and the balance of convenience is not in favour of the Noticee. The directions issued against the Noticee vide the *interim order* are preventive and remedial. In my view, the facts and circumstances of the case justify the continuation of the directions issued against the Noticee vide the *interim order* dated February 23, 2017 and no intervention is called for, at this stage, in either vacating the interim directions or modifying them.
23. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(4), 11B and 11D read with section 19 of the SEBI Act, 1992, hereby confirm the directions issued vide the *ad interim ex-parte* order dated February 23, 2017 against Mr. Gautam Sanjay Khandelwal. The directions issued vide the interim order against Mr. Gautam Sanjay Khandelwal shall remain in force till further directions.
24. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

Sd/-

DATE: June 30th, 2017
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA