

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act,
1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair
Trade Practices Relating to Securities Market) Regulations, 2003**

In respect of

Sl. No.	Name	PAN
1	SMS Techsoft (India) Limited	AAECA1954G
2	K Rajagopal	AGCPR8130L
3	Dashrathkumar Keshaji Khatri	ACFPK3128C
4	Mahavirsingh N Chauhan	AQOPC6330R
5	Devaraj Siddiah Pera Naidu	ACGPD9190G
6	Maheshchandra Chunilal Shah	AIOPS3870Q
7	Dilipbhai Jaswantlal Gajjar	ADVPG4094Q
8	Meenaben Natubhai Thakkar	AHWPT5940M
9	Jagadish Vital	ACJPJ5747L
10	Minaben Prafulbhai Shah	COYPS9153J
11	Akash Jagadish Vital	ATYP A8648K
12	Mitesh Kanaiyalal Thakkar	AHQPT0178H
13	Anita Srinivasabhatt Kadanthalai	ABUPA2184Q
14	Mukeshbhai Shantilal Thakkar	AJBPT8789M
15	Alakaben Kirtibhai Shah	CPAPS2335R
16	Mulchand Ganeshmal Jain	ABBPJ6373M
17	Bafna S R	AFXPB6525P
18	Natubhai Shantilal Thakkar	AHWPT5944R
19	Chhaya Umeshchandra Trivedi	AHDPT3058P
20	Navinchandra Kanubhai Thakkar	ADUPT1264A
21	Dharmendra Rikhavchand Shah (HUF)	AAEHD6246F
22	Pruthvi Himanshu Shah	DCAPS6011N
23	Himadri Kamleshbhai Shah	AZYPS5654H
24	S Rajaganesh	ALBPR2586E
25	Himanshu Prafulchandra Shah	ANEPS9445A
26	Suresh Nenmalji Malvi	AKMPM4951C
27	Kaliyaben Himansu Shah	BFQPS1462A
28	Vaishali Natvarlal Thakkar	AMJPT1242N

Sl. No.	Name	PAN
29	Kanubhai Narandas Thakkar	ADZPT3418R
30	Vinit Kamleshkumar Shah	BOIPS2506E
31	Karan Kirtibhai Shah	BQYPS0082D
32	Vinod Jain	AEDPJ4235P
33	Keval Kirtikumar Shah	DFNPS6796L
34	Manjulaben Maheshchandra Chunilal Shah	AFSPS6606M
35	Kirtikumar Rasiklal Shah	AKQPS8463F
36	Mr. Rajesh Ranka	ACUPR5573R

In the matter of trading in the shares of SMS Techsoft (India) Limited

BACKGROUND

1. SMS Techsoft (India) Limited (hereinafter referred to as ‘**SMS Tech**’/ ‘**Company**’) was listed on Bombay Stock Exchange Limited (hereinafter referred to as ‘**BSE**’) since December 2000 and Coimbatore Stock Exchange Limited. The company was suspended on BSE since January 2015. It was formerly known as AKL Soft and Infosys (India) Ltd. with its registered office at Coimbatore. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) noticed a burst of Short Text Messages (hereinafter referred to as ‘**SMS**’) during February — March 2013, mentioning therein buy recommendation for the scrip of SMS Tech. The details of such SMS’s are as under
 - (a) “*BUY SMS TECHSOFT LTD (BSE 531838) RS.0.45. TARGET RS. 5 + 9. BIG ORDER FROM BANKING + ATM TRANSACTION*” – Senders’ Mobile No: +918608862368; +918015874386.
 - (b) “*BUY SMS TECHSOFT LTD (BSE 531838) RS.0.45 PAISE. TARGET RS. 5+. BIG ORDERS FROM BANKING AND ATM TRANSACTION. BIG PROFIT*” – Senders’ Mobile No: +9208125980.
 - (c) “*BUY SMS TECHSOFT LTD (BSE 531838) RS.0.45. TARGET RS. 5 + 9. BIG ORDERS FROM BANKING+ ATM TRANSACTION. - www.theeartemvestor.co.in*” Senders’ Mobile No - +919210421689; +917299532689
 - (d) “*JACKPOT CALL - BUY SMS TECHSOFT LTD (BSE 531838) AT 0.40 PAISE TARGET RS. 5+, BIG ORDERS FROM BANKING AND ATM TRANSACTION*”. - Sender.: LM-066462
2. In view of the above SMSs mentioning predominantly rumours for buy recommendations in the scrip of SMS Tech, SEBI undertook an inquiry into the matter relating to buying,

selling or dealing in the shares of SMS Tech to ascertain whether there was any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) and the Rules and Regulations made thereunder and possible violation of provision of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“hereinafter referred to as ‘**PFUTP Regulations**’).

3. Upon analysis of the trading activity in the scrip SMS Tech, it was observed that the following entities, namely:

Table - 1

Sl. No.	Name	PAN
1	SMS Techsoft (India) Limited	AAECA1954G
2	Mr. Akash Jagadish Vital	ATYPA8648K
3	Mr. Jagadish Vital	ACJPJ5747L
4	Ms. Anita Srinivasabhattach Kadanthalai	ABUPA2184Q
	Entities at Sl. No. 2-4 hereinafter collectively referred to as “ promoters ” or individually by their respective names; (of these, Mr. Akash Jagadish Vital and Mr. Jagadish Vital were the promoters/directors)	
5	Mr. Dashrathkumar Keshaji Khatri	ACFPK3128C
6	Mr. Devaraj Siddiah Pera Naidu	ACGPD9190G
7	Mr. Dilipbhai Jaswantlal Gajjar	ADVPG4094Q
	Entities at Sl. No. 5-7 hereinafter collectively referred to as “ independent directors ” or individually by their respective names	
8	Mr. Rajesh Ranka	ACUPR5573R
9	Mr. K. Rajagopal	AGCPR8130L
10	Mr. S. Rajaganesh	ALBPR2586E
11	Mr. Bafna S. R.	AFXPB6525P
12	Ms. Chhaya Umeshchandra Trivedi	AHDPT3058P
13	Ms. Meenaben Natubhai Thakkar	AHWPT5940M
14	Mr. Mitesh Kanaiyalal Thakkar	AHQPT0178H
15	Mr. Mukeshbhai Shantilal Thakkar	AJBPT8789M
16	Mr. Mulchand Ganeshmal Jain	ABBPJ6373M
17	Mr. Natubhai Shantilal Thakkar	AHWPT5944R
18	Mr. Navinchandra Kanubhai Thakkar	ADUPT1264A
19	Mr. Suresh Nenmalji Malvi	AKMPM4951C
20	Ms. Vaishali Natvarlal Thakkar	AMJPT1242N
21	Mr. Vinod Jain	AEDPJ4235P
22	Dharmendra Rikhavchand Shah HUF	AAEHD6246F

Sl. No.	Name	PAN
23	Mr. Kanubhai Narandas Thakkar	ADZPT3418R
24	Ms. Alakaben Kirtibhai Shah	CPAPS2335R
25	Mr. Himadri Kamleshbhai Shah	AZYPS5654H
26	Mr. Himanshu Prafulchandra Shah	ANEPS9445A
27	Ms. Kaliyaben Himansu Shah	BFQPS1462A
28	Mr. Karan Kirtibhai Shah	BQYPS0082D
29	Mr. Keval Kirtikumar Shah	DFNPS6796L
30	Mr. Kirtikumar Rasiklal Shah	AKQPS8463F
31	Ms. Minaben Prafulbhai Shah	COYPS9153J
32	Mr. Pruthvi Himanshu Shah	DCAPS6011N
33	Mr. Vinit Kamleshkumar Shah	BOIPS2506E
34	Ms. Nila Rajeshkumar Shah	BSLPS2675B
35	Mr. Mahavirsingh N. Chauhan	AQOPC6330R
36	Mr. Maheshchandra Chunilal Shah	AIOPS3870Q
	Entities at Sl. No. 8-36 hereinafter collectively referred to as “ preferential allottees ” / “ Ranka Group ” or individually by their respective names	
37	Ms. Manjulaben Maheshchandra Chunilal Shah	AFSPS6606M
	Entities at Sl. No. 1-37 except entity no. 34 hereinafter collectively referred to as “ Noticees ” or individually by their respective names	

while acting together as a group, adopted a fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying fraudulent transactions as genuine preferential allotment of shares and offloading the shares allotted in the preferential allotment in the market thereby earning illegal profits.

4. In view of the above, in order to protect the interests of investors and to preserve the safety and integrity of the market, SEBI vide *ad-interim ex-parte* order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) (hereinafter referred to as ‘**Interim Order**’) issued following directions against 37 entities mentioned at para 3 above for the alleged violation of the provisions of Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a), (f) and (g) of the PFUTP Regulations; Regulations 77(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”); and Clauses 49, 54 of the Listing Agreement read with section 21 of Securities Contracts (Regulations) Act, 1956.

- (a) the said entities are restrained from accessing the securities market and further prohibited them from buying, selling or dealing in securities market, either directly or indirectly, in any manner whatsoever, till further directions;
- (b) the said entities are hereby ordered to keep in an escrow account, jointly and severally within 30 days of this order, an amount of Rs. 6,00,11,512/- that they have earned as ill-gotten profit during the period March 13, 2013 to October 18, 2013 and any other amount that they have realised as sale proceeds of the shares allotted in the preferential allotment by the company; and
- (c) SMS Techsoft (India) Limited (PAN: AAECA1954G) is restrained from raising additional capital through securities market, either directly or indirectly, in any manner whatsoever, till further directions.

5. SEBI vide order dated May 07, 2015 (followed by corrigendum order dated May 14, 2017) (hereinafter referred to as “**Confirmatory order**”) had confirmed the directions issued vide the *ad-interim ex-parte order* dated November 05, 2013 against all the entities mentioned at para 3 above except Ms. Nila Rajeshkumar Shah (deceased) (entity no. 34 of Table - 1) and the directions issued vide para 35 of the *interim order* dated November 05, 2013 shall remain in force till further directions.

SHOW CAUSE NOTICE

6. Thereafter, SEBI undertook an investigation in the matter and consequent to the completion of investigation, a Common Show Cause Notice (hereinafter referred to as ‘SCN’) dated November 15, 2016 was issued to the Noticees (36 persons/entities) in the matter of SMS Tech to show cause as to why suitable actions/directions in terms of Sections 11(4) and 11B of the SEBI Act, including disgorgement of ill-gotten gains should not be initiated against them for the alleged violation of the provisions of Sections 12A(a), (b), and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) & 4(2)(a) of the PFUTP Regulations.
7. The period of investigation was from March 13, 2013 to November 05, 2013 (hereinafter referred to as ‘**Investigation Period**’ / ‘**IP**’). Investigation *inter alia* revealed that: –

- (a) The Financial Results of SMS Tech prior to the start of investigation and during the investigation period revealed that SMS Tech incurred a loss during the financial year 2013-14. It was also observed that SMS Tech has not filed standalone financial results for the quarter ending March 2012 to the exchange. The financial results of the company are as under:

Table - 2

Rs. in Lakhs

Particulars	Yearly			Quarterly								
	2011-12	2012-13	2013-14	Dec-11	Mar-12	June-12	Sep-12	Dec-12	Mar-13	Jun-13	Sep-13	Dec-13
Total Income	71.45	59.30	20.1	10.0	Not available	11.8	11.8	10.0	25.8	5.1	4.9	5.4
Total Expenditure	69.50	58.28	21.0	9.3	Not available	11.3	11.4	9.5	11.4	5.0	5.9	6.7
Net Profit / (Loss)	1.22	0.55	-0.95	0.6	Not available	0.1	0.2	0.3	0.5	0.2	(1.1)	(1.5)

- (b) It is noted that on March 13, 2012 SMS Tech had allotted 3,00,00,000 shares on preferential basis to 31 entities (including 3 promoters) at a price of Rs. 10 per share. Details of preferential allottees with the number of shares allotted are as under:

Table - 3

Sl. No.	Name	No. of shares allotted	% to total share capital post allotment
1	Jagadish Vital	998590	2.85%
2	Akash Jagadish Vital	451000	1.29%
3	Anita Srinivasabhatt Kadanthalai	297000	0.85%
4	K Rajagopal	998000	2.85%
5	S Rajaganesh	997000	2.84%
6	Bafna S R	996000	2.84%
7	Chhaya Umeshchandra Trivedi	997500	2.85%
8	Meenaben Natubhai Thakkar	995000	2.84%
9	Mitesh Kanaiyalal Thakkar	997000	2.84%
10	Mukeshbhai Shantilal Thakkar	996000	2.84%
11	Mulchand Ganeshmal Jain	998000	2.85%
12	Natubhai Shantilal Thakkar	997000	2.84%

Sl. No.	Name	No. of shares allotted	% to total share capital post allotment
13	Navinchandra Kanubhai Thakkar	995000	2.84%
14	Suresh Nenmalji Malvi	997000	2.84%
15	Vaishali Natvarlal Thakkar	998500	2.85%
16	Vinod Jain	997000	2.84%
17	Dharmendra Rikhavchand Shah HUF	1045000	2.98%
18	Kanubhai Narandas Thakkar	997000	2.84%
19	Himanshu Prafulchandra Shah	995000	2.84%
20	Kaliyaben Himansu Shah	995000	2.84%
21	Alakaben Kirtibhai Shah	996000	2.84%
22	Karan Kirtibhai Shah	995000	2.84%
23	Keval Kirtikumar Shah	997500	2.85%
24	Kirtikumar Rasiklal Shah	995000	2.84%
25	Vinit Kamleshkumar Shah	994500	2.84%
26	Minaben Prafulbhai Shah	994000	2.84%
27	Himadri Kamleshbhai Shah	996000	2.84%
28	Pruthvi Himanshu Shah	996000	2.84%
29	Nila Rajeshkumar Shah	995000	2.84%
30	Mahavirsingh N Chauhan	1253410	3.58%
31	Maheshchandra Chunilal Shah	1050000	3.00%
Total of preferential allotment		3,00,00,000	85.57%
Total shareholding of company after preferential allotment		3,50,57,200	100%

- (c) The company had allotted 3 crore shares through preferential allotment to 31 entities on March 13, 2012. After stock split in ratio 1:10 in November 2012, these 3 crore shares became 30 crore shares.
- (d) Upon analysis of the KYC documents of the preferential issue allottees and bank statements, investigation revealed that the preferential allottees are connected. The connection between the preferential allottees are as under

Table - 4

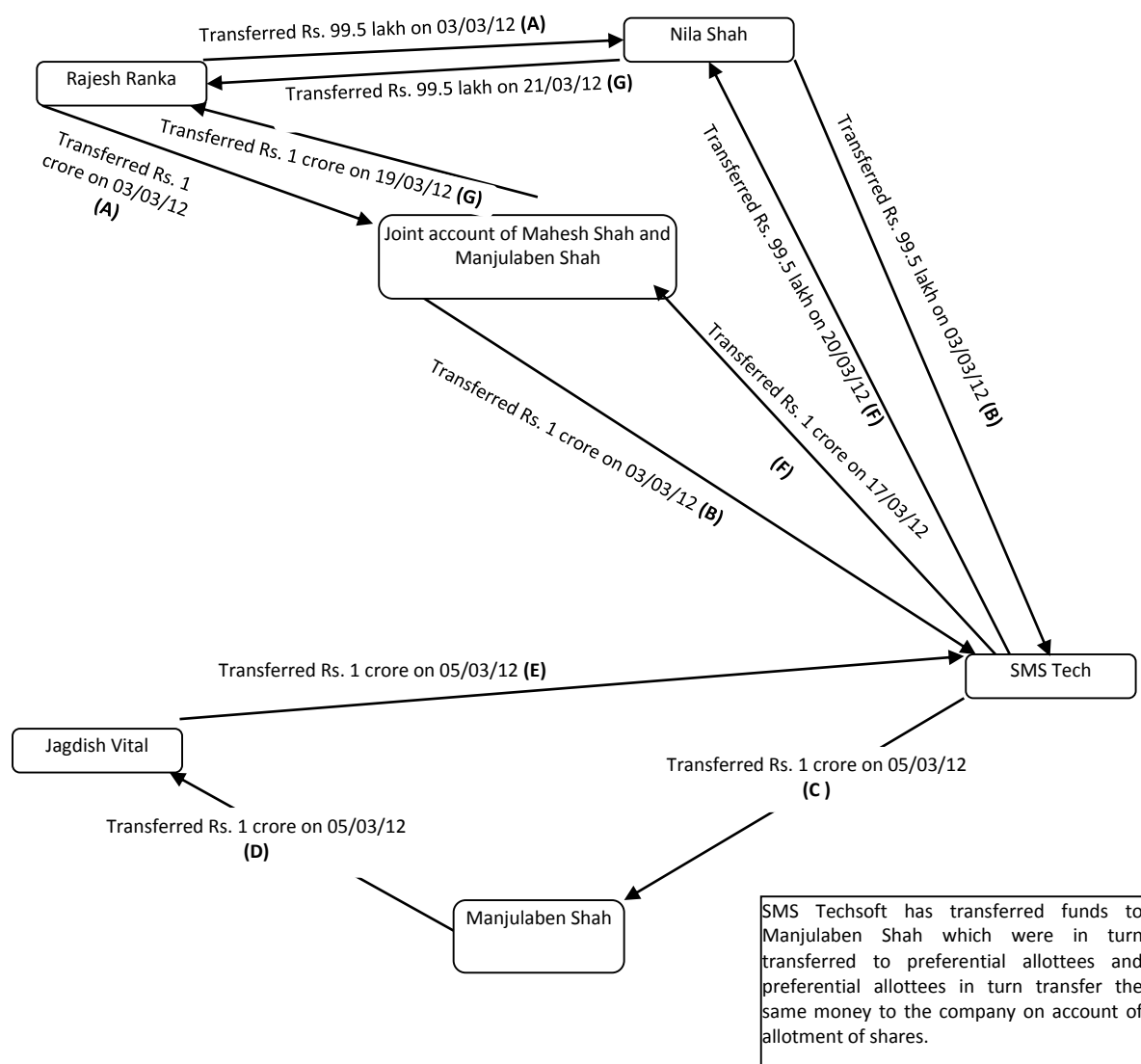
Sl.No	Name of entity	PAN no.	Basis of relationship
1	Alka K Shah	CPAPS2335R	(i) As per KYCs submitted by member Monarch Research and Brokerage Pvt. Ltd. (for entities from Sr. no. 1 to 23)
2	Himadri K Shah	AZYP5654H	

Sl.No	Name of entity	PAN no.	Basis of relationship
3	Himanshu P Shah	ANEPS9445A	and by member Krone research & \Brokerage (P) Ltd. (for entities at S. No. 24 and 25) and by member Master Capital Services Ltd. (for entity at S. No. 26), entities at S. No. 1 to 26, they all shared one common mobile no. i.e. 9825032074 which was in the name of Rajesh Ranka. (ii) As per the KYC of the company submitted by ING Vysya Bank, Mr. Rajesh Ranka is its authorized signatory. (iii) As per KYCs submitted by their broker Monarch Research and Brokerage Pvt. Ltd., entities from Sr. no. 1 to 21 share common email id i.e. rajranka8@yahoo.com with Rajesh Ranka and had also made Mr. Rajesh Ranka as their nominee while opening trading account with broker the Monarch Research and Brokerage Pvt. Ltd. (iv) As per KYCs submitted by their broker Monarch Research and Brokerage Pvt. Ltd., entities at Sr. no. 1, 4, 5, 19 share common address i.e. 12, Ratnadip Soc, Naroda, Ahmedabad. (v) As per KYCs submitted by their broker Monarch Research and Brokerage Pvt. Ltd., entities at Sr. no. 3, 11, 18, 21 share common address i.e. 10, Saritkunj Soc, Shahpur, Ahmedabad. (vi) As per KYCs submitted by their broker Monarch Research and Brokerage Pvt. Ltd., entities at Sr. no. 2, 14 share common address i.e. 2299, Moti Polei, Kadiya Naka, Dariapur, Ahmedabad. (vii) Entities at Sr.no.16 and 25 received funds from Mr. Rajesh Ranka . (viii) As per KYCs submitted by their broker Monarch Research and Brokerage Pvt. Ltd. and Krone Research & Brokerage (P) Ltd, entities at Sr. no. 22, 24 share common address i.e. A 103, Anmol Tower, Shahibaug, Ahmedabad
4	Karan K Shah	BQYPS0082D	
5	Keval K Shah	DFNPS6796L	
6	Kanubhai N Thakkar	ADZPT3418R	
7	Mukesh S Thakkar	AJBPT8789M	
8	Mitesh K Thakkar	AHQPT0178H	
9	Mulchand G Jain	ABBPJ6373M	
10	Navin K Thakkar	ADUPT1264A	
11	Pruthvi H Shah	DCAPS6011N	
12	Suresh N Malvi	AKMPM4951C	
13	Vaishali N Thakkar	AMJPT1242N	
14	Vinit K Shah	BOIPS2506E	
15	Natubhai S Thakkar	AHWPT5944R	
16	Nilaben R Shah	BSLPS2675B	
17	Chhayaben U Trivedi	AHDPT3058P	
18	Kaliyaben H Shah	BFQPS1462A	
19	Kirti R Shah	AKQPS8463F	
20	Mahavir N Chauhan	AQOPC6330R	
21	Minaben P Shah	COYPS9153J	
22	Siddhraj Bafna	AFXPB6525P	
23	Meenaben Thakkar	AHWPT5940M	
24	Vinod Jain	AEDPJ4235P	
25	Mahesh C Shah	AIOPS3870Q	
26	K Rajagopal	AGCPR8130L	

Sl.No	Name of entity	PAN no.	Basis of relationship
27	S Raja Ganesh	ALBPR2586E	(ix) As per KYCs submitted by the broker Master Capital Services Ltd., entities at Sr. no. 26 & 27 share common address. i.e. G-13, Orchid Green society, Girdhar, Shahibaug, Ahmedabad. (x) Entity at Sr.no.25 had off market transfers with entity at Sr.no.28.
28	Dharmendra R Shah HUF	AAEHD6246F	
29	Mr. Akash Jagadish Vital	ATYPA8648K	(xi) Entities at Sr. no 29, 30 & 31 are promoters and having same address. Further, there was a movement of funds from bank account of Manjulaben Mahaeshchandra Shah wife of entity at Sr. no. 25 to entities at Sr. no. 29, 30 & 31
30	Mr. Jagadish Vital	ACJPJ5747L	
31	Ms. Anita Srinivasabhatt Kadanthalai	ABUPA2184Q	

- (e) From above Table - 4, it is noted that entities from Sr. 1 to 26 shared common mobile number, i.e., '9825032074' and entities from Sr. 1 to 21 shared common e-mail address, i.e., 'rajranka8@yahoo.com'. The said mobile number and email address belong to Shri Rajesh Mangilal Ranka. It is also noted that that majority of the allottees in the preferential allotment are Ahmedabad based entities. From the above Table -4 it is observed that the said 28 allottees and Shri Rajesh Mangilal Ranka were connected with each other through common email – id, mobile number, addresses, off market transfer etc. Further, entities at Sr. no 29, 30 & 31 are promoters and having same address. There was a movement of funds from bank account of Manjulaben Mahaeshchandra Shah wife of entity at Sr. no. 25, to entities at Sr. no. 29, 30 & 31.
- (f) Upon analysis of the bank account statements of SMS Tech, 31 preferential allottees (mentioned at Table -3 above) and 2 other entities namely Manjulaben C. Shah and Rajesh Ranka, investigation revealed that there were certain bank transactions between SMS Tech, Rajesh Ranka, Manjulaben C Shah and 31 preferential allottees (mentioned at Table -3 above). The diagrammatic representation of one such bank transaction is under:

Diagram – 1



(g) From the aforesaid diagram, following is noted:

(i) The Fund flow are as under:

(A) Mr. Rajesh Ranka (an employee of SMS Tech) transferred Rs. 1,00,00,000 and Rs. 99,50,000 to entities at S. No. 31 [Maheshchandra Chunilal Shah (joint account with Manjulaben Shah)] & 29 (Nila Rajeshkumar Shah) referred at Table-3 above respectively on March 03, 2012.

- (B) On same date i.e. March 03, 2012, these 2 entities have transferred these funds to SMS Tech on account of preferential allotment.
- (C) On March 05, 2012, SMS Tech transferred Rs. 1 crore to one Manjulaben Shah.
- (D) Manjulaben Shah had in turn on same date i.e. March 05, 2012 transferred these Rs. 1 crore to one of the preferential allottee (i.e. Jagdish Vital).
- (E) That preferential allottee (Jagdish Vital) has transferred Rs. 1 crore to SMS Tech on same date i.e. March 05, 2012 on account of preferential allotment.
- (F) This Rs. 1 crore was transferred by SMS Tech to the joint account of Mahaesh Shah and Manjulaben Shah on March 17, 2012.
- (G) Both Maheshchandra Chunilal Shah (joint account with Manjulaben Shah) & Nila Rajeshkumar Shah transferred Rs. 1,00,00,000 and Rs. 99,50,000 respectively back to Rajesh Ranka on March 19, 2012 and March 21, 2012 respectively.
- (ii) By transferring the above mentioned Rs. 1 crore again and again between SMS Tech, Manjulaben Shah and again SMS Tech through a preferential allottee, it was observed that in total, Rs. 28.03 crore were transferred from the Company's bank account no. 673011005933 with ING Vysya Bank to Manjulaben Shah's bank account no. 673010029662 with ING Vysya Bank during the period March 05, 2012 to March 12, 2012 in 29 different transactions. During the same period, Manjulaben C Shah directly transferred Rs. 18.69 crore to 20 preferential allottees (mentioned at S. No. 1, 2, 3, 8 to 15, 18, 19, 21 to 25, 27, 28 referred at Table – 3 above) and these 20 preferential allottees have transferred Rs. 18.68 crore to SMS Tech. Further, Manjulaben Shah also transferred Rs. 9.27 crore directly to SMS Tech (for the consideration amount of other 9 preferential allottees).
- (iii) Thus, the investigation revealed that for the payment of shares to be allotted in preferential allotment, the fund movement started from Mr. Rajesh Ranka and thereafter, Ms. Manjulaben C Shah was used as an intermediary to transfer funds between SMS Tech and preferential allottees in a repeating

loop. Further, the outflow of funds from Mr. Rajesh Ranka on March 03, 2012 was returned back to him on March 19, 2012 and March 21, 2012.

- (h) Thus, it is alleged that SMS Tech had allotted 3,00,00,000 shares to 31 preferential allottees (including 3 promoters) without any actual consideration amount received by SMS Tech.
- (i) During the investigation period, the price of the scrip moved up from Rs. 0.60 on March 13, 2013 to Rs. 0.71 on May 20, 2013. Thereafter, the price of the scrip declined gradually to Rs. 0.45 on August 13, 2013 and then the price declined steeply to Rs. 0.09 on November 05, 2013. The preferential allotment was done on March 13, 2012 and the lock-in period for trading by preferential allottees expired on March 12, 2013. It was observed that the volume of the scrip increased substantially after the expiry of the lock-in period and preferential allottees started offloading the shares in the market.
- (j) The investigation further revealed that the following 23 entities have traded in the market during the investigation period. The trading details of the group entities are as follows:

Table - 5

S. No.	Name of entities	Gross Buy	% Of Gross Buy To M. V.	Gross Sell	% Of Gross Sell to M.V.	Net
1	Alkabab K Shah			9960000	2.05%	-9960000
2	Dharmendra Rikhavchand Shah HUF	70276	0.01%	2500	0.00%	67776
3	Himadri Kamleshbhai Shah			9960000	2.05%	-9960000
4	Himanshu Prafulchandra Shah			9950000	2.05%	-9950000
5	Kaliyaben Himansu Shah			9950000	2.05%	-9950000
6	Kanubhai Narandas Thakkar			9970000	2.05%	-9970000
7	Karan Kirtibhai Shah	50000	0.01%	10000000	2.06%	-9950000
8	Keval Kirtikumar Shah			9975000	2.05%	-9975000
9	Kirtikumar R Shah			9950000	2.05%	-9950000
10	Mahavirsingh N Chauhan	155724	0.03%	12714322	2.62%	-12558598
11	Maheshchandra Chunilal Shah	146786744	30.22%	157275248	32.38%	-10488504
12	Meenaben N Thakkar			9950000	2.05%	-9950000
13	Minaben Prafulbhai Shah			9940000	2.05%	-9940000
14	Mitesh Kanaiyalal Thakkar			9970000	2.05%	-9970000
15	Mukeshbhai Shantilal Thakkar			9960000	2.05%	-9960000
16	Mulchand Ganeshmal Jain			9980000	2.05%	-9980000
17	Natubhai Shantilal Thakkar			9970000	2.05%	-9970000
18	Navinchandra K Thakkar			9950000	2.05%	-9950000

S. No.	Name of entities	Gross Buy	% Of Gross Buy To M. V.	Gross Sell	% Of Gross Sell to M.V.	Net
19	Nila Rajeshkumar Shah			9950000	2.05%	-9950000
20	Pruthvi Himanshu Shah			9960000	2.05%	-9960000
21	Suresh Nenmalji Malvi			9970000	2.05%	-9970000
22	Vaishali Natvarlal Thakkar			9985000	2.06%	-9985000
23	Vinit Kamleshkumar Shah			9945000	2.05%	-9945000
	Total Traded Volume of Group	147062744	30.28%	369237070	76.02%	-222174326
	Total Market Volume	485727122		485727122		

As mentioned above, the lock-in period, with regard to the equity shares allotted to the 31 group entities under the purported preferential allotment on March 13, 2012, expired on March 12, 2013. Just after the expiry of lock-in period, the preferential allottees started offloading their shares in the market and the daily average volume of the scrip increased from 33,956 shares between December 13, 2012 and March 12, 2013 to 30,16,939 shares between March 13, 2013 and November 05, 2013.

From the above Table-5, it is clear that out of 30,00,00,000 shares (3 crore shares allotted in preferential allotment sub divided in ratio of 1:10 on November 02, 2012 becomes 30 crore shares), the preferential allottees have offloaded 22.21 crore shares in the market from March 13, 2013 to November 05, 2013.

(k) Details of top 10 buy broker and sell broker concentration on BSE during investigation period is tabulated as below:

Table - 6

Name of Buy Broker	Quantity	% to M.V.	Name of Sell Broker	Quantity	% to M.V.
ASE Capital Markets Ltd.	249018958	51.27%	Monarch research & brokerage Pvt.ltd.	212161135	43.68%
ICICI Securities Ltd.	38996340	8.03%	ASE Capital Markets Ltd.	173462082	35.71%
Vibrant Securities Pvt. Ltd.	19230775	3.96%	Vibrant securities pvt.ltd.	19230785	3.96%
Sharekhan Ltd.	15396575	3.17%	Amit Sahita finance Pvt.Ltd.	11250946	2.32%
Amit Sahita Finance Pvt. Ltd.	11278357	2.32%	ICICI Securities Ltd.	8944534	1.84%
P.C.S Securities Ltd.	11205300	2.31%	R.Wadiwala Sec. Pvt .Ltd.	5267612	1.08%
Kotak Securities Ltd.	8325353	1.71%	Sharekhan Ltd.	5073917	1.04%

Name of Buy Broker	Quantity	% to M.V.	Name of Sell Broker	Quantity	% to M.V.
India Infoline Ltd.	6726144	1.38%	Kotak Securities Ltd.	3298726	0.68%
R.Wadiwala Sec. Pvt. Ltd.	6273486	1.29%	India Infoline Ltd.	2923875	0.60%
Religare Securities Ltd.	5397063	1.11%	Axis Securities Limited	2441330	0.50%
Top 10 buy brokers	371848351	76.55%	Top 10 sell brokers	444054942	91.42%
Remaining brokers	113878771	23.45%	Remaining brokers	41672180	8.58%
Grand Total	485727122	100.00%	Grand Total	485727122	100.00%

The top 10 trading members contributed 76.55% and 91.42% of the gross purchase and gross sales respectively. The broker ASE Capital Markets Ltd was the highest contributor to gross buy and gross sell with 51.27% and 35.71% of total market quantity.

- (l) Details of top 10 buy clients and sell clients concentration on BSE during investigation period is tabulated as below:

Table - 7

Name of Buy Client	Quantity	% to M.V.	Name of Sell Client	Quantity	% to M.V.
Maheshchandra C Shah	146786744	30.22%	Maheshchandra C Shah	157275248	32.38%
Aashish Developer	19505060	4.02%	Vibrant Securities Pvt Ltd	13887260	2.86%
Reshma Nimit Shah	17961669	3.70%	Mahavirsingh N Chauhan	12714322	2.62%
Kirit Vinodbhai Vaghela	17899818	3.69%	Amit Sahita Finance Pvt Ltd	11250946	2.32%
Rajvi Jayendrabhai Shah	15867640	3.27%	Karan K Shah	10000000	2.06%
Sagar Rajeshbhai Jhaveri	14474317	2.98%	Vaishali N Thakkar	9985000	2.06%
Vibrant Securities Pvt Ltd	13887257	2.86%	Mulchand G Jain	9980000	2.05%
Shree Bhuvnakaram Tradinvest Pvt Ltd	12000000	2.47%	Keval Kirtikumar Shah	9975000	2.05%
Amit Sahita Finance Pvt Ltd	11253357	2.32%	Kanubhai N Thakkar	9970000	2.05%
Sunil S Dadha	10800000	2.22%	Mitesh K Thakkar	9970000	2.05%
Top 10 buy clients	280435862	57.74%	Top 10 sell clients	255007776	52.50%

Name of Buy Client	Quantity	% to M.V.	Name of Sell Client	Quantity	% to M.V.
Remaining clients	205291260	42.26%	Remaining clients	230719346	47.50%
Grand Total	485727122	100.00%	Grand Total	485727122	100.00%

From the above Table-7, it is observed that out of the top ten entities, one entity at gross buy (comprising 30.22% of market volume) and eight entities at gross sell (comprising 47.32% of market volume) are part of the Noticees.

- (m) The analysis of trade log and order log reveals that, on a daily basis, the group entities (mentioned in Table - 5 above) had traded on 155 days out of 161 trading days during investigation period. It was also observed that the group entities (mentioned in Table - 5 above) were trading amongst themselves and contributing to the total traded volume in the scrip. The gross buy, gross sell and net traded volume of the group entities (mentioned in Table - 5 above) during investigation period is as under:

Table - 8

Market Volume	Total no. of shares bought by the group	Total no. of shares sold by the group	Total traded qty. among the group entities	Traded qty among the group as a % of mkt.vol.	Traded qty among the group as a % of total no. Of shares bought	Traded qty. Among the group as a % of total no. of shares sold
48,57,27,122	14,70,62,744	36,92,37,070	10,51,57,702	21.65%	71.51%	28.48%

- (i) The Group entities bought a gross quantity of 14,70,62,744 shares and sold a gross quantity of 36,92,37,070 shares, which constitute 30.28% and 76.02% of the market volume. Thus, the group entities had altogether sold a net quantity of 22,21,74,326 shares during the Investigation period.
- (ii) The Group entities traded in 10,51,57,702 shares amongst themselves, which constitutes 71.51% of their gross bought quantity, 28.48% of their gross sell quantity and 21.65% of the total market volume.
- (n) After expiry of lock-in period, the preferential allottees have offloaded the shares from March 13, 2013 to November 05, 2013. Details of trades done by the preferential allottees (except Nila R Shah, deceased) during the said period along with

the detail of shares held by them as on November 05, 2013 is shown in Table – 9 below:

Table - 9

S. No.	Name of Entity	Allotted in Preferential Allotment (in no.)	Buy Quantity (in no.)	Buy Value (in Rs.)	Sell Quantity (in no.)	Sell Value (in Rs.)	Remaining shares (in no.)	Profit / (Loss) in Rs.
		A	B	C	D	E	F = A+B-D	G
1	Dharmendra R. Shah HUF	10450000	70276	37087	2500	225	10517776	1014915
2	Jagadish Vital	9985900					9985900	998590
3	K Rajagopal	9980000					9980000	998000
4	Chhaya U. Trivedi	9975000					9975000	997500
5	S Rajaganesh	9970000					9970000	997000
6	Vinod Jain	9970000					9970000	997000
7	Bafna S R	9960000					9960000	996000
8	Akash Jagadish Vital	4510000					4510000	451000
9	Anita S. Kadanthalai	2970000					2970000	297000
10	Maheshchandra C. Shah	10500000	146786744	68723038	157275248	72688332	11496	3966444
11	Vinit Kamleshkumar Shah	9945000			9945000	5643550	0	5643550
12	Keval Kirtikumar Shah	9975000			9975000	5244750	0	5244750
13	Minaben Prafulbhai Shah	9940000			9940000	5154200	0	5154200
14	Suresh Nenmalji Malvi	9970000			9970000	5055950	0	5055950
15	Himanshu P. Shah	9950000			9950000	4755250	0	4755250
16	Pruthvi Himanshu Shah	9960000			9960000	4570200	0	4570200
17	Kaliyaben Himansu Shah	9950000			9950000	4569000	0	4569000

S. No.	Name of Entity	Allotted in Preferential Allotment (in no.)	Buy Quantity (in no.)	Buy Value (in Rs.)	Sell Quantity (in no.)	Sell Value (in Rs.)	Remaining shares (in no.)	Profit / (Loss) in Rs.
		A	B	C	D	E	F = A+B-D	G
18	Mahavirsingh N Chauhan	12534100	155724	76259	12714322	4225969	-24498	4135011
19	Nila Rajeshkumar Shah	9950000			9950000	4013500	0	4013500
20	Himadri Kamleshbhai Shah	9960000			9960000	3976000	0	3976000
21	Mulchand Ganeshmal Jain	9980000			9980000	2415250	0	2415250
22	Karan Kirtibhai Shah	9950000	50000	5500	10000000	1692750	0	1687250
23	Vaishali Natvarlal Thakkar	9985000			9985000	998500	0	998500
24	Kanubhai Narandas Thakkar	9970000			9970000	997000	0	997000
25	Natubhai Shantilal Thakkar	9970000			9970000	997000	0	997000
26	Mitesh Kanaiyalal Thakkar	9970000			9970000	996357	0	996356
27	Alakaben Kirtibhai Shah	9960000			9960000	996000	0	996000
28	Mukeshbhai S. Thakkar	9960000			9960000	996000	0	996000
29	Meenaben Natubhai Thakkar	9950000			9950000	995000	0	995000
30	Navinchandra K. Thakkar	9950000			9950000	995000	0	995000
31	Kirtikumar Rasiklal Shah	9950000			9950000	995000	0	995000
	Total	300000000	147062744	68841884	369237070	132970783	77825674	71899217

Note - Method adopted to calculate unlawful gains under various scenarios is as detailed below:

- (i) When Buy quantity (B) + Allotted in preferential allotment (A) $\geq$ Sell quantity (D), Profits made (G) = Sell Value (E) - Buy value (C) + (Remaining shares (F) * Closing price of last day of investigation period which was Rs. 0.1)
- (ii) When Buy quantity (B) + Allotted in preferential allotment (A) $<$ Sell quantity (D), Profits made (G) = Sell Value (E) - Buy value (C) + (Remaining shares (F) * Opening price of first day of investigation period which was Rs. 0.6)

8. From the above it is alleged in the SCN that SMS Tech had allotted 3,00,00,000 shares to 31 preferential allottees (including 3 promoters) without any actual consideration amount received by SMS Tech. Since consideration amount was not being paid by the allottees during the preferential allotment, the value of shares allotted during preferential allotment ('A' at Table - 9 above) is considered as nil. From the above Table - 9, it can be observed that excluding Nila Rajeshkumar Shah, the preferential allottees have bought 14.7 crore shares amounting to Rs. 6.88 crore and sold 35.92 crore shares amounting to Rs. 12.89 crore during the investigation period. Also, 7.78 crore shares are still held by them (taking the closing price on last day of investigation period as the notional price). The notional profit earned by the preferential allottees (excluding Nila Rajeshkumar Shah) comes out to Rs. 6.79 crore.
9. Thus, it is alleged in the SCN that the Noticees mentioned at Table – 1 at Paragraph - 3 above, while acting together as a group, adopted a fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying transactions as genuine preferential allotment and offloading the shares allotted in the fraudulent preferential allotment in the market thereby earning illegal profits. It is also alleged in the SCN that the preferential allottees have earned profit (including notional profit) to the tune of Rs. 6.79 crore as detailed at Table – 9 and paragraph 8 above. Therefore, it is alleged that the Noticees have violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (b), (c), (d), 4 (1), (2)(a) of PFUTP Regulations.
10. The SCN dated November 15, 2016 was sent to the all Noticees at their last known available address with SEBI and same was delivered except Bafna S R and Vinod Jain. Thereafter, vide notification dated July 08, 2017 published in newspaper *Times of India* and notification dated July 08, 2017 published in newspaper *Sandesh*, Bafna S R and Vinod Jain were notified by SEBI that SCN dated November 15, 2016 has been issued to them in the matter of SMS Techsoft (India) Limited and they are advised to collect the copy of SCN from SEBI, Head Office, Mumbai and submit their reply within 21 days from the date of said publication.
11. All the Noticees except Bafna S R, Vinod Jain, Maheshchandra Chunilal Shah and Manjulaben Maheshchandra Chunilal Shah in their replies have acknowledged the receipt

of delivery of SCN. Further, it is noted that, SCN was delivered to Maheshchandra Chunilal Shah & Manjulaben Maheshchandra Chunilal Shah (proof of delivery is available on record) and to Bafna S R & Vinod Jain through newspaper publication.

REPLY

12. Jagadish Vital, Managing Director of SMS Tech vide letter dated November 22, 2016 stated that they don't know any of the allottees as all the allottees were brought into the preferential issue by Mahesh Chandra Chunnilal Shah Gujarat business head of SMS Tech. They have never met these allottees and much later, they we came to know that Mahesh Chandra Chunnilal Shah has used the allottees PAN cards and ID without their knowledge. The Managing Director of SMS Tech further vide letter dated November 23, 2016 stated that they had acknowledged the receipt of various orders passed by SEBI in the matter and had answered the same. SMS Tech further states that in the preferential allotment, all the share allottees have little or no allotment or have no knowledge of the same directly or indirectly and their documents have been misused by Mr. Mahesh C Shah (Gujarat Business Head). Mr. Mahesh C Shah had opened bogus bank accounts and demat accounts of various entities. SMS Tech as well as preferential holders were not aware of the misuse of bank account and demat account opened in their name by Mr. Mahesh C Shah. Further, SMS Tech takes all responsibility in future and request to kindly stop proceeding against all the share allottees.
13. SMS Tech vide letter dated December 07, 2016 stated that in its earlier correspondence made with SEBI it had already accepted the liability on its own footage and responsibility and the Company undertake whole economical and legal liability thereof. Therefore, SMS Tech request SEBI to kindly entertain the future and present correspondence only with the company as none other director or allottees have been responsible for the same.
14. Jagadish Vital, Managing Director of SMS Tech vide separate letter dated December 07, 2016 stated as under:
“
(a) *The Company had made a preferential allotment of shares in March 2012 to various allottees. The Company was in need of money for its project and hence to arrange*

funds, I requested our companies employee to arrange funds. Accordingly at request of company, Mr. Rajesh Ranka arranged funds of Rs. 1,00,00,000 in the account of Mahesh Shah who in turn transferred funds to the Company. The fund received from Mahesh Shah was rotated time and again and every time shares were allotted to various persons as introduced to the company by said Mahesh Shah. Once again on his request Mr Rajesh Ranka arranged funds and transferred funds to the bank account of Ms. Nila Shah who in turn transferred funds to the Company. The Company allotted shares there against and rotated funds to various persons by allotting shares to them who were introduced by Mr. Mahesh Shah. For the purpose of such financial transaction, Mr. Rajesh Ranka opened separate account and the cheque book of same was to be given to Mr. Mahesh Shah for said purpose.

- (b) After the shares were allotted, and the company being no longer in need of funds, due to failure of proposed project, returned the funds to Mahesh Shah and Nila Shah. They in turn refunded the loan taken from Rajesh Ranka. Thus in this entire episode, Mr. Rajesh Ranka's role was only to the extent of arranging funds and taking same back. How and in what circumstances the company utilized the funds and allotted shares is not the concern of or within knowledge of Mr. Rajesh Ranka. The email id rajranka8@yahoo.com and the mobile no. 9825032074 belong to the Company and not Mr. Rajesh Ranka personally. The same was given to the broker at the instance of Mr. Mahesh Shah and is also not within the personal knowledge of Mr. Rajesh Ranka.*
- (c) Whatever is stated above is true to the best of my knowledge and I am ready to state the same on oath also."*

15. SMS Tech vide letter dated December 12, 2016 submitted that for the fund needs of the Company the same was primarily arranged by Mr. Rajesh Ranka, which was given to Mr. Mahesh Shah and Ms. Nila Shah and by rotating the funds several times from the Bank Account of Mr. Mahesh Shah and Ms. Nila Shah, preferential allotment was made to various persons. SMS Tech further submitted that the Bank Account and Demat Account of these allottees were opened by Mr. Mahesh Shah and after the allotment of shares, when shares were sold, the sale proceeds of the shares was received by Mr. Mahesh Shah. Mr. Mahesh Shah lured certain persons to allow him to open Bank and Demat Account in their name but the same were operated by Mr. Mahesh Shah only and the shareholders are not aware as to what transactions are carried on in their Bank and Demat Account. SMS Tech

further state that the said information is provided only to clarify the matter and clear the doubt in the whole episode of issuance of shares on preferential basis in March, 2012. Neither the shareholders nor Mr. Rajesh Ranka is aware as to what happened after the funds came in possession of Mr. Mahesh Shah and it is between the Company and Mr. Mahesh Shah who have carried out all these transactions regarding allotment and sale of shares.

16. Jagadish Vital, Managing Director of SMS Tech vide affidavit dated December 24, 2016, notarized on December 26, 2016 stated as under:

“With reference to your letter EFD/DRA-1/SPV/AS/31163/2016 DT. 15/11/2016, we submit as under that:

- (a) The an interim order as passed by your esteemed Organization during 5/11/2013 and subsequent passing out of confirmatory order 14/5/2015 (Except Nila Shah) we would like to bring under your kind notice that in earlier communication we agreed to accept the liability by the company as mentioned under the said order which please note.*
- (b) It is pertinent to note that none of the allottees as mentioned under the said letter has been benefited and in receipt of the unlawful gain out of the transfer of funds as arrived under the said letter which please put a serious note of it.*
- (c) However Late Mahesh Shah the former Business head of the company has planned and executed the said transactions and the said transactions virtually not been under the knowledge and information of the allottees as mentioned under the said letter. As Late Mahesh Shah has been responsible in the matter on behalf of the company, the company undertake all the liabilities for the amount under the order. And hence the Company is sole liable to clear out of the liabilities as Late Mahesh Shah has acted on behalf of the company and the Company undertakes the acts does by the direction of the company and transactions as made by Late Mahesh Shah which please note.*
- (d) It is further note that all the amount of transaction been routed back to the Company in Company's account by Mahesh shah through immovable property and software data base resulting out of the placement of the said preferential allotment of the shares covered under the notice and the same are reflected in the Financial statement of the*

company. And therefore none of the allottees responsible for any of the transaction as claimed under your said letter.

- (e) And hence none of the allottee should be held responsible for any wrongful gain out of the said transaction as mentioned by affidavit submitted earlier to SEBI which please consider.*
- (f) And hence kindly grant us the time to make the payment to clear the liability as accepted by the Company under your suggestion and direction to make the payment of the liability under passing out of your order during 2013 and confirmatory order during 2015 and Company crave time to discharge the said liability on account of current economical crisis and crunch as under passed by the nation as a whole so kindly grant us the time to clear the liability by the Company. The Company also agrees to make the payment of the said amount under your order by Post-dated cheques or any other mode of payment as directed by your organization in the interest of law and justice.”*

17. Jagadish Vital, Managing Director of SMS Tech vide email dated June 20, 2017 had submitted the letter dated June 20, 2017. The content of letter dated June 20, 2017 is same as the content of affidavit dated December 24, 2016, notarized on December 26, 2016.
18. One Vishal Valmik Acharya vide letter dated December 10, 2016 had submitted the reply on behalf of Minaben Prafulbhai Shah, Alakaben Kirtibhai Shah, Pruthvi Himanshu Shah, Himadri Kamleshbhai Shah, Himanshu Prafulchandra Shah, Kaliyaben Himansu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Keval Kirtikumar Shah, Kirtikumar Rasiklal Shah (10 entities). The brief of reply is as under:

- (a) They are no way involved in the trading activity relating to SMS Tech.
- (b) They are no way connected to the company, SMS Tech.
- (c) They had no knowledge about the said trading activity right from opening of bank account in Navnirman Bank (Ahmedabad), which has been falsely opened / operated in their name and also opening of bogus demat account and trading account in their name.
- (d) That one Mr. Maheshchandra Chunilal Shah is the mastermind behind the entire issue involved in the present case.

- (e) They have earlier submitted their written arguments in support of the present case which may be treated as a part and parcel of the present reply to avoid repetition of facts.
- (f) Their names in the said preferential shares related to SMS Tech have been wrongly placed on record as they did not had any knowledge about the same.
- (g) They have received a letter dated 23/11/2016 from SMS Tech which has also been addressed to SEBI wherein SMS Tech has also mentioned the name of Mr. Maheshchandra Chunilal Shah, hence, it is necessary that strict action be taken against such entities and not against them who are no way involved in the present activity.

19. Suresh Nermalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar (8 entities) vide separate but identical letters all dated December 16, 2016 had acknowledged the receipt of SCN dated November 15, 2015 and submitted his/her/their reply stating as under:

“

- (a) *I have not been served any order stated to be confirmatory order dt. 07th May 2015 whereby directions issued in ad interim order dt. 5th November 2013 are confirmed. Since such order is not served upon me, I am unable to comment correctness thereof as against me nor I could avail any legal remedy available thereagainst. I, therefore, at the outset request you to keep the proposed proceedings in abeyance till the confirmatory order is served upon me and any legal remedy thereagainst is exhausted.*
- (b) *After passing of the ex-parte ad-interim order, I was afforded personal hearing during which I had submitted that I have not opened any account with broker or demat account. All that I know is that one Mr. Mahesh Shah requested me to allow him to use my name for some share transactions, which I in good faith accepted. However, I have neither applied for any shares and issued any cheque for same nor I have sold any shares and received payment thereof. This fact is evident from the bank account from which such shares are purchased or payment received for sale of said shares. I request you to confirm said fact from the bank accounts of Mr. Mahesh Shah over which I have no control but you in capacity of regulatory authority can call for details and verify at*

your end.

(c) I understand that proposed proceedings are for disgorgement of illgotten gains. Thus, the action can be taken provided I have made any gain in violation of SEBI rules etc. Since I have not received any single rupee from proposed transactions of shares of SMS Techsoft (India) Ltd., I am not liable for any action of disgorgement. You may check from your end whether I have earned any amount in any way and if found that I have not earned any amount, no action can be taken against me. I request you to furnish any evidence showing any amount earned by me before taking any action against me.

(d) I shall be glad if any personal hearing is granted to me after the request for supply of confirmatory order and evidence of earning illgotten gains by me is furnished to me... ”

20. It is noted that separate but identical letters all dated November 23, 2016 from S Rajaganesh, Anita Srinivasa Bhat Kadandhale, Akash Jagadish Vital, PS Devraj, (4 entities) addressed to the Managing Director of SMS Tech have been submitted to SEBI. Vide said letters they had acknowledged the receipt of SCN dated November 15, 2015 and stated that they received a carbon copy (CC) email sent by the SMS Tech to SEBI and they have no idea about said matter and were out of their scope of understanding. They further state that, their letter shall be consider as their personal final hearing confirmation in the proceedings.

21. It is noted that separate but identical letters all dated November 25, 2016 from Jagadish Vital, S Rajaganesh, K Rajagopal addressed to the Managing Director of SMS Tech have been submitted to SEBI. Vide said letters they had acknowledged the receipt of SCN dated November 15, 2015 and stated that they received a carbon copy (CC) email sent by the SMS Tech to SEBI. They also stated that they have no idea about said matter and it seems to them that their IDs were misused by Mr. Mahesh C Shah Business Head, SMS Tech, Gujarat. They further state that, their letter shall be considered as their personal final hearing confirmation in the proceedings.

22. Dharmendra Rikhavchand Shah vide letter dated December 19, 2016 had acknowledged the receipt of SCN dated November 15, 2015 and submitted his reply stating as under:

“

- (a) *I have not received any order in the nature of confirmatory order dt. 07th May 2015 whereby ad interim order dt. 5th November 2013 is confirmed. During said proceedings I had filed reply stating that I have neither applied any shares, nor any payment is made by me for shares of SMS Techsoft. In absence of such order, it is not made out as to what is my fault in entire episode. Even if such order is passed, it is not final as I can file appeal against such order. I therefore request you to wait till outcome of finality to such order.*
- (b) *During the course of earlier proceedings, I had filed my reply as also an affidavit stating that I have neither applied for shares nor paid any amount for purchase of shares of SMS Techsoft. I recollect that one Mr. Mahesh Shah wanted to use my bank account and demat account for some of his transactions since he did not possess one. He requested me to allow limited access for such application. I am not aware as to what transactions are carried out by him and I am not owner of any such shares.*
- (c) *The proposed action is for issuing direction u/s 11B and 11 (4) of SEBI Act including disgorgement of illgotten gains. I understand that the action can be disgorgement can be taken provided I have made any gain in violation of applicable laws. Since I have not earned anything from transaction of shares of SMS Tech, I may not be called upon for disgorgement proceedings. To the best of my knowledge, the shares of said company are still lying in the demat account and are not sold so as to have any earning out of said shares. Copy of my demat accout is attached. I have no objection if said shares are forfeited or seized by you. However, since I have not earned anything from shares of SMS Techsoft, I am not liable for any disgorgement proceedings.*
- (d) *I hope my reply will be found acceptable to you. If you are not satisfied by my reply, I may be called upon personally for further explanations before any order is made against me. Till the confirmatory order is served and attains finality, the present proceedings may be kept in abeyance.”*

23. Rajesh Ranka vide letter dated December 12, 2016 had acknowledged the receipt of SCN dated November 15, 2015 and submitted his reply stating as under:

“

- (a) In para-1 of your said show cause notice, it has been mentioned that an interim order dated 5th November, 2013 was passed by SEBI in the matter of dealing in shares of M/s. SMS Techsoft (India) Ltd. Thereafter, a confirmatory order in this regard dated 7th May, 2015 was passed confirming the direction issued in the interim order. However, till date I am never served with any such order dated 7th May, 2015 confirming the interim ex-parte order dated 5th November, 2013 referred in para -1. Since the confirmatory order is not received by me, I am unable to comment as to what is held therein and what is the violation of SEBI Act and/or Rules or violation done by me in respect of which the action is proposed in the Show Cause Notice dated 15th November, 2016. Till the said order is received by me, I am unable to comment as to whether I am held guilty for any violation or not and consequently whether I am liable for any direction including disgorgement or not.
- (b) I therefore request you to furnish a copy of the confirmatory order passed on 7th May 2015 along with corrigendum to confirmatory order dated 14th May 2015. I reserve my right to file Appeal there against and till then the proposed action of further direction including disgorgement may please be kept in abeyance....”

24. Rajesh Ranka vide letter dated December 24, 2016 stated as under:

“

- (a) I am in receipt of your Show Cause Notice No. EFD/DRA-1/SPV/AS/31251/2016 dated November 15 2016, and subsequent reply given by me on dt.12/12/2016, We would like to inform to you that the copy of your letter dt.07/05/2015 was received by me but due to certain misplaced of the said order in my said reply it was mentioned that the same was not receipted by us as the said mistake was caused on account of death of my wife and mindset upset on account of that reason.
- (b) So kindly pardon us for the mistake of occurred as mentioned above and also to kindly release us from the said liability as the company has already undertaken the responsibility to make out the payment on account of the transactions under your notice and the purporting affidavit is already submitted by us as sworn by the company as submitted to your kind organization.”

25. Dasharthkumar K Khatri vide letter dated nil received by SEBI on December 09, 2016 had submitted his reply in Gujarati language and acknowledge the receipt of SCN dated November 15, 2016. He stated that he did not know anything about the trading of shares in the Company. He knows Mahesh Chunilal Shah but never transacted with the Company at any point of time and everything was done by the Company. Jagadishbhai Vithal, Managing Director of the Company had stated to him that they are not involved in the matter and Company will reply to the said SCN.
26. Mulchand Ganeshmal Jain vide letter dated nil received by SEBI on December 21, 2016 had submitted his reply in Gujarati language and acknowledge the receipt of SCN dated November 15, 2016. He stated that he did not know anything about the trading of shares in the Company. He knows Mahesh Shah for last 10 years and had money transaction for loan purpose only. Mahesh Shah had misused his document. The same was informed to Jagadishbhai Vithal, Managing Director of the Company.
27. Mahavirsingh N Chauhan vide letter dated nil received by SEBI on December 14, 2016 had submitted his reply in Gujarati language and acknowledged the receipt of SCN dated November 15, 2016. He has studied till High School (till 10th class) and he did not know anything about the trading of shares in the Company. He was a car driver of Mahesh Chunilal Shah. He had submitted the copy of PAN card, Ration card, License, Voter ID etc. to Mahesh Chunilal Shah for the purpose of his salary and the said documents were misused by Mahesh Chunilal Shah.
28. Chhaya Umesh Trivedi vide letter dated nil received by SEBI on December 14, 2016 had submitted her reply in Gujarati language and acknowledged the receipt of SCN dated November 15, 2016. She stated that she did not know anything about the trading of shares in the Company. She knows Mahesh Chunilal Shah but never transacted with the Company at any point of time and everything was done by the Company. Jagadishbhai Vithal, Managing Director of the Company had stated to her that they are not involved in the matter and Company will reply to the said SCN.
29. Dilipbhai Jaswantlal Gajjar vide letter dated nil received by SEBI on December 09, 2016 had submitted his reply in Gujarati language and acknowledged the receipt of SCN dated

November 15, 2016. He stated that he did not know anything about the trading of shares in the Company. Mahesh Chunilal Shah had misused his documents. Jagdishbhai Vithal, Managing Director of the Company had stated to him that they are not involved in the matter and Company will reply to the said SCN. He further requested to de-freeze his demat account. Further, Dilipbhai Jaswantlal Gajjar vide letter dated May 20, 2017, stated as under:

“

- (a) That we the Applicant has not gained any amount out of the transaction as alleged to have taken under your correspondence made to you at the first stage of the notice as issued to us along with the 31 allottees and hence we have been wrongfully induced in the aforesaid transaction by late Mr. Mahesh Shah by misuse of our ID which also been notified to you in our earlier communication which please note.*
- (b) I know Mr. Mahesh Shah who was provided my IDS for approval of my car loan and the same was misused by Mr. Mahesh Shah for appointment of my directorship in the said company however I have no connection or any relation with the company in any capacity which please note.*
- (c) The funds applied and used in the alleged transaction, the total amount was brought by Late Mr. Mahesh Shah and routed through Mahesh Shah in the account of the company i.e. SMS TECHSOFT INDIA LIMITED and we have no role to play in the alleged notice and transaction which please also note.*
- (d) The averments made under above para C and D are also noticed to you by Company's Managing director Mr. Jagdish Vital in his affidavit as sworn and provided to you to your organization which please consider and the company has also undertaken the all the liabilities and accountability for the alleged transaction at present and future also by deposit of the PDC with your organization and hence as company has already undertaken the liability to redress the matter the issuance of such frequent notice to us which harass us mentally and physically so please hold the company only as sole responsible for the all the transactions as alleged under your notice.*
- (e) So we request your kind organization to kindly drop proceedings against me in the interest of law and justice.*
- (f) We further intimated by us in our personal appearance before your good organization and replied by purporting affidavit also that my name was wrongly adduced in the*

Board of Directors of the company by misuse of my ID as provided to Mr. Mahesh Shah and hence I am not at all involved in any management and administrative directorship of the said company which please note.

(g) I further reply that I am not holding a single share in my name of the above company till date and I have been wrongfully been induced in the said transaction And despite I been innocent in the matter my demat account also been freezed by your organization without any consideration of the facts which caused a huge loss to me and my family which also please kindly release in the interest of law and justice.”

30. From the documents available on record I find that no reply was received from Maheshchandra Chunilal Shah and Manjulaben Maheshchandra Chunilala Shah.
31. As requested by Dharmendra Rikhavchand Shah HUF vide letter dated December 19, 2016, Mukeshbhai Shantilal Thakkar, Navinchandra Kanubhai Thakkar, Suresh Nemmalji Malvi, Vaishali Natvarlal Thakkar, Kanubhai Narandas Thakkar, Mitesh Kanaiyalal Thakkar, Meenaben Natubhai Thakkar, Natubhai Shantilal Thakkar vide letters dated December 16, 2016, SEBI Vide letter dated August 16, 2017 had forwarded the copy of Confirmatory order dated May 07, 2015 to them.

HEARING AND WRITTEN SUBMISSIONS:

32. In the interest of natural justice, vide notice of hearing dated August 16, 2017 an opportunity of personal hearing was granted to all 36 Noticees before SEBI on September 21, 2017 at SEBI, Head Office, Mumbai.
33. Himanshu Prafulchandra Shah on behalf of himself and on behalf of Alakaben Kirtibhai Shah, Minaben Prafulbhai Shah, Himadri Kamleshbhai Shah, Kaliyaben Himansu Shah, Pruthvi Himanshu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Kirtikumar Rasiklal Shah and Keval Kirtikumar Shah vide letter dated August 21, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and requested for the change of place of hearing from Mumbai to Ahmedabad. Acceding to the request of Himanshu Prafulchandra Shah, Alakaben Kirtibhai Shah, Minaben Prafulbhai Shah,

Himadri Kamleshbhai Shah, Kaliyaben Himansu Shah, Pruthvi Himanshu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Kirtikumar Rasiklal Shah and Keval Kirtikumar Shah, SEBI vide email dated September 08, 2017 informed them that the hearing in the matter is rescheduled to September 20, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.

34. Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar (8 entities) vide separate but identical letters all dated September 01, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that they are neither aware nor involved in any of the transaction carried out by the Company and requested for the change of place of hearing from Mumbai to Ahmedabad. Acceding to the request of Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar, SEBI vide email dated September 13, 2017 informed them that the hearing in the matter is rescheduled to September 21, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference. On September 21, 2017 at Ahmedabad Regional Office of SEBI, Bhruvish Brahmabhatt, Advocate, on behalf of Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar, Kanubhai Narandas Thakkar, Mr. Jagadish Vital and SMS Tech appeared for hearing and requested for the adjournment of hearing, accordingly at the time of hearing, the matter was adjourned to October 12, 2017. SEBI vide notice of hearing dated October 05, 2017 informed Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar, Kanubhai Narandas Thakkar and SMS Tech that the hearing in the matter is rescheduled to October 12, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.
35. Rajesh Ranka vide letter dated August 24, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that he is unable to attend the hearing scheduled on September 21, 2017 at Mumbai due to severe illness of his father and requested for the

change of place of hearing from Mumbai to Ahmedabad. He further stated that in the present matter the Company had already undertaken the liability to make full and final payment in the matter. Acceding to the request of Rajesh Ranka, SEBI vide email dated September 10, 2017 informed him that the hearing in the matter is rescheduled to September 20, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.

36. Dashrathkumar K Khatri vide letter dated September 02, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that he is small person engaged in tailoring job and cannot to afford to attend the hearing at Mumbai Office. Therefore, he requested for the change of place of hearing from Mumbai Office to Ahmedabad Office. Further, Jagadish Vital, Managing Director of SMS Tech, on behalf of Mahavirsingh N Chauhan and Dashrathkumar Keshaji Khatri vide email dated September 12, 2017 stated that Mahavirsingh N Chauhan is a driver by profession and Dashrathkumar Keshaji Khatri is a tailor by profession. Both of them cannot afford to travel to Mumbai and requested for the change of place of hearing from Mumbai to Ahmedabad. Acceding to the request of Mahavirsingh N Chauhan and Dashrathkumar Keshaji Khatri, SEBI vide email dated September 13, 2017 informed them that the hearing in the matter is rescheduled to September 21, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.
37. Dilip J Gajjar vide letter dated September 01, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that he is unable to attend the hearing at Mumbai Office due the death Tithi of his father expired on September 21, 2007. Therefore, he requested for the change of place of hearing from Mumbai Office to Ahmedabad Office. Acceding to the request of Dilip J Gajjar, SEBI vide notice of hearing dated September 13, 2017 informed him that the hearing in the matter is rescheduled to September 21, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.
38. Dharmendra R Shah on behalf of Dharmendra R Shah HUF vide letter dated September 02, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that he is unable to attend the hearing schedule on September 21, 2017 at Mumbai because

his mother is seriously ill and requested for the change of place of hearing from Mumbai to Ahmedabad. Acceding to the request of Dharmendra R Shah HUF, SEBI vide notice of hearing dated September 13, 2017 informed Dharmendra R Shah HUF that the hearing in the matter is rescheduled to September 21, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.

39. Chhaya U Trivedi vide letter dated September 07, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that she is small person working in electricity company and cannot to afford to attend the hearing at Mumbai Office. Therefore, she requested for the change of place of hearing from Mumbai Office to Ahmedabad Office. Chhaya U Trivedi appeared for hearing on September 21, 2017 at Ahmedabad Regional Office of SEBI along with other Noticees whose hearings were scheduled on September 21, 2017.
40. Mulchand G Jain vide letter dated September 07, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that he is unable to attend the hearing at Mumbai and requested for the change of place of hearing from Mumbai to Ahmedabad. Mulchand G Jain appeared for hearing on September 21, 2017 at Ahmedabad Regional Office of SEBI along with other Noticees whose hearings were scheduled on September 21, 2017.
41. SMS Tech on behalf of all the allottees vide email dated August 31, 2017 had requested for the change of place of hearing from Mumbai to Ahmedabad and stated that all the transaction were done by late Mr. Mahesh Shah, Business Head, Gujarat Office and Company had undertaken all payment liability which is affirmed by the affidavit submitted by Company. Further, SMS Tech vide letter dated September 20, 2017 had stated Company's managing director was unable to attend the hearing on behalf of SMS Tech due to his wife's illness, therefore, SMS Tech requested for the adjournment of hearing. Acceding to the request of SMS Tech, SEBI vide notice of hearing dated October 05, 2017 informed SMS Tech that the hearing in the matter is rescheduled to October 12, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.

42. V Jagadish on behalf of himself and on behalf of S RajaGanesh, Vinod Jain, K Rajagopal, Bafna S R, Devaraj Siddhiah Pera Naidu, Akash J Vital and Anita S Kadanthalai vide letter dated September 01, 2017 had acknowledged the receipt of hearing notice dated August 16, 2017 and stated that Company had already undertaken the liabilities on behalf of all 36 allottees under the impugned notice with purporting affidavit submitted to SEBI and take the reply on record & treat the same as personal hearing on behalf of all 36 allottees in accordance with the replies submitted by them before SEBI. However, from their reply it is noted that they had neither sought for adjournment of hearing nor change of place of hearing. Further, S RajaGanesh, Vinod Jain, K Rajagopal and Bafna S R, vide separate but identical letters all dated October 05, 2017 stated that they have no idea on this matter and it's out of their scope of understanding and it seems to them that their IDs were misused by Mr. Mahesh C Shah Business Head, SMS Tech, Gujarat. They further stated that SMS Tech has undertaken the responsibility to resolve the matter with SEBI and their letter shall be consider as their personal final hearing confirmation in the proceedings. Devaraj Siddhiah Pera Naidu and Akash J Vital vide separate but identical letters dated nil received through email dated October 05, 2017 stated that SMS Tech has undertaken the responsibility to resolve the matter with SEBI and their letter shall be considered as their personal final hearing confirmation in the proceedings. Anita S Kadanthalai letter dated nil received through email dated October 05, 2017 stated she has no idea on this matter and it's out of her scope of understanding. She further stated that SMS Tech has undertaken the responsibility to resolve the matter with SEBI and her letter shall be considered as her personal final hearing confirmation in the proceedings.
43. On September 20, 2017, Mr. Viral Acharya, Advocate, Authorized Representative on behalf of Minaben Prafulbhai Shah, Alakaben Kirtibhai Shah, Pruthvi Himanshu Shah, Himadri Kamleshbhai Shah, Himanshu Prafulchandra Shah, Kaliyaben Himansu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Keval Kirtikumar Shah, Kirtikumar Rasiklal Shah (10 Entities) (hereinafter collectively referred to as “**Shah Group**”) had appeared for hearing scheduled at Western Regional Office of SEBI (Ahmedabad) through video conferencing and made oral submissions. The brief points are summarized as under:

(a) Shah Group never met the other entities/group of people involved in the matter.

- (b) *All the members of Shah Group had given the copy of KYC documents (Copy of ID proof, proof of address etc.) to Mr. Himanshu Shah. In 2011-12, Mr. Himanshu Shah had given the said copy of KYC documents of all 10 members of Shah Group to Mr. Dave for opening of Demat account. Mr. Dave and Mr. Himanshu Shah both work in M/s Sarthav Infrastructure Limited. Mr. Himanshu Shah already had a demat account. As there were no charges to open demat account and also to get the shares in IPO, the new demat accounts were opened for all the members of Shah Group. They had received some demat account statements.*
- (c) *All the members of Shah Group had never signed any application form.*
- (d) *All the members of Shah Group had never signed any document/application form to open bank account with Navnirman Co-operative Bank Limited. All the members of Shah Group had never given any document to open bank account. Shah Group had never received any bank statement from the said bank.*
- (e) *After receipt of SEBI's interim order, Shah Group had visited the broker, Monarch Research & brokerage Private Limited and also filed an FIR.*
- (f) *AR had submitted the copy of RTI.*
- (g) *Kaliyaben Himanshu Shah, Pruthvi Himanshu Shah and Nila Shah are advised to submit the affidavits by September 23, 2017 stating whether they had received any demat account statements in the month of May, June & July 2013 or not?*
- (h) *Shah Group /AR are also advised to submit the written submissions in the matter, if any, by September 27, 2017. If Shah Group /AR fail to submit the affidavits and written submissions within the time limit, then the matter would be proceeded further on the basis of documents available on record.*

44. On September 21, 2017, Mr. Dashrathkumar K Khatri, Director, Mr. Dilipbhai Jaswantlal Gajjar, Director, Dharmendra Rikhavchand Shah HUF, allottee and Mr. Mulchand Ganeshmal Jain, allottee, appeared and made oral submissions in this matter.

45. Ms. Chhayaben Umeshchandra Trivedi was provided an opportunity of hearing on October 12, 2017. However, Mr. Yash Trivedi authorized representative on behalf of Ms. Chhaya Umeshchandra Trivedi had appeared for hearing on September 21, 2017 and made oral submissions in the matter.

46. Mr. Rajesh Ranka, employee, was granted an opportunity of personal hearing on September 20, 2017. However, Mr. Rajesh Ranka appeared for hearing on September 21, 2017 and made oral submissions in the matter.
47. On September 21, 2017 Mr. Mahavirsingh Chauhan did not appeared for hearing.
48. On September 21, 2017, Mr. Bhruvish Brahmbhatt, Advocate, Authorized Representative on behalf of Mr. Kanubhai N. Thakkar, Ms. Meenaben Natubhai Thakkar, Mr. Mitesh Kanaiyalal Thakkar, Mr. Mukeshbhai Shantilal Thakkar, Mr. Natubhai Shantilal Thakkar, Mr. Navinchandra Kanubhai Thakkar, Mr. Suresh Nenmalji Malvi, Ms. Vaishali Natvarlal Thakkar, Mr. Jagadish Vital, Managing Director and SMS Techsoft (India) Limited had appeared for hearing and requested for an adjournment of the personal hearing. Accordingly, hearing was adjourned for above said entities on October 12, 2017.
49. Notice of hearing dated August 16, 2017 issued to Maheshchandra Chunilal Shah and Manjulaben Maheshchandra Chunilal Shah has been delivered to them (proof of delivery is available on record). It is noted that Maheshchnadra Chunilal Shah and Manjulaben Maheshchandra Chunilal Shah neither appeared for hearing on September 21, 2017 nor sought any adjournment.
50. SEBI vide notice dated October 10, 2017 had rescheduled the hearing in respect of Mr. Kanubhai N. Thakkar, Ms. Meenaben Natubhai Thakkar, Mr. Mitesh Kanaiyalal Thakkar, Mr. Mukeshbhai Shantilal Thakkar, Mr. Natubhai Shantilal Thakkar, Mr. Navinchandra Kanubhai Thakkar, Mr. Suresh Nenmalji Malvi, Ms. Vaishali Natvarlal Thakkar, and SMS Techsoft (India) Limited to October 13, 2017 at Ahmedabad Regional Office of SEBI through video/tele conference.
51. On October 13, 2017, Mr. Deepak Shah, Authorized Representative on behalf of SMS Techsoft (India) Limited appeared for hearing and made the following oral submission in line with their earlier replies:

(a) "The Company was originally into business of Plastic and Mr. Mahesh Shah, Business head at Ahmedabad, came with a proposal for diversification of business into computer software etc. and proposed preferential allotment for fund raising.

- (b) *Mr. Mahesh Shah contacted all the allottees and did the allotment. We understand that something wrong had happened and in the absence of Mr. Mahesh Shah we are unable to say what had happened but we take the responsibility of the same. We admit that Mr. Mahesh Shah did it for and on behalf of the company. There is no fault of any other accused preferential allottees.*
- (c) *The Company expressed their willingness to pay the illegal profit of approx. Rs.6.79 crores. However, they disputed the calculation of the said amount and as per them, illegal gains are approx. Rs.6.1 crores. AR sought time to repay the same.*
- (d) *The Company was directed to submit the following:*
- i. *Submit the actual amount realized by the company through the impugned preferential allotment and pursuant offloading of shares.*
 - ii. *Details of utilization of money which was offered vide cheque pursuant to the interim order;*
 - iii. *Submit the calculation of illegal profits gained along with documentary proof such as bank statement showing purchase and sale of shares, contract notes, etc.;*
 - iv. *Submit a plan for disgorgement/payment of approx. Rs.6.79 crores;*
- (e) *AR requested time to file detailed written submissions on behalf of SMS Techsoft (India) Limited in the matter. The company was granted time till November 01, 2017 to submit the additional written submissions, if any, in the matter.”*

52. On October 13, 2017, Mr. Bipin Thakkar, Authorized Representative on behalf of Mr. Kanubhai N. Thakkar, Ms. Meenaben Natubhai Thakkar, Mr. Mitesh Kanaiyalal Thakkar, Mr. Mukeshbhai Shantilal Thakkar, Mr. Natubhai Shantilal Thakkar, Mr. Navinchandra Kanubhai Thakkar, Mr. Suresh Nenmalji Malvi, Ms. Vaishali Natvarlal Thakkar appeared for hearing and made the following oral submission in line with their earlier replies:

- (a) *“The entities are all villagers having primary education and meager income and did not know anything mentioned in the SCN.*
- (b) *Mr. Mahesh Shah contacted them regarding personal loan of approx. Rs.2.5 lacs for business purposes and took their PAN card, photos, Election Card as ID. When they received the SCN, they realized the issue.*

- (c) They have received some papers from the bank and the same was given to Mr. Mahesh Shah.
- (d) The entities are directed to submit the following :
- i. Submit the copy of documents given to Mr. Mahesh Shah
 - ii. Submit the personal bank account details including pass book for the period from January 2012 to December 2013.
- (e) The entities have been granted time till November 01, 2017 to submit the abovementioned information”.

Written Submission:

53. Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar vide separate but identical letters all dated September 21, 2017 stated as under:

“

As per show cause notice dt. 15th November 2016, the charge is against me is that I have violated PFUTP regulations of SEBI. As per para 2.3 of the SCN I am connected with other preferential allottee. This is arrived on the basis of the fact that telephone and email id provided to the broker is same as provided by all other preferential allottee. Please note that I have not made any application for allotment of shares. The shares were applied for and payment for same has been made by Mr. Mahesh Shah. Mr Mahesh Shah who has taken my signatures on some documents for personal purposes but not for opening any bank account or account with a broker or a demat account. I have no knowledge of anything done on the basis of signatures obtained from me in good faith. I am not related to any other preferential allottee mentioned in the said SCN. Therefore, merely because the email id or telephone no. is common, there cannot be any connection with other allottees. From the SCN it is clear that the email address and telephone no. shown against me is also of the company SMSTL. No intimation is given to me for application of shares or allotment and sale of shares. The intimation of sale of shares has gone to email address and tel. no of the company only. Therefore I had no occasion to inquire about such transactions. After the shares were applied for and allotted, I have not sold the shares nor received any payment

from the broker. Whatever was done was done by Mr. Mahesh Shah. The payment for shares was made by Mr. Mahesh Shah which is evident from the SCN. The payment for sale of shares has also gone to Mr. Mahesh Shah. Therefore, I can not be said to have earned any illgotten profit on sale of such shares.

Please note that the promoter of said company Mr. Jagdish Vittal has confessed all his wrong doing and also have shown willingness for payment of profit made on sale of shares of SMSTL. The copy of letter addressed by Mr. Vittal is annexed. Thus the violation of PFUTP regulation is done by Mr. Jagdish Vittal in association with Mr. Mahesh Shah. In such a situation, when all the wrong doing is of the promoter in association with Mr. Mahesh Shah, any action against me is not warranted.

I have narrated the correct fact. I request you to absolve me from the charges leveled against me.”

54. Suresh Nemalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar vide separate but identical affidavit all notarized on October 31, 2017 stated that they had provided their KYC to Late Mr. Maheshbhai Shah for availing personal loan by them and the same were misused by Maheshbhai Shah as they are small village person. They are not aware of any other transaction made by Maheshbhai Shah on their behalf.

55. Himanshu Prafulchandra Shah, Alakaben Kirtibhai Shah, Minaben Prafulbhai Shah, Himadri Kamleshbhai Shah, Kaliyaben Himansu Shah, Pruthvi Himanshu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Kirtikumar Rasiklal Shah and Keval Kirtikumar Shah vide common affidavit dated September 22, 2017 (received through letter dated September 25, 2017) stated as under:

“.....

(a) We state that, we are making this Affidavit for limited purpose.

(b) We state that, we have been falsely booked in the case of SMS Techsoft Ltd.

(c) We say that, we have absolutely no knowledge about the any trading activity that took place with one Monarch Research & Brokerage Pvt. Ltd.

- (d) We say that, we do not have knowledge about trading in the stock market. We say that we had only handed over zerox copies of our respective documents to Mr. Himanshu Shah who is all the Deponent of this Affidavit.
- (e) We say that, we have never received any demat statement from Monarch Research & Brokerage Pvt. Ltd.
- (f) We say that if your office has a proof, duly produced by the said Monarch Research & brokerage Pvt. Ltd. Thereby proving the acknowledgement of such statements, we assume that the acknowledgement slips are signed by some other person, and the signatures are forged and not our original signatures.
- (g) We say that after enquires made with CDSL we have been informed that the statements are sent on email as well as by courier to the beneficiary.
- (h) We say that, it is further informed to us that, the demat statements are sent on a quarterly basis if the account does not have any new scripts being bought in that particular quarter.
- (i) We say that in case there is any purchase if new scripts, the holding statements are sent to the beneficiary the next month after the shares are being purchased. We say that we have never received any such statements from Monarch Research & Brokerage Pvt. Ltd.
- (j) We say that, we have not received the delivery instructions book.
- (k) We say that we have never signed any Power of Attorney thereby giving powers to Monarch Research & Brokerage to auto debit the shares from our account.
- (l) We say that the entire story has been cooked up by one Mr. Rajesh Ranka whose mobile number and email id is mentioned in all the KYC forms.
- (m) We say that it is our assumption that incase any acknowledgement slip is provided by Monarch Research & Brokerage the said courier was never sent to us, nor received by us, and the signatures of the receiver has been forged.....”

56. The Managing Director of SMS Tech vide affidavit dated September 26, 2017 stated as under:

“

We most respectfully submit that the 32 entities of the preferential issue have been informed that the company has taken the responsibility to represent the case with Sebi so we request you not to contact them and route all correspondence to Sms Techsoft

India ltd directly the same has also been established by your good office in the initial hearing where you have already interview almost 26+ entities of the preferential issue. Mr Mahesh c shah has routed 2 crores via Mr. rajesh M Ranka bank account and later he Ranka questioned as the latter used to go to his office he informed that since no charges were incurred and ignore the same and also promised to close the account at a later date.

In the same manner he has misused the ids of all the 32 allottees and most were aware of the misuse a few years later after receiving the Sebi letters directly

Mr Ranka informed smstechsoft I Ltd of the misuse and the company warned the then business head of Gujarat Mr. Mahesh c shah that this was illegal and against what the company believed as the motive of the company was to raise funds ethically and be a part of vibrant Gujarat (make in India) as per our beloved PM's vision.....”

57. Dilip J Gajjar vide letter dated September 28, 2017 stated that he is no more the director of SMS Tech. He resigned as the director of the said Company and was not aware of his appointment as director of the said Company. He had not signed any form of appointment or consent under Section 264 of the Companies Act, 1956.

58. The Managing Director of SMS Tech vide affidavit dated October 12, 2017 submitted written submission in the matter, which are as under:

“

(a) We, the Petitioner being engaged in the Business of Software and software based products having registered office situated at Coimbatore - India and make this humble submission that earlier also we have entered into several communication and correspondence made with your esteemed organization and clarified the facts of the matter from time to time as brought under your kind notice as required at your end in context with the confirmatory order dt. May 14, 2015 as passed confirming the directions issued vide the aforesaid interim order dt. November 18, 2013 against all 37 entities (except Nila R. Shah) which please note.

(b) In reply to your reply of Para No.2.1 of under your investigation and non filing of the standalone financial results for the quarter ending on March- 2012 carries no adverse remarks for the part of the noncompliance of the petitioner company and which may be exonerated in the interest of law and justice.

- (c) It is true in reply of para no.2.2 of your order that company had allotted 3,00,00,000 shares to 31st entities on march-2012 as the company is the loss making company and in order to write off the loss as incurred by the company the company had issued the said allotment of shares on preferential basis and carries no other adverse motive which please note.
- (d) As averred under your para 2.3 of the order it is mentioned that KYC of 28 entities were provided to Late Mr. Mahesh shah who misused the same in the name of the all entities as mentioned under your impugned notice. It is also pertinent to note that as KYCS submitted by the various brokerage agencies carries the common mobile No. 9825032074 in the name of Rajesh Ranka it is clarified that the said mobile was provided to Mr. Rajesh Ranka and carried the common usage provided by the company thereof and hence there is no particular matter of suspect to Rajesh Ranka as been the small employee of the petitioner company.
- (e) It is also pertinent to note that in ING Vysya Bank Mr. Rajesh Ranka was authorized signatory for the specific purpose of salary cheques and petty expenses of the company as he was working under Late Mahesh Shah at Gujarat office of the petitioner company.
- (f) It is also to note that common ID under suspect rajranka8@yahoo.com is common for the for sr. no. 1 to 21 is also for the sake of convenience of the investors by the petitioner company and that has no other financial or other nexus with the allottees of Rajesh Ranka as mentioned under the notice.
- (g) In reply to other observation as made by your good office for the purpose of common address is provided for simple communication viability and there is no other purpose of any wrongful act on the part of the allottees.
- (h) In reply to your para No.2.4 of the said order and diagram for the purpose of circulation and cycle of the inflows of funds and return of the funds back to the said entities as alleged against Manjulaben and Rajesh Ranka and further observation carried by you with respect to the transfer of Rs. 1crore and further transfer of Rs.1 crore was managed by Rajesh Ranka was aware only after the transactions took place in the matter and the same was clarified by the MD V JAGADISH in his earlier correspondence and the same was given him back to him and that does not establish any sort of irregularity of the allotment of the shares.

- (i) *In reply to sub para iii. iv and v of 2.5 of the order it is self explanatory that the funds were paid by the allottees and hence there is no violation of any SEBI rules as alleged under the impugned order which please note.*
- (j) *In reply of your para 2.6 and observation as made by your good office that the inflows and outflows of the funds does not establish any wrongful act among the preferential allottees and the company as channel of funds rotation among the company and hence all the operation and the funds rotation was operated and made by late Mahesh Shah -the Gujarat Business Head and the allottees or other agency are not at all responsible for any misact or any omission as alleged under your said Notice.*
- (k) *In reply to Para No. 3 of the notice It is not admitted on our part that the petitioner company had allotted 3,00,00,000 shares to 31 allottees without any consideration in context with the funds rotation diagram as explained by you under para 2.4 of the said notice.*
- (l) *In reply to your Para 4 and 5 it is clarified that the company was to purchase the Land as immovable asset and retaining the funds in the Bank account of Manjulaben Maheshchandra shah as the same was to be managed by Late Maheshbhai shah but the ultimate deal could not be finalized on account of title deficiencies during September-2013.*
- (m) *In reply to para 6 of your notice it is wrongful averments made that as the land deal was not finalized Mrs. Manjulaben Maheshbhai shah jointly operated with Maheshbhai C. Shah had transferred the funds to the preferential allottees as the said transaction was not on the record of your kind office in pursuance with the diagram again under para 2.4 is not established the facts of the with any cogent evidence as shown under the said notice and hence it is not admitted.*
- (n) *In reply to para 7 of the notice it is not admitted to have differed the statements on the part of the V. Jagdish and further funds circulation by Rajesh Ranka for raising of the funds of Rs.2.00 crores for purchase of the land, it is further clarified that all the funds and transfer of funds were managed by Late Mahesh Shah and none other is responsible in the matter which please put a serious note of it.*
- (o) *In reply to Para 8 of the notice it is true that Notices no. 3, 5 and 7 knew Late Mahesh Shah who requested them to become independent directors of the company but had not got signed of any form of Appointment as to be submitted*

with ROC or with any other government office and the said noticees were not aware of their appointment in the petitioner company as the KYCS been misused by Late Mahesh Shah and further it is also to be note that Mr. Dilip Gajjar and Dashrath Khatri after receipt of such show cause notice have resigned as director of the company w.e.f. 28/02/2014 as per the ROC record and he is also no more continuing director or director appointed in accordance with the companies Act,1956 and rules there under which please note

- (p) In reply to Para-9 of the said notice it is not true that Dilip gajjar and Dashrathkumar Keshaji Khatri were among the audit committee and alleged manipulation of annual accounts relating to purchase of land worth Rs.30 crores non utilization of funds of preferential allotment of shares and the same is not admitted on our part. And none of the above independent directors have attended any such meeting of the Board of the directors of the company which please note. But the funds were further utilized for the purpose of the purchase and procurement of the All India data base and marketing software and the same were reflected in the Annual report of the company which please note. And it is also further to note that Dilip Gajjar and Dashrath K. Khatri on personal hearing at your Ahmedabad Office on 21st September, 2017 also refused and rejected the said issue as alleged against them under the impugned notice.*
- (q) In reply to para 10 of the said notice it is further clarified that the emailed as well as mobile nos of Rajesh Ranka were common usage of the company and there is no relationship established among the clients in the scrip of SMSTIL and the said Phone connection belongs to Jagadish which was please note.*
- (r) In reply to Para 11 of the said notice that arrangement of funds of Rs.1,99,50,000/- but the same was not differed as per the reply submitted by him to SEBI on affidavit dt.20/08/2014 and his further statements made before his personal appearance at Ahmedabad office on dt.21/09/2017 which please note and hence there is no question of any contradiction in the matter and the same was brought under your notice by Managing Director of the company with the purporting Affidavit which please note.*
- (s) In reply to Para 12 and 13 of the said notice and subsequent pricing of the scrip under lock in period and subsequent wrongful gain by 23 entities on higher value during March 2013 offloading of shares in the-market and thereby gained*

unlawful profit it is not admitted on the part of the company. As the spurt rise in the price of shares also based upon the market factors and hence company has no role in buying and selling of securities of Petitioner company to play in it but however the company had published effective advertisement for innovative software which please note.

- (t) In reply 14 and 15 of your notice is not within the control and factors of the company and hence the same deserved no role on the part of the company. And all the market business advertisement resulting into fluctuation was done by Mahesh shah on behalf of the bonafide interest of the company.*
- (u) In reply to para 16 of the notice that Maheshchandra C. Shah caries 32.38% of volume of the total shares who misused the KYCS of the 31 entities under your notice and Mahesh shah who was looking after the company shares and operation and he acted upon on behalf of the company which please note. As Mahesh Shah later transferred the said funds into the company as per the Affidavit submitted by the company with SEBI.*
- (v) In reply to Para 17 of the notice it is clarified that the volume and the percentage as mentioned under the para is true but the said transactions were entered into by Late Mahesh Shah on behalf of other eight entities under the notice and other eight entities have no role for any such offloading of shares and wrongful gain out of the said transaction which please put a serious note of it.*
- (w) In reply to Para 18 of the notice the company does not recognize any such group or their trading in the market however the said para does not stipulate or specify any such name of any group as classification of group mechanism is not under the knowledge of the company.*
- (x) In reply to Para 19 of the notice mentioning that offloading of shares by 31 allottees after lock in period and gain out of the said transactions as mentioned under the impugned notice, the said transactions were done by Late Mahesh shah who misused the KYCS of all the 31 entities and hence the same was admitted by the company under their reply on various dates with the purporting affidavit with your office which please note.*
- (y) In reply to para 20 of the said notice it is not admitted that the preferential allotment was made without consideration by the company, however the company has accepted the liability on behalf of preferential allottees except Nila R. Shah*

and the company had undertaken the responsibilities on the part of all the preferential allottees except Nila R. Shah and also undertook to pay out the sum of Rs.6.79 crore and the company had also issued the Post dated cheque in favor of SEBI but the same was returned by SEBI, However the company undertake and agree to make the payment of such unlawful gain on settlement value as to be paid by the company as all the omission and misacts were done by Late Mahesh Shah who acted on behalf of the company and responsible for any such illegal profit and the same were affirmed by company in their earlier correspondence with SEBI.

- (z) In reply to para 21 of your notice that company does not recognize group namely Rajesh Ranka and others and violation of SEBI RULES for the unfair Trade Practice conducted by them but the same was further clarified that such misact and omission was done by Late Mahesh Shah on behalf of the company and the company has undertaken to pay the amount of illegal profit as averred under your notice and hence none of the preferential allottees been responsible in the matter and hence the company accepted the total liability of the transactions as done by Late Mahesh shah acting on behalf of the company by misuse of the KYCS of all preferential allottees and independent directors as alleged under the said notice.*

Therefore the Petitioner company humble prayer in the matter are as under that

- (i) To kindly hold the company alone as responsible for all the transactions and dealing as done by Late Mahesh Shah -the Gujarat Office Head of the petitioner company by misuse of KYCS of all preferential allottees.*
- (ii) To kindly acquit all the preferential allottees from the matter as they had not done any wrongful act in the matter and they neither gained any illegal profit out of the said transactions without any conditions.*
- (iii) To kindly consider the earlier Affidavits and replies as given by the company to SEBI in the matter accepting and holding the sole Company as responsible and liable in the matter as none of the preferential allottees or any independent directors, and Employees of the company is directly or indirectly involved in the aforesaid transactions or gained any illegal profits out of the said transactions which please put a serious note it.*

- (iv) To kindly consider the plea on the part of the company for any sort of penalty or compensation on exonerate grounds in the interest of survival and future of the company.
- (v) To kindly consider and safe guard the interest of the other 32000 investors of the company and also to safe guard the economical and future prospects of the company so as not to shatter, the trust and confidence of other thousands of the investors.
- (vi) To kindly allow the company for the rectification of their mistakes and omissions as committed by their Late Gujarat Head -Maheshbhai Shah and to kindly allow the company for their future prospective and stock market operations in future.
- (vii) To kindly also penalize the company only on relaxation grounds in order to grow in future market with the imposition of the minimum volume of penalty and compensation for any violation of SEBI rules and acts.
- (viii) To kindly consider the copies of the earlier correspondence as submitted along with the submission by the company for acceptance of the liability of the breach and violation of the SEBI rules and laws in the interest of law and justice.
- (ix) To kindly consider the financial arrangement as made by Rajesh Ranka, the employee of company as commercial one and not the personal capacity and no such shares were allotted to Rajesh Ranka or independent director Dilip J. Gajjar and hence kindly acquit all other-preferential allottees as covered under the impugned notice without any penal provision in the interest of law and justice.
- (x) To kindly exonerate the group factors based on email id or common mobile numbers been mentioned and commonly used for the purpose of the transactions as all the acts and misacts were done by Late Mahesh Shah - the Gujarat Office Head by misuse of KYCS as provided by the preferential allottees, independent directors and employees for the purpose of the financial borrowings from him or for a short financial assistance and the same were misused by Late Mahesh Shah for the purpose of the alleged transactions under the impugned notice.
- (xi) To kindly consider the all earlier correspondence as submitted by the company with SEBI from the period of the interim order during the year 2013 to till date for making out the total compliance in the matter and to settle the issue on amicable and positive manner in the interest of law and justice.

(xii) *To kindly pass an appropriate order holding the sole company as responsible in the matter and also request your kind organization to enter into the correspondence in the matter in future only with the company and not to any of the preferential allottees, independent directors or employee of the company as none of them is direct or indirect involved or would have gained any sort of illegal profit out of the aforesaid transactions. To kindly acquit the all other preferential allottees, independent directors, employee of the company in the matter without any further proceedings under the law.”*

59. The Managing Director of SMS Tech vide further affidavit dated October 17, 2017 stated as under:

“

(a) *Our Company was originally incorporated for carrying of business in Plastic taps. We had our office in Gujarat -Ahmedabad also. In view of the rising demand for computer software and related products, the Company decided to venture into the same. The venture required huge funds. The issue was discussed with our Head of the Business at Gujarat Mr. Mahesh C. Shah. According to the proposal suggested by Mr. Mahesh C. Shah, the company decided to raise share capital via preferential issue. Mr. Mahesh C. Shah was assigned to do needful for the same. Accordingly, Mr. Mahesh C. Shah raised a loan of Rs.2 crores which was deposited in the Bank Account of Mr. Rajesh Ranka, another employee of our company. On the instruction of Mr. Mahesh C. Shah, the fund was transferred in the account of Mr. Mahesh C. Shah jointly with Smt. Manjula Shah and Smt. Nila Shah. The cheque book of the said Bank account of the company was with Mr. Mahesh C. Shah. He informed the Company that amount is received from share applicants to whom share needs to be allotted, which was allotted accordingly.*

(b) *SEBI has found that there is no actual inflow of fund but only routing of the amount of temporary loan which was arranged through the Bank account of Mr. Rajesh Ranka. Though the instructions of the Company to Mr. Mahesh C. Shah to do the things legally, yet without the knowledge of the Company or its Directors, Mr. Mahesh C. Shah routed the funds in such a way which in paper shows the amount received but actually it was not received. Now it also transpires that even the alleged shareholders, who are allotted any preferential allotments are also not aware about the transfer of funds in*

their account or allotment of shares to them in their Demat Account. The papers collected from such preferential allottee were for different purposes and same is utilized for opening bank and demat accounts in name of such preferential allottee. They have not even signed bank or demat account opening forms. The said bank and demat accounts are found to be opened by Mr Mahesh Shah. In case of some of the preferential allottees, shares are sold at nominal price of 7-8 paise approximately. The amount received on sale of shares of approximately 6 crores was paid by Mr. Mahesh C. Shah for acquiring All India Mobile Data Base and Business marketing software. The same is also appearing in the accounts of the company.

- (c) We therefore state that said Mahesh C. Shah was solely responsible for all these acts of commission and omissions and was not authorized to do the same in illegal way. Neither Mr. Rajesh Ranka nor any of the preferential allottees have any knowledge or the design or devise adopted by Mr. Mahesh C. Shah and they are made a scapegoat by obtaining their KYC documents fraudulently and utilizing the same for an illegal purpose.*
- (d) We have no issue with the observations made in the show cause notice but we reiterate that the whole Scheme of obtaining documents from preferential allottees, opening their bank accounts, opening their Demat Accounts, allotment of shares and sale of shares was devised by Mr. Mahesh C. Shah which is not within the knowledge of the company. Even Mr. Rajesh Ranka is not aware as to how the funds deposited in his account and later on withdrawn from such Bank account was routed. On the objection of Mr. Rajesh Ranka, Mr. Mahesh C. Shah has promised to reverse the entries, which was done accordingly. Narrating the above facts, we had also filed an Affidavit on earlier occasions to which we stick to. We are attaching the Affidavit filed earlier to demonstrate that we have honest intention and we do not want to drag into any litigation.*
- (e) The financial position of the Company as on date is very precarious due to stoppage of all business activities. At present no funds are available. On earlier occasion we had shown our willingness to pay the amount of Rs.6.01 crore (rounded off) and a cheque was also issued from Bank account of the Company. However, the same was returned by you and were advised to open an Escrow account. At that point of time, we were to borrow a sum and make good the payment to you. However, since the cheque was not accepted the fund was not arranged. The exact payment plans will be worked out and*

will be intimated to you in due course of time. So far as present notice is concerned, we reiterate that since the scheme was devised by Mr. Mahesh C. Shah who was an employee of our company, we undertake not to deal in shares or securities and also approach security market for any fund raising.

(f) We therefore request you to absolve Mr. Rajesh Ranka and all other preferential allottees from any action proposed against them pursuant to the impugned notice. The amount so realized on sale of shares will be computed and a proposal will be also placed before you as to how we propose to pay back the same to you.”

60. Mahavir Singh N Chauhan (hereinafter referred to as “**Mahavir**”) filed an appeal challenging the ex-parte interim order dated November 05, 2013. Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”) vide order dated June 14, 2018 held that:

“

2. In view of the statement made by Counsel for SEBI that final order would be passed shortly, Counsel for the Appellant does not press the appeal and requests that the final order be passed after considering the representation that the appellant would like to make.

3. Accordingly, appeal is allowed to be withdrawn with liberty to the appellant to make a representation to SEBI within one week from today. If such representation is made, SEBI shall consider the representation and pass appropriate order within four weeks from the date of receiving the representation from the appellant.

..... ”

61. Mahavir vide letter dated June 20, 2018 which is received by SEBI on June 21, 2018 has submitted his representation in the matter stating as under:

“

(a) An ex-parte interim order was passed by WTM on 05-11-2013 in respect of 38 entities in the above referred matter. A confirmatory order was also passed on 07-05-2015. As per the order, the entities named therein including me was restrained from accessing the securities market and prohibited from buying selling the

shares. The order also directed the company and all persons to deposit ill-gotten gain of Rs. 6 crores (rounded off) in a escrow account.

- (b) Here it is pertinent to mention that I was nowhere involved in the entire scheme of issuing the shares and selling the same in the market. I am a poor person and is a driver by profession. I was in need of money to buy some second-hand vehicle to run it on hire. One Mr. Mahesh Shah approached me and lured me to give my documents like PAN card and residential proof for arranging loan funds. In good faith I gave it to him. Without my knowledge, and without any application duly signed by me, he got some shares of SMSTL allotted to me. When I brought to his notice such facts, he asked me not to worry as I was assured that I will not be affected by it. Ultimately the above referred orders were also passed. By the time the said confirmatory order was passed, Mr. Mahesh Shah expired. When it was shown to his representative, they once again assured that since the company is following up the matter with SEBI, I have no reason to worry.
- (c) The company SMSTL agreed that the entire device created to issue shares and selling the same was the brain child of its manager Mr. Mahesh Shah and accordingly agreed to pay the same by sending a cheque for the stated amount. In view of the above, I was under a bonafide belief that the direction is not to be followed by me and the company has undertaken the entire responsibility. The correspondence in this regard is attached. Thus it is clear that I was in no way involved with such alleged illegal activities by SMSTL.
- (d) Now that the Adjudicating officer of SEBI by its notice dt.10th March 2017 has proposed as to why penalty should not be imposed for not following the direction contained in the final order passed by WTM. The Dy. G.M. enforcement department of SEBI has proposed by its notice dt. 15th November 2016 as to why suitable direction be not issued u/s 11B and 11 (4) of SEBI Act be not jointly and severally against all the entities involved therein including me.
- (e) I submit that I am in no way connected with any other entities named in the above referred notices. I know only and only Mr. Mahesh Shah who, as I described

earlier, has assured me to get me some financial assistance. Therefore, I cannot be held responsible for the transaction of any other person much less about their ill-gotten gains as alleged in the notice. I am neither an agent nor any of the representatives of any other entity. Therefore, I cannot be held guilty for the alleged acts of others or to pay for them. As such joint and several liabilities cannot be fastened upon me. At the most I can be held responsible for any action on my part. But since I have not done any transaction of my own like applying for shares of SMSTL or selling the same and receiving any consideration, I cannot be visited with any action.

- (f) Without prejudice to above, if you think that I am liable for any violation under the Act, I may be let off with bare minimum penalty of around 1-2 lacs which if imposed, I promise to pay immediately. I also state that I will pay the penalty if my demat account is defreezed and I am allowed to sale the shares lying in my demat account other than of SMSTL.
- (g) Without prejudice to above, I also state that the actual profit arrived at by you against my name in the notice by enforcement department is not correct. Even if you consider the cost of acquisition of shares of SMSTL to be nil, the net consideration is much less. After the amount was paid in my bank account by the broker, substantial sum is paid back to the representative of the company. Thus the net consideration in my hand will be absolutely negligible. Thus justifies my bonafides about not doing anything wrong. Still to buy peace of mind and further litigation, I am willing to cooperate and pay the minimum penalty payable by me.
- (h) I request for a personal hearing before any adverse order is passed against me. The correspondence by the company SMSTL admitting the guilt and their willingness to pay the amount ordered is attached herewith.

.....”

62. Pursuant to the request of Mahavir, an opportunity of hearing was granted to him to appear before undersigned on June 28, 2018 at SEBI Head office, Mumbai. Mr. Deepak R Shah, Advocate, Authorized Representative (AR) on behalf of Mahavir had appeared for hearing

scheduled on June 28, 2018 at SEBI, Head Office, Mumbai and made oral submissions in line of replies available of record. Authorized Representative stated as under:

“

- (a) *That AR reiterated the submission dated June 20, 2018 made by Mahavir.*
- (b) *That there are no direct or indirect connections between Mahavir and all other preferential allottees. The connection established in the order was on the basis of common email id and phone/mobile number which belong to one Mr. Rajesh Ranka, an employee of SMS. The same email id and mobile/phone number is also mentioned on the letter head of SMS, thus, the email id and mobile/phone number is of SMS and not of Mahavir.*
- (c) *That Mahavir is driver by profession and his gross annual income is merely Rs. 2.5 Lakhs.*
- (d) *That Mahavir knows Mr. Mahesh Chandra Shah and Mahavir had lent his name & identity to Mahesh Chandra Shah. AR also stated that Mahavir had not signed any application form.*
- (e) *From the correspondence of SMS, it may be noted that SMS has accepted that alleged scheme/wrongdoing mentioned in the interim order was done by it and allottees namely Mahavir & others were not involved in the whole scheme/wrongdoing.*
- (f) *That Mahavir is not liable for joint and several liability. If any violation of SEBI Act and rules and regulations made thereunder is established against Mahavir, he should be individually liable to the extent of his profit only. AR requested one week time to submit the computation of profit made by Mahavir...*

.....”

63. Mahavir vide letter dated July 05, 2018 received through email dated July 10, 2018 from Mr. Deepak R Shah, AR, submitted as under:

“

- (a) *At the outset I reiterate the submissions made earlier at the time of personal hearing.*

- (b) *I further submit that I have not done anything wrong. Mr. Mahesh Shah lured me to give my personal documents to arrange loan for me for purchasing second hand vehicle to be run on hire, which is my main occupation. However, he misused the same and without my infusing any sum allotted me the shares of SMS Techsoft India Ltd (SMSTIL for short). The name of the company was later changed to AKL Software. When I informed him about the same, he asked me not to worry as the company is responsible for same and not me personally. He thereafter asked me to sell the shares and also asked me to refund the sum received on sale which I did. This facts of wrong doing is also admitted by the company and its managing director in various correspondences which I have supplied during personal hearing.*
- (c) *I also submit that except knowing Mr. Mahesh Shah, I do not know any else person who are stated to be allotted any shares in the company. I may know Mr. Mahesh Shah, and so many other persons may also know Mr. Mahesh Shah or the company directors, but that alone does not make me known to all other persons. Therefore, I submit that I cannot be held responsible for the acts done by others. I therefore cannot be held guilty as such joint and several liabilities cannot be fastened upon me.*
- (d) *I submit that as per account of the broker through whom the shares of SMSTIL are sold by me, the net profit as worked out by him is Rs. 27,65,953.48. The copy of said account from the broker is attached herewith. Out of said sum substantial sum is paid back to Mr. Mahesh Shah or his nominees. Therefore, no sum needs to be disgorged from me. Even if any such sum is to be disgorged, the amount retained by me is around Rs. 60-70 thousands only. This fact can be confirmed from the company or Mr. Mahesh Shah.*
- (e) *I therefore be not held guilty under SEBI rules or regulations and be exonerated for which act of kindness, I shall remain grateful to you.*

.....”

64. I note that Dharmendra Rikhavchand Shah (HUF) (hereinafter referred to as “**Dharmendra HUF**”) in continuation of its earlier reply dated December 19, 2016, vide letter dated June 20, 2018 which is received by SEBI on June 21, 2018 has submitted its additional reply in the matter stating as under:

“

- (a) *An ex-parte interim order was passed by WTM on 05-11-2013 in respect of 38 entities in the above referred matter. A confirmatory order was also passed on 07-05-2015. As per the order, the entities named therein including me was restrained from accessing the securities market and prohibited from buying selling the shares. The order also directed the company and all persons to deposit ill-gotten gain of Rs. 6 crores (rounded off) in a escrow account.*
- (b) *Here it is pertinent to mention that I was nowhere involved in the entire scheme of issuing the shares and selling the same in the market. I am a law abiding citizen and have done nothing wrong. I am known to one Mr. Mahesh Shah who once met me at a function. He kept meeting me and assured that some benefit will accrue to me if my details of demat account is shared with him. Without my knowledge, and without any application duly signed by me, he got some shares of SMSTL allotted to me. When I brought to his notice such facts, he asked me not to worry as I was assured that I will not be affected by it. When I asked me to sell the shares and give back the proceeds of shares to him, I refused and asked him that till my name is not removed from SEBI proceedings, I will not sell the shares and not give the proceeds to him. Till date, the shares of SMSTL are lying in my demat account. Ultimately the above referred orders were also passed. By the time the said confirmatory order was passed, Mr. Mahesh Shah expired. When it was shown to his representative, they once again assured that since the company is following up the matter with SEBI, I have no reason to worry.*
- (c) *The company SMSTL agreed that the entire device created to issue shares and selling the same was the brain child of its manager Mr. Mahesh Shah and accordingly agreed to pay the same by sending a cheque for the stated amount. In view of the above, I was under a bonafide belief that the direction is not to be followed by me and the company has undertaken the entire responsibility. The correspondence in this regard is attached. Thus it is clear that I was in no way involved with such alleged illegal activities by SMSTL.*

- (d) Now that the Adjudicating officer of SEBI by its notice dt.10th March 2017 has proposed as to why penalty should not be imposed for not following the direction contained in the final order passed by WTM. The Dy. G.M. enforcement department of SEBI has proposed by its notice dt. 15th November 2016 as to why suitable direction be not issued u/s 11B and 11 (4) of SEBI Act be not jointly and severally against all the entities involved therein including me.
- (e) I submit that I am in no way connected with any other entities named in the above referred notices. I know only and only Mr. Mahesh Shah who, as I described earlier, has just used my name as his benamidar. I have neither applied for shares of SMSTL nor sold the same. Therefore, I cannot be held responsible for the transaction of any other person much less about their ill-gotten gains as alleged in the notice. I am neither an agent nor any of the representatives of any other entity. Therefore, I cannot be held guilty for the alleged acts of others or to pay for them. As such joint and several liabilities cannot be fastened upon me. At the most I can be held responsible for any action on my part. But since I have not done any transaction of my own like applying for shares of SMSTL or selling the same and receiving any consideration, I cannot be visited with any action.
- (f) Without prejudice to above, if you think that I am liable for any violation under the Act, I may be let off with bare minimum penalty of around 1 lacs which if imposed, I promise to pay immediately. I also state that I will pay the penalty if my demat account is defreezed and I am allowed to transact in the securities market and also sale the shares lying in my demat account other than of SMSTL.
- (g) Without prejudice to above, I also state that I have not sold any shares of SMSTL and therefore earning any ill-gotten gains does not arise at all. Thus justifies my bonafides about not doing anything wrong. Still to buy peace of mind and further litigation, I am willing to cooperate and pay the minimum penalty payable by me.
- (h) I request for a personal hearing before any adverse order is passed against me. The correspondence by the company SMSTL admitting the guilt and their willingness to pay the amount ordered is attached herewith.

.....”

65. I note that Dharmendra HUF vide letter dated June 20, 2018 had once again requested for personal hearing. However, from the documents available on record, I find that Dharmendra HUF appeared for hearing on September 21, 2017 and made its oral submissions. Therefore, I note that sufficient opportunity of hearing has been granted to Dharmendra HUF to present its case.

FINDINGS & CONSIDERATIONS

66. I have perused the SCN, replies, written submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

- (i) *Whether the Noticees have violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(b), 3(c), 3(d), 4(1) & 4(2)(a) PFUTP Regulations as alleged in the SCN?*
- (ii) *If issue No. 1 is determined in affirmative, then what directions should be issued against the Noticees?*

67. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI ACT, 1992 and PFUTP Regulations, which read as under:

SEBI Act, 1992

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

Section 12A: No person shall directly or indirectly

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

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

PFUTP Regulations

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly

- (a);
- (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 there under;
- (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 there under.

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;

ISSUE No. 1- Whether the Noticees have violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(b), 3(c), 3(d), 4(1) & 4(2)(a) PFUTP Regulations as alleged in the SCN?

68. **Issue No. 1(a):** *Whether on March 13, 2012 SMS Tech had allotted 3,00,00,000 shares on preferential basis to 31 entities at a price of Rs. 10 per share and thereafter the shares were sub divided into 1:10 on November 2, 2012 leading to creation of 30 crore shares.*
69. From the SCN, it is noted that the period of investigation was from March 13, 2013 to November 05, 2013. I find from the investigation report that on March 13, 2012 SMS Tech had allotted 3,00,00,000 shares on preferential basis to 31 entities at a price of Rs. 10 per share. Details of preferential allottees with the number of shares allotted are mentioned at Table-3 on page 6 & 7. I note that the names of the preferential allottees including 3 promoters as mentioned in the investigation report are not under dispute. Further, after stock split in ratio 1:10 in November 2012, these 3 crore shares became 30 crore shares. I also note that the Managing Director of SMS Tech had admitted that the Company had made the preferential allotment of shares in March 2012 to various allottees. Thus, I conclude that on March 13, 2012 SMS Tech had allotted 3,00,00,000 shares on preferential basis to 31 entities, thereafter, the shares were sub divided into 1:10 in November 2012 leading to creation of 30 crore shares.
70. **Issue No. 1(b):** *Whether all the noticees are connected.*
71. I find from Table – 4 on page 7 & 8 the 31 entities (preferential allottees mentioned at Table-3 on page 6 & 7) Rajesh Ranka, Manjulaben Shah and SMS Tech are connected through KYC documents of the preferential issue and bank statements i.e. through common mobile number, common address, common email id, fund movement, off market transfer etc. However no such connection is found in case of Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar.
72. Mahavirsingh N Chauhan, Meenaben Natubhai Thakkar, Mitesh K Thakkar, Mukesh Shantilal Thakkar, Natubhai Shantilal Thakkar, Navinchandra Kanubhai Thakkar, Suresh Nemalji Malvi, Vaishali N Thakkar, and Kanubhai Narandas Thakkar in their replies have stated that common email id and common mobile number cannot be the basis of any connection with other allottees and the said email id & mobile number belongs to the Company and not to them, therefore, they are not related to any other preferential allottees

mentioned in the SCN. In this regard, I note that the Hon'ble SAT has, in many cases such as *Classic Credit Ltd. vs. SEBI* (SAT Appeal no. 68/2003, Order dated December 8, 2006), *Classic Credit Ltd. vs. SEBI* (SAT Appeal no. 76/ 2003, Order dated January 9, 2007) and *Veronica Financial Services Ltd. vs. SEBI* (SAT Order dated August 24, 2012), held that connection/relations can be established on the basis of factors like relationship, common addresses, e-mails, telephone numbers, fund transfer, etc.

73. Mahavir also contented that except knowing Mr. Mahesh Shah, he does not know any other person who are stated to be allotted any shares in the company. He stated that he may know Mr. Mahesh Shah and so many other persons may also know Mr. Mahesh Shah or the company directors, but that alone does not make him known to all other persons.
74. I am of the view that it is not necessary in a large fraud that the participants should know the entire gamut of fraud and should know or be connected with every participant in the larger scheme of fraud. Hence I do not find any merit in the said contention and in view of the facts and circumstances, I find that 31 entities (preferential allottees mentioned at Table-3 on page 6 & 7) Rajesh Ranka, Manjulaben Shah and SMS Tech are connected to each other.
75. **Issue No. 1(c):** *Whether the preferential allotment made to 31 entities was without consideration.*
76. Upon analysis of the bank account statements of SMS Tech, 31 preferential allottees (mentioned at Table -3 on page 6 & 7) and 2 other entities namely Manjulaben C. Shah and Rajesh Ranka, it is noted that there were certain bank transactions between SMS Tech, Rajesh Ranka, Manjulaben C Shah and 31 preferential allottees (mentioned at Table -3 above).
77. From the bank account statement analysis and diagram 1 on page 10 above, following is noted:
- (i) The Fund flow are as under:
- (A) Mr. Rajesh Ranka (an employee of SMS Tech) transferred Rs. 1,00,00,000 and Rs. 99,50,000 to entities at S. No. 31 [Maheshchandra Chunilal Shah (joint

account with Manjulaben Shah)] & 29 (Nila Rajeshkumar Shah) referred at Table-3 above respectively on March 03, 2012.

- (B) On same date i.e. March 03, 2012, these 2 entities have transferred these funds to SMS Tech on account of preferential allotment.
- (C) On March 05, 2012, SMS Tech transferred Rs. 1 crore to one Manjulaben Shah.
- (D) Manjulaben Shah had in turn on same date i.e. March 05, 2012 transferred these Rs. 1 crore to one of the preferential allottee (i.e. Jagdish Vital).
- (E) That preferential allottee (Jagdish Vital) has transferred Rs. 1 crore to SMS Tech on same date i.e. March 05, 2012 on account of preferential allotment.
- (F) This Rs. 1 crore was transferred by SMS Tech to the joint account of Mahaesh Shah and Manjulaben Shah on March 17, 2012.
- (G) Both Maheshchandra Chunilal Shah (joint account with Manjulaben Shah) & Nila Rajeshkumar Shah transferred Rs. 1,00,00,000 and Rs. 99,50,000 respectively back to Rajesh Ranka on March 19, 2012 and March 21, 2012 respectively.

(ii) Further, details of funds transfers are tabulated below:

Table - 10

Date	Fund movement	Amount in Rs.
March 03, 2012	Rajesh Ranka Transferred to Nila R Shah	99,50,000
March 03, 2012	Nila Shah Transferred to SMS Tech	99,50,000
March 03, 2012	Rajesh Ranka Transferred to joint account of Mahesh C Shah & Manjulaben	1,00,00,000
March 03, 2012	Mahesh C Shah transferred to SMS Tech	1,00,00,000
March 05, 2012	SMS Tech transferred to Manjulaben	45,10,000
March 05, 2012	Manjulaben transferred to Akash Jagdish	45,10,000
March 05, 2012	Akash Jagdish transferred to SMS tech	45,10,000
March 05, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 05, 2012	Manjulaben transferred to Vital Jagdish	1,00,00,000
March 05, 2012	Vital Jagdish transferred to SMS Tech	1,00,00,000

Date	Fund movement	Amount in Rs.
March 09, 2012	SMS Tech transferred to Manjulaben	99,60,000
March 09, 2012	Manjulaben transferred to Pruthvi Shah	99,60,000
March 09, 2012	Pruthvi Shah transferred to SMS tech	99,60,000
March 09, 2012	SMS Tech transferred to Manjulaben	99,70,000
March 09, 2012	Manjulaben transferred to Mitesh K Thakkar	99,70,000
March 09, 2012	Mitesh K Thakkar transferred to SMS tech	99,70,000
March 09, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 09, 2012	Manjulaben transferred to N K Thakkar	1,00,00,000
March 09, 2012	N K Thakkar transferred to SMS Tech	99,45,000
March 09, 2012	SMS Tech transferred to Manjulaben	99,45,000
March 09, 2012	Manjulaben transferred to Vinit K Shah	99,45,000
March 09, 2012	Vinit K Shah transferred to SMS tech	99,45,000
March 09, 2012	SMS Tech transferred to Manjulaben	99,85,000
March 09, 2012	Manjulaben transferred to Keval Kirtikumar Shah	99,75,000
March 09, 2012	Keval Kirtikumar Shah transferred to SMS Tech	99,75,000
March 09, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 09, 2012	Manjulaben transferred to Vaishali N Thakkar	99,85,000
March 09, 2012	Vaishali Thakkar transferred to SMS Tech	99,85,000
March 09, 2012	SMS Tech transferred to Manjulaben	99,60,000
March 09, 2012	Manjulaben transferred to Alkaben Shah	99,60,000
March 09, 2012	Alkaben Shah transferred to SMS Tech	99,60,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Himadri K Shah	99,60,000
March 10, 2012	Himadri K Shah transferred to SMS Tech	99,60,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Himanshu P Shah	99,50,000
March 10, 2012	Himanshu P Shah transferred to SMS Tech	99,50,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000

Date	Fund movement	Amount in Rs.
March 10, 2012	Manjulaben transferred to Mulchand G Jain	99,80,000
March 10, 2012	Mulchand G Jain transferred to SMS Tech	99,80,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Thakkar Kaneeyalal Narandas	99,70,000
March 10, 2012	Thakkar Kaneeyalal Narandas transferred to SMS Tech	99,70,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Thakkar N S	99,70,000
March 10, 2012	Thakkar N S transferred to SMS Tech	99,70,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Kirtikumar R Shah	99,50,000
March 10, 2012	Kirtikumar R Shah transferred to SMS Tech	99,50,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben Transferred to Mukesh S Thakkar	99,60,000
March 10, 2012	Mukesh S Thakkar transferred to SMS tech	99,60,000
March 10, 2012	SMS Tech transferred to Manjulaben	99,50,000
March 10, 2012	Manjulaben transferred to Karan Shah	99,50,000
March 10, 2012	Karan Shah transferred to SMS Tech	99,50,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Suresh N Malvi	99,70,000
March 10, 2012	Suresh Malvi transferred to SMS Tech	99,70,000
March 10, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 10, 2012	Manjulaben transferred to Meenaben N Thakkar	99,40,000
March 10, 2012	Meenaben N Thakkar transferred to SMS Tech	99,40,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,80,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,70,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000

Date	Fund movement	Amount in Rs.
March 12, 2012	Manjulaben transferred to SMS Tech	99,70,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,50,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,75,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	1,04,50,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,30,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	1,25,34,100
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,60,000
March 12, 2012	SMS Tech transferred to Manjulaben	1,00,00,000
March 12, 2012	Manjulaben transferred to SMS Tech	99,50,000
March 12, 2012	SMS Tech transferred to Manjulaben	30,00,000
March 12, 2012	Manjulaben transferred to Anitha K Jagdish	30,00,000
March 12, 2012	Anitha K Jagdish transferred to SMS Tech	29,70,000
March 17, 2012	SMS Tech transferred to Mahesh C Shah	1,00,00,000
March 19, 2012	Mahesh C. Shah transferred to Rajesh Ranka	1,00,00,000
March 20, 2012	SMS Techsoft (India) Ltd Transferred to Nila R Shah	99,50,000
March 21, 2012	Nila R Shah transferred to Rajesh Ranka	99,50,000

(iii) From (i) above I note that in effect Jagdish Vital (preferential allottee) was allotted preferential shares against funds which originate from SMS Tech itself, albeit layered through Manjulaben Shah's bank account. Thus, I find that Jagdish Vital was allotted preferential shares without consideration.

(iv) Similarly by transferring the above mentioned Rs. 1 crore again and again between SMS Tech, Manjulaben Shah and again SMS Tech through different preferential allottee, it was observed that in total, Rs. 28.03 crore were transferred from the Company's bank account no. 673011005933 with ING Vysya Bank to Manjulaben Shah's bank account no. 673010029662 with ING Vysya Bank during the period March 05, 2012 to March 12, 2012 in 29 different transactions. During the same

period, Manjulaben C Shah directly transferred Rs. 18.69 crore to 20 preferential allottees (mentioned at S. No. 1, 2, 3, 8 to 15, 18, 19, 21 to 25, 27, 28 referred at Table – 3 above) and these 20 preferential allottees have transferred Rs. 18.68 crore to SMS Tech. Thus, I conclude that for all 20 preferential allottees mentioned at S. No. 1, 2, 3, 8 to 15, 18, 19, 21 to 25, 27, 28 referred at Table – 3 above, preferential shares were allotted without consideration.

(v) Further, I note that on March 12, 2012 Manjulaben Shah transferred Rs. 9.27 crore in 9 different instances directly to SMS Tech for the consideration amount of 9 preferential allottees and SMS Tech cycled it back to Manjulaben Shah as depicted in Table-10 above. Thus, I conclude that for all 9 preferential allottees mentioned at S. No. 4,5,6,7,16,17,20, 26 and 30 referred at Table – 3 above, preferential shares were allotted without consideration.

(vi) Further, I also note that on March 03, 2012 Mahesh C Shah and Nila R Shah had transferred Rs. 1,00,00,000 and Rs. 99,50,000 respectively to SMS Tech and SMS Tech cycled it back Rs. 1,00,00,000 to Mahesh C Shah on March 17, 2012 and Rs. 99,50,000 to Nila R Shah on March 20, 2012. Thus, I conclude that for 2 preferential allottees mentioned at S. No. 29 & 31 referred at Table – 3 above, preferential shares were allotted without consideration.

78. The Managing Director of SMS Tech vide letter dated December 07, 2016 had accepted/stated that at the request of company, Mr. Rajesh Ranka arranged funds of Rs. 1,00,00,000 in the account of Mahesh Shah who in turn transferred funds to the Company. The fund received from Mahesh Shah' was rotated time and again and every time shares were allotted to various persons as introduced to the company by said Mahesh Shah. Once again on Mr. Mahesh Shah's request, Mr. Rajesh Ranka arranged funds and transferred funds to the bank account of Ms. Nila Shah who in turn transferred funds to the Company. The Company allotted shares there against and rotated funds to various persons by allotting shares to them who were introduced by Mr. Mahesh Shah. For the purpose of such financial transaction, Mr. Rajesh Ranka opened separate account and the cheque book of same was to be given to Mr. Mahesh Shah for said purpose. The managing director of SMS Tech further stated that after the shares were allotted, and the company being no

longer in need of funds, due to failure of proposed project, returned the funds to Mahesh Shah and Nila Shah. They in turn refunded the loan taken from Rajesh Ranka. Thus in this entire episode, Mr. Rajesh Ranka's role was only to the extent of arranging funds and taking same back. The managing Director of SMS Tech vide letter dated October 12, 2017 stated that all the operation and funds rotation was operated by Late Mahesh Shah and allottees are not at all responsible. In its affidavit, SMS Tech also denied that it had allotted 3,00,00,000 shares to 31 allottees without any consideration.

79. I note that Rajesh Ranka had transefered the funds of approximately Rs. 2 crore to SMS Tech through Nila R Shah and Manjulaben Shah/Mahesh Shah on March 03, 2012, which is cycled back to Rajesh Ranka by SMS Tech through Nila R Shah and Manjulaben Shah/Mahesh Shah on March 19/21, 2012. In reply to it, SMS Tech stated the due to the failure of proposed project, SMS Tech was no longer in need of funds and the loan taken from Rejesh Ranka was transferred back to him through Nila R Shah and Manjulaben Shah/Mahesh Shah. Considering that Managing Director of SMS Tech by his own admission had allowed the preferential allotment of shares to subsist but returned the funds, I am unable to understand that what transpired to SMS Tech that in a span of 15 days' time, SMS Tech has realized that the proposed project had failed and it had decided to return back the funds to Rajesh Ranka. Hence, I do not find any merit in the said contentions.
80. Further, I note that apart from evidence in the form of the bank statements of the Company and bank statements of Mr. Mahesh Shah, Manjulaben C Shah and Mr. Rajesh Ranka, I also note that SMS Tech had accepted that for the payment of shares to be allotted in preferential allotment, the fund movement started from Mr. Rajesh Ranka and thereafter, Ms. Manjulaben C Shah / Mr. Mahesh Shah-was used as an intermediary to transfer funds between SMS Tech and preferential allottees in a repeat loop. Further, the outflow of funds from Mr. Rajesh Ranka on March 03, 2012 was returned back to him on March 19, 2012 and March 21, 2012. The flow of funds between SMS Tech, Manjulaben Shah and preferential allottees shows that actual consideration was not paid by the preferential allottees to the company at all, since the entire consideration money originating from Rajesh Ranka ultimately reached back to him.

81. Further, from the financial statement of SMS Tech for financial year 2011-12, I note that the Company had earned a profit of Rs.1.22 lakhs and for the financial year 2012-13, Rs. 0.55 lakhs. I also note that the market price of shares of SMS Tech at the time of preferential allotment was Rs. 3.73/- per share. Thus, in spite of its unimpressive financials, poor fundamentals and abysmally low market price, the preferential allotment was made at a price (Rs. 10 per share) considerably higher than the prevailing market price.
82. Thus, I conclude that as SMS Tech had actually not received any money from the preferential allottees, therefore, I am of the view that SMS Tech had allotted 3,00,00,000 shares to 31 preferential allottees without any actual consideration amount received by SMS Tech.
83. **Issue No. 1(d):** *Who are the entities having major role in raising the funds and rotating the same for preferential allotments without consideration.*
84. I note that Jagadish Vital, Managing Director of SMS Tech by his own admission had rotated the funds between SMS Tech, Manjulaben Shah and other preferential allottees and allowed the preferential allotment of shares to subsist. Thus, I am of the view that Jagadish Vital being the Managing Director of SMS Tech and also by knowing that funds were rotated (created only book entry) between SMS Tech, Manjulaben Shah and other preferential allottees for the purpose of allotment of preferential shares was involved in the whole process, thereby, responsible for the act of SMS Tech.
85. It is noted that Rajesh Ranka was an authorised signatory of ING Vyasa Bank account of the Company as reflected from the KYC of the Company. Though the affidavit filed by SMS Tech contended that Rajesh Ranka was a small employee and his authority in bank account is to transfer salary. Thus, I am of the view that Rajesh Ranka as authorised signatory of SMS Tech has transferred the funds from the bank account of the company to Manjulaben C Shah who was also holding bank account in ING Vyasa Bank during the period March 05, 2012 to March 12, 2012 in 29 different transactions. Thereby Rs. 28.03 crore in total (rotated funds) were transferred to Manjulaben C Shah from the bank account of SMS Tech. I also note that Rajesh Ranka also transferred Rs. 1 crore from his own bank

account to joint bank account of Maheshchandra Shah & Manjulaben Shah and Rs. 99.5 lakhs to the bank account of Nila R Shah.

86. Further while SMS Tech in its affidavit stated that the e-mail id and the phone number belongs to the company, whereas, Rajesh Ranka himself admitted that the email id and mobile number given in the KYC documents of other Noticees are his own. SMS Tech in its reply further stated that email id and mobile number of Rajesh Ranka were for common usage of the Company and said phone connection belongs to Jagdish Vital. I note that SMS Tech had not submitted any documentary evidence to justify its claim that the said email id and mobile number were of the Company and phone connection belongs to Jagdish Vital. BSE vide its letter dated January 10, 2014 confirmed that the details of the trades were sent to that mobile number. The fact that Rajesh Ranka has not provided any proof that he has taken any further action on receipt of trade details shows that such message was in fact expected by him and on receipt of those messages he has no complaint to make. Therefore, the contention of Rajesh Ranka that he did not know how his e-mail id and mobile number was mentioned in the KYC of other entities cannot be supported. This also belies the contention of SMS Tech in its letter dated December 12, 2016 and December 07, 2016 (by Jagdish) that neither the shareholders nor Mr. Rajesh Ranka is aware as to what happened after the funds came in possession of Mr. Mahesh Shah and it is between the Company and Mr. Mahesh Shah who have carried out all these transactions regarding allotment and sale of shares. This shows that Rajesh Ranka was not only aware of the transactions in shares but also was actively involved in the funds transfer. Thus, the routing of funds were made possible from the Company's accounts by Rajesh Ranka.
87. On the aspect of arranging the funds of Rs. 1.99 crore for the purpose of showing this amount as consideration for the preferential allottees, SMS Tech vide its letter dated December 12, 2016 stated that for the fund needs of the Company the same was primarily arranged by Mr. Rajesh Ranka, which was given to Mr. Mahesh Shah and Ms. Nila Shah and by rotating the funds several times from the Bank Account of Manjulaben Shah wife of Mr. Mahesh Shah, consideration for preferential allotment was seen to be made to various persons. In his letter dated December 07, 2016 Jagdish Vital submitted that for the purpose of such financial transaction, Mr. Rajesh Ranka opened separate account and the cheque book of same was to be given to Mr. Mahesh Shah for said purpose. During

the hearing conducted subsequent to the passing of the ad-interim ex parte order, on January 13, 2014, Mr. Rajesh Ranka had submitted that he had arranged loan of Rs.1,99,50,000 for Mr. Maheshchandra Shah from Jhaveri Trading and Investment Pvt. Ltd. for a few days. However, vide letter August 20, 2014, Rajesh Ranka stated that Mr. Maheshchandra Shah had the cheque book of Rajesh Ranka Nav Nirman Co-operative bank account and Mr. Maheshchandra Shah informed him that an amount worth Rs.1,99,50,000/- has been deposited in his bank account. I find that there are contradictory versions by Rajesh Ranka. However, I note that once the company has returned the preferential offer consideration of Rs. 1 Crore to Mr. Maheshchandra Shah on March 17, 2012, this was further transferred Mr. Rajesh Ranka on March 19, 2012 which was further transferred to Jhaveri Trading and Investment Pvt. Ltd. on March 19, 2012. Thus, it is clear Mr. Rajesh Ranka has acted as the active intermediary in the whole transactions.

88. Coming to the aspect of whether Mahesh Shah and Manjulaben shah are connected to the company and the preferential allotment, I note that Maheshchandra Chunilal Shah who has a joint bank account with Manjulaben shah received in their joint bank account Rs. 1,00,00,000 from Mr. Rajesh Ranka on March 03, 2012 which was subsequently transferred to SMS Tech on account of preferential allotment and thereafter it had been rotated between SMS Tech and other preferential allottees through Manjulaben shah.
89. Thus, I find that Mr. V. Jagadish, Mr. Mahesh Shah, Manjulaben Shah and Mr. Rajesh Ranka are the entities having major role in raising the funds and rotating the same for preferential allotments without consideration.
90. **Issue No. 1(e):** *Whether there was any trade subsequent to the allotment of shares after the lock in period was over for the said shares and whether by virtue of the said trade any profit was made out the transactions.*
91. During the investigation period, it is noted that the price of the scrip moved up from Rs. 0.60 on March 13, 2013 to Rs. 0.71 on May 20, 2013. Thereafter, the price of the scrip declined gradually to Rs. 0.45 on August 13, 2013 and then the price declined steeply to Rs. 0.09 on November 05, 2013. The preferential allotment was done on March 13, 2012 and the lock-in period for trading by preferential allottees expired on March 12, 2013. Just

after the expiry of lock-in period, the preferential allottees started offloading their shares in the market and the daily average volume of the scrip increased from 33,956 shares between December 13, 2012 and March 12, 2013 to 30,16,939 shares between March 13, 2013 and November 05, 2013. Thus, it was observed that the volume of the scrip increased substantially after the expiry of the lock-in period.

92. Upon analysis of top 10 buy clients and sell clients concentration on BSE during investigation period it is noted that out of the top ten entities, one entity at gross buy (comprising 30.22% of market volume) and eight entities at gross sell (comprising 47.32% of market volume) are part of the Noticees. The details of 10 buy clients and sell clients concentration on BSE during investigation period is mentioned at Table – 7 above.
93. During the investigation period, the 23 entities (mentioned at Table -5 above) have traded in the market. The trading details of the 23 entities are mentioned at Table -5 above. The total market volume during investigation period was 48,57,27,122. During the investigation period, these 23 entities have bought 14,70,62,744 shares of SMS Tech (i.e. 30.28% of total market volume) and sold 36,92,37,070 shares of SMS Tech (i.e. 76.02% of total market volume). Thus, the 23 entities had altogether sold a net quantity of 22,21,74,326 shares during the Investigation period. Thus, out of 30,00,00,000 shares (3 crore shares allotted in preferential allotment sub divided in ratio of 1:10 becomes 30 crore shares), the preferential allottees have offloaded 22.21 crore shares in the market from March 13, 2013 to November 05, 2013.
94. Upon analysis of trade log and order log it is noted that, the connected entities mentioned in Table-5 above had traded on 155 days out of 161 trading days during the investigation period. It was also observed that the 23 entities mentioned in Table-5 above were trading amongst themselves and contributing to the total traded volume in the scrip. From the Table – 8 above, I note that the 23 entities traded in 10,51,57,702 shares amongst themselves, which constitutes 71.51% of the gross bought quantity, 28.48% of the gross sell quantity and 21.65% of the total market volume. The gross buy, gross sell and net traded volume of the group entities (mentioned in Table 5 above) during investigation period is mentioned at Table - 8 above.

95. It is noted that after expiry of lock-in period, the preferential allottees have offloaded the shares from March 13, 2013 to November 05, 2013. Details of trades done by the preferential allottees during the said period along with the detail of shares held by them as on November 05, 2013 are mentioned at Table - 9 above. It is also noted that SMS Tech had allotted 3 crore shares (after stock split the said 3 crore shares allotted in preferential allotment sub divided in ratio of 1:10 on November 02, 2012 becomes 30 crore shares) to 31 preferential allottees (including 3 promoters) without any actual consideration amount. As consideration amount was not effectively paid by the allottees during the preferential allotment, the value of shares allotted during preferential allotment is considered as nil. From the above Table-9, it can be observed that excluding Nila Rajeshkumar Shah, the preferential allottees have bought 14.7 crore shares amounting to Rs. 6.88 crore and sold 35.92 crore shares amounting to Rs. 12.89 crore during the investigation period. Also, 7.78 crore shares are still held by them. Therefore, as per Table – 9 above, the profit [including notional profit (taking the closing price on last day of investigation period as the notional price)] earned by the preferential allottees (excluding Nila Rajeshkumar Shah) comes out to Rs. 6.79 crore.
96. Bafna S R, Chhaya Umeshchandra Trivedi, Mulchand Ganeshmal Jain, Vinod Jain, Dasharthkumar K Khatri, Mahavir N Chauhan, Dilipbhai Jaswantlal Gajjar, S RajaGanesh, K Rajagopal, Akash J Vital, Anita S kadanthalai and Dharmendra Rikhavchand Shah HUF, in their reply have stated that they knew Maheshchandra Chunnilal Shah and their KYC documents were misused by him for opening of demat / bank account. They also stated that the Company had taken the liabilities on behalf of all the Noticees mentioned in the SCN.
97. Meenaben Natubhai Thakkar, Mitesh K Thakkar, Mukesh Shantilal Thakkar, Natubhai Shantilal Thakkar, Navinchandra Kanubhai Thakkar, Suresh Nemalji Malvi, Vaishali N Thakkar, and Kanubhai Narandas Thakkar in their replies have stated that their documents and signatures taken in good faith were misused by one Mr. Mahesh Shah for opening of demat and bank account. They further stated that they have not made any application for allotment of shares and Mr. Mahesh Shah was the one who had applied for the preferential allotment and made the payment for the same. Therefore, they do not have any knowledge

of said transactions i.e. allotment of preferential shares and its payment and subsequent sale of shares after lock-in period and receipt of money of said sale.

98. Suresh Nermalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar further submitted that they had provided their KYC to Late Mr. Maheshbhai Shah for availing personal loan by them and the same were misused by Maheshbhai Shah as they are small village person. It was also stated by them in their written submission vide separate but identical letters all dated September 21, 2017 that “.....*I have not made any application for allotment of shares. The shares were applied for and payment for same has been made by Mr. Mahesh Shah. Mr Mahesh Shah who has taken my signatures on some documents for personal purposes but not for opening any bank account or account with a broker or a demat account. I have no knowledge of anything done on the basis of signatures obtained from me in good faith.....No intimation is given to me for application of shares or allotment and sale of shares. The intimation of sale of shares has gone to email address and tel. no of the company only. Therefore I had no occasion to inquire about such transactions. After the shares were applied for and allotted, I have not sold the shares nor received any payment from the broker. Whatever was done was done by Mr. Mahesh Shah. The payment for shares was made by Mr. Mahesh Shah which is evident from the SCN. The payment for sale of shares has also gone to Mr. Mahesh Shah. Therefore, I can not be said to have earned any illgotten profit on sale of such shares.....*”
99. I also note that Suresh Nermalji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar (8 entities) vide separate but identical letters all dated December 16, 2016 stated that “.....*After passing of the ex-parte adinterim order, I was afforded personal hearing during which I had submitted that I have not opened any account with broker or demat account. All that I know is that one Mr. Mahesh Shah requested me to allow him to use my name for some share transactions, which I in good faith accepted. However, I have neither applied for any shares and issued any cheque for same nor I have sold any shares and received*

payment thereof. This fact is evident from the bank account from which such shares are purchased or payment received for sale of said shares.....”

100. During the course of hearing held on October 13, 2017 Suresh Nemaaji Malvi, Natubhai Shantilal Thakkar, Meenaben Natubhai Thakkar, Navinchandra K Thakkar, Vaishali Natubhai Thakkar, Mitesh Kanubhai Thakkar, Mukesh Shantilal Thakkar and Kanubhai Narandas Thakkar were advised to submit the documents given to Mr. Mahesh Shah and personal bank account details including pass book for the period from January 2012 to December 2013. It is noted that vide letter dated November 18, 2017 Natubhai K Thakkar on behalf of aforesaid 8 entities have stated that none of the 8 said entities agrees to provide the identity proof and bank statements for the year 2011-12.

101. Further, I note that, during the course of investigation, Bafna S R, Chhaya Umeshchandra Trivedi, Meenaben Natubhai Thakkar, Mitesh K Thakkar, Mukesh Shantilal Thakkar, Mulchand Ganeshmal Jain, Natubhai Shantilal Thakkar, Navinchandra Kanubhai Thakkar, Suresh Nemaaji Malvi, Vaishali N Thakkar, Vinod Jain, Dharmendra Rikhavchand Shahu HUF and, Kanubhai Narandas Thakkar (13 entities) have submitted the copy of agreement executed between them and Mr. Maheshchandra Shah. As per the said agreement these entities had rented their demat / broking / bank accounts to Mr. Maheshchandra Shah for a sum of Rs. 15,000/- per month.

102. Dharmendra HUF vide letter dated June 20, 2018 stated that he was nowhere involved in the entire scheme of issuing the shares and selling the same in the market. He stated that he knows only Mr. Mahesh Shah and his name was used by Mr. Mahesh Shah as benamidar. He also stated that he had neither applied for the shares of SMS Tech nor sold the same. He further stated that without his knowledge and without signing any application, he received some shares of SMS Tech. He also stated that on informing the receipt of shares to Mr. Mahesh Shah, Mr. Mahesh Shah had asked him to sell the shares and refund the sale proceeds to him, however, he had refused to sell the shares and decided not to give the sale proceeds to Mr. Mahesh Shah and till date the shares of SMS Tech is lying in his demat account.

103. I note that Dharmendra HUF had the knowledge of said transactions i.e. allotment of preferential shares. I also note from Table-9 above that Dharmendra HUF was allotted

with 1,04,50,000 shares and during the investigation period he had bought additional shares of 70,276 shares and sold 2,500 shares of SMS Tech. Thus, I am of the view that he was aware about the allotment of preferential shares and subsequent buy and sell of shares after the expiry of lock-in period. Hence, he is equally responsible for the alleged irregularities in the preferential allotment of shares. Thus, I do not find any merit in the contention of Dharmendra HUF that his name was used as benamidar by Mr. Maheshchandra Shah and he was unaware about the transactions.

104. On perusal of replies of Mahavir dated June 20, 2018 and July 05, 2018 I find that he has stated that his personal documents (KYC) were misused by Mr. Mahesh Shah. He further stated that without his knowledge and without signing any application, he received some shares of SMS Tech. He further stated that on informing the receipt of shares to Mr. Mahesh Shah, Mr. Mahesh Shah had asked him to sell the shares and refund the sale proceeds to him. Admittedly, he has sold the shares on the instruction or request of Mr. Mahesh Shah. Therefore, I note that Mahavir had the knowledge of said transactions i.e. allotment of preferential shares and subsequent sale of shares after lock-in period and receipt of money of said sale.

105. I also note that during the course of hearing proceedings Mahavir had stated that he had lent his name & identity to Mr. Mahesh Chandra Shah. Thus, I am of the view that Mahavir had lent his name & identity and he cannot be absolved from any liability arising out from misuse of his name & identity. Hence, he is equally responsible for the alleged irregularities in the preferential allotment of shares and illegal gains made out from the subsequent sale of said shares after the expiry of lock-in period. Thus, I do not find any merit in the contention of Mahavir that his documents were misused by Mr. Maheshchandra Shah and he was unaware about the transactions.

106. Therefore, I hold that these Noticees including Mahavir and Dharmendra HUF were aware of the fact that their demat account and bank account is going to be used by Mr. Maheshchandra Shah. Having done so, they cannot claim now that they are not responsible for the trades done in their demat account or the transactions done in their bank account. There is no element of good faith in such renting. Thus, I note that renting of demat/broking/bank account is illegal in nature. The very fact that the demat accounts

and bank accounts are lent gives credence to the conclusion that the lenders were put in circumstances of letting them to satisfy the reasons for such renting. Thus, I am of the view that the said entities have lent their name and the fact that they were renting their accounts does not absolve them from any liability arising from misuse of these accounts. Hence, they are equally responsible for the alleged irregularities in the preferential allotment of shares and illegal gains made from the subsequent sale of said shares after the expiry of lock-in period.

107. Minaben Prafulbhai Shah, Alakaben Kirtibhai Shah, Pruthvi Himanshu Shah, Himadri Kamleshbhai Shah, Himanshu Prafulchandra Shah, Kaliyaben Himansu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Keval Kirtikumar Shah, Kirtikumar Rasiklal Shah (10 entities) had submitted that they had not signed any account opening forms of Nav Nirman Co-operative Bank, ING Vysya Bank and DP and broking account with Monarch Research and Broking Private Limited (hereinafter referred to as 'Monarch'). Shah Group had never received any bank statement from the said bank. During the course of hearing, they have admitted that they had given the copies of their KYC documents (PAN card, address proof and photo ID), to their friend, Mr. Dave, with an intention to open a demat account and to get shares in IPO. It was submitted that they had received some demat account statements. They also stated that they were not aware that the fictitious accounts have been opened in their names and trading has taken place. After receipt of SEBI's interim order, Shah Group had visited the broker, Monarch Research & brokerage Private Limited and also filed a criminal complaint with the Commissioner of Police, Ahmedabad.

108. The above mentioned 10 entities in para 107 further submitted in their affidavit dated September 22, 2017 stating that they had absolutely no knowledge about the any trading activity that took place with one Monarch Research & Brokerage Pvt. Ltd. They denied having knowledge about trading in the stock market. Though at the time of personal hearing on September 20, 2017 they stated that they received some demat statements, vide the affidavit they denied having ever received any such statements from Monarch Research & Brokerage Pvt. Ltd.

109. I note that during the investigation vide letter dated November 20, 2013, Minaben Prafulbhai Shah, Alakaben Kirtibhai Shah, Pruthvi Himanshu Shah, Himadri Kamleshbhai Shah, Himanshu Prafulchandra Shah, Kaliyaben Himansu Shah, Vinit Kamleshkumar Shah, Karan Kirtibhai Shah, Keval Kirtikumar Shah, Kirtikumar Rasiklal as well as during the course of hearing admitted that they received demat statement by post but they never opened the said demat statement. I also note that they have admitted that the KYC documents for opening the accounts had been provided by them. I, therefore, find that they were aware that demat account has been opened in their name and is active. Hence, their contentions that they are not aware of such transactions are not tenable. I also find that they have taken action only when they received copies of the interim order. Thus, I do not find any merit in the said contention of the said entities.

110. **Issue No. 1(f):** *Whether there was a misrepresentation in the annual accounts to the effect that the proceeds of the preferential allotment was used for a land deal.*

111. Investigation revealed that vide corporate announcement dated January 18, 2012 SMS Tech had informed BSE that the purpose of preferential allotment of Rs. 30 crores was to generate funds for its diversification, expansion plans, working capital requirements and other corporate purposes. I have already found that the preferential allotment was made without consideration. SMS Tech in its annual report for the Financial year (FY) 2011-12 and 2012-13, under head Fixed Assets had mentioned the land worth Rs. 30 crore (the exact amount of proceeds of preferential allotment) to give the impression that the company has utilized the proceeds of preferential allotment for purchase of land. Therefore, it is clear that the said annual report for the Financial Year (FY) 2011-12 and 2012-13 has made misrepresentation to the effect that Rs. 30 crores was raised by way of preferential allotment and the proceeds of the preferential allotment was used for a land deal.

112. During the course of investigation, SEBI vide letter dated September 06, 2013, had sought certain information from SMS Tech about the utilization of the proceeds of preferential allotment. SMS Tech on September 13, 2013, informed BSE about the termination of the land deal. SMS Tech vide its letter dated September 25, 2013 to SEBI, submitted that SMS Tech executed a tripartite agreement with Mr. Prakash Thakkar (seller of land) and

Mrs. Manjulaben Maheshchandra Shah (arbitrator and intermediary for the deal) according to which the deal amount would be kept in account of Mrs. Manjulaben Maheshchandra Shah and would be transferred to seller on all clearances. SMS Tech further stated that in September 2013 the land deal was terminated due to title deficiencies.

113. I note that SMS Tech had allotted 3 crore shares on preferential basis. After stock split in ratio 1:10 in November 2012, these 3 crore shares became 30 crore shares. I have already found that the preferential allotment was made without consideration i.e. SMS Tech had actually not received any money from the preferential allottees, I also note that Managing Director of SMS Tech by own admission, returned the rotated funds used for preferential allotment proceeds to Rajesh Ranka but allowed the shares to subsist. I note that since the preferential allotment was without consideration, the liability of the Company were overstated to the tune of Rs. 30 crores, in parallel, the fixed asset/land was also overstated by Rs. 30 crores. Thus, I find that SMS Tech had misrepresented its financials for FY 2011-12 and 2012-13.

114. SMS Tech in its reply had stated that during September 2013 the land deal was terminated due to title deficiencies and the funds were utilized for the purpose of purchase and procurement of the all India database and marketing software. Though the company tried to explain that the land deal was terminated, the fact that it has already made a misrepresentation in the annual report about raising Rs. 30 crores in the first place, is not mitigated even if it is assumed that said land deal got terminated. Thus, I do not find any merit in the said contentions of SMS Tech.

115. The SCN has further alleged that the directors, namely, Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar who were also part of audit committee of the Company were aware of the manipulation of annual accounts relating to purported purchase of land worth Rs. 30 crore and relating to non-utilization of proceeds of preferential allotment.

116. SMS Tech vide affidavit dated October 12, 2017 submitted that *“it is not true that Dilip Gajjar and Dashrathkumar Keshaji Khatri were among the audit committee and alleged manipulation of annual accounts relating to purchase of land worth Rs.30 crores and non utilization of funds of preferential allotment of shares and same is not admitted on our*

part. And none of the above independent directors have attended any such meeting of the Board of the directors of the company which please note. But the funds were further utilized for the purpose of the purchase and procurement of the All India data base and marketing software and the same were reflected in the Annual report of the company which please note. And it is also further to note that Dilip Gajjar and Dashrath K Khatri on personal hearing at your Ahmedabad Office on 21st September, 2017 also refused and rejected the said issue as alleged against them...”

117. Dasharthkumar K Khatri vide letter dated nil received by SEBI on December 09, 2016 stated that he did not know anything about the trading of shares in the Company. He knows Mahesh Chunilal Shah but never transacted with the Company at any point of time and everything was done by the Company. He also stated that Jagadishbhai Vithal, Managing Director of the Company had stated to him that they are not involved in the matter and Company will reply to the said SCN.

118. Dilipbhai Jaswantlal Gajjar vide letter dated nil received by SEBI on December 09, 2016 stated that he did not know anything about the trading of shares in the Company. Mahesh Chunilal Shah had misused his documents. Jagadishbhai Vithal, Managing Director of the Company had stated to him that he is not involved in the matter. Dilipbhai Jaswantlal Gajjar further vide letter dated May 20, 2017 stated that he knows Mr. Mahesh Shah who was provided with his ID's for approval of his car loan and his ID's were misused by Mr. Mahesh Shah for appointment of his directorship in the said company. He further stated that he has no connection or any relation with the company in any capacity. He was not involved in the management and administration of SMS Tech. He also stated that he had not signed any form of appointment or consent under Section 264 of the Companies Act, 1956.

119. I observe that during the course of investigation, the directors of SMS Tech, namely, Dashrathkumar Keshaji Khatri, Devaraj Siddiah Pera Naidu and Dilipbhai Jaswantlal Gajjar, submitted that they knew Mr. Maheshchandra Shah, who had approached them and had requested them to become the independent directors of the company without any responsibility and liability. Therefore, the latter defense that IDs of Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar were misutilised could only be considered

as an after thought. Moreover, they have not substantiated their claim of misuse of their claimed submission of IDs to Mr. Maheshchandra Shah. Further I find that Investigation had revealed that from the Annual report of SMS Tech for Financial Year (FY) 2011-12, it is noted that Devaraj Siddiah Pera Naidu and Dilipbhai Jaswantlal Gajjar were members of the Audit committee and they had attended all board meetings. I further observe from the annual report of SMS Tech for FY 2011-12 that Dashrathkumar Keshaji Khatri had also attended all board meetings during the financial year 2011-12. Further, from the Annual report of the company for FY 2012-13, it is observed that Dashrathkumar Keshaji Khatri, and Dilipbhai Jaswantlal Gajjar were members of the Audit committee and all three directors had attended all board meetings during the year 2012-13. It was also mentioned in the annual report of the company for FY 2011-12 and 2012-13 that the scope of audit committee includes review of company's financial statement. Further, as per the annual report of SMS Tech of FY 2011-12, 2012-13. I note that that Dilipbhai Jaswantlal Gajjar Dashrathkumar Keshaji Khatri, Devaraj Siddiah Pera Naidu and Dilipbhai Jaswantlal Gajjar were independent directors of SMS Tech. I also note that SMS Tech in its reply dated October 12, 2017, has stated that as per the ROC record Dilipbhai Jaswantlal Gajjar and Dashrathkumar Keshaji Khatri have resigned as director of the company w.e.f. February 28, 2014.

120. In view of this documentary evidence, I am not able to accept the contentions of the SMS Tech made in the affidavit dated October 12, 2017. Further, it is admitted that Dashrathkumar Keshaji Khatri, Devaraj Siddiah Pera Naidu and Dilipbhai Jaswantlal Gajjar, knew Mr. Maheshchandra Shah, who had approached them and had requested them to become the independent directors of the company without any responsibility and they had accepted the position of Independent directors. Needless to say, after the accepting the position of directorship, no one can be heard to say that there are not responsible as directors.

121. I note that by virtue of accepting the directorship of the company, Dilipbhai Jaswantlal Gajjar Dashrathkumar Keshaji Khatri and Devaraj Siddiah Pera Naidu have also taken the responsibility of the acts and omissions of the Company. A Company though a legal entity cannot act by itself, it can act only through its directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. The Hon'ble

Supreme Court, while describing what is the duty of a director of a company, held in *Official Liquidator v. P. A. Tendolkar* (1973) 1 SCC 602 that:

“...a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially...”

122. In view of the above the directors, namely Mr. Devaraj Siddiah Pera Naidu, Mr. Dilip Gajjar and Mr. Dashrathkumar Khatri, being part of audit committee at various points of the relevant period, the role of audit committee as mentioned in listing agreement merits mention here. As per the listing agreement, the role of Audit committee *inter alia* includes "Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible." In view of these facts, I find that the directors of SMS Techsoft, including the independent directors have failed to perform their above mentioned duties and have allowed the company to fabricate the figures in its Annual Reports and to make wrong disclosures. Thus, the directors of SMS Techsoft cannot escape from the obligation of the board of directors with regard to their fiduciary duties towards SMS Tech and its shareholders. In this regard, the observation of the Hon'ble SAT in the matter of *Mr. N. Narayanan vs SEBI* (order dated October 05, 2012) is worth mentioning:

“With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto.”

123. Thus, in view of the above, I find that the directors, namely, Mr. Devaraj Siddiah Pera Naidu, Mr. Dilip Gajjar and Mr. Dashrathkumar Khatri are responsible for the mis-reporting of financials and appropriate actions need to be taken.

124. **Issue No. 1(q):** *In the event of death of Mr. Maheshchandra Chunnilal Shah, whether current proceeding against Mr. Maheshchandra Chunnilal Shah are liable to abate or not.*

125. During the course of proceeding, I have been informed that Mr. Maheshchandra Chunnilal Shah died on October 02, 2013. The copy of death certificate was submitted. Now the question arises that whether in view of the death of Mr. Maheshchandra Chunnilal Shah, the present proceedings against Mr. Maheshchandra Chunnilal Shah, would continue or abate. On the question of which causes of action survive and which abate the Hon'ble Supreme Court (SC) in *Melepurath Sankunni Ezhuthassan Vs Thekittil Gopalankutty Nair*, (1986 AIR 411) observed as follows:-

“.....So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925, which provides as follows :

306. Demands and rights of action of or against deceased survive to and against executor or administrator. -

All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory....

.....Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse

position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

126. In an earlier judgment in *Girijanandini Vs Bijendra Narain* [1967 SCR (1) 93], Hon’ble Supreme Court observed that “.....*The maxim ‘actio personalis moritur cum persona’ - a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party.....*”.

127. The Hon’ble Supreme Court had another occasion to deal with the meaning of the words “*other personal injuries not causing the death of the party*” in *M. Veerappa Vs Evelyn Sequeira & Ors* (1988 AIR 506). In the said case it made a reference to the Full Bench decision of the Madras High Court in *Rustomji Dorabji v. W.H. Nurse*, (1921) ILR 44 Mad 357 Coutts Trotter, J. wherein speaking for himself and Ayling, J. set out the law as follows.

*“We are therefore driven to the conclusion that the Act must be supposed to have envisaged a logically coherent class of causes of action, and that result can only be achieved by construing ‘personal injuries’ as meaning not ‘injuries to the body’ merely, but injuries to the person in Blackstone’s sense, other than those which either cause death or tangible affect the estate of the deceased injured person or **cause an accretion to the estate of the deceased wrong doer**. In effect, we think that the words which we have to construe are ejusdem generis not merely with the last preceding word ‘assault’, but with the two preceding words ‘defamation’ and ‘assault’”*

In its concluding remarks, the Hon’ble Supreme Court in *M. Veerappa vs Evelyn Sequeira & Ors*, (1988 AIR 506) observed that “.....*Thus it may be seen that there is unanimity of view among many High Courts in the country regarding the interpretation to be given to the words ‘other personal injuries not causing the death of the party’ occurring in Section 306 of the Indian Succession Act and that the contrary view taken by the Calcutta & Rangoon High Courts in the solitary cases referred to above has not commended itself for acceptance to any of the other High Courts. The preponderant view*

taken by several High Courts has found acceptance with this Court in its decision in Melepurath Sankunni Ezhuthassan's case.....”

128. In subsequent case of *Smt. Yallawwa Vs. Smt. Shantavva* on October 08, 1996, (MANU/SC/0016/1997) the Hon’ble Supreme Court endorsed its earlier view and held that “.....*Save and except the personal cause of action which dies with the deceased on the principal of ‘actio personalis moritur cum persona,’ i.e. a personal cause of action dies with the person, **all the rest of causes of action which have impact on proprietary rights** and socio legal status of the parties cannot be said to have died with such a person.....”*

129. Since the consequences of the present violations of fraud has resulted in the unlawful gains and accretions of property and the same becomes the part of the estate of the deceased and also the said unlawful gains are liable to be disgorged, the cause of action for disgorgement of such unlawful gains survives the death of Mr. Maheshchandra Chunnilal Shah. Therefore, I am of the view that the proceedings against Late Mr. Maheshchandra Chunnilal Shah are not liable to be abated and the same survives the death of him.

130. On the same reasoning, the cause of action against Late Ms. Nila R Shah should survive her death. However, I note that the confirmatory order dated May 7, 2015 has observed that the proceedings against Ms. Nila R Shah are liable to be abated on two grounds. Firstly, the violation committed in this case pertains to the period as per the confirmatory order dated May 7, 2015 from March 15, 2012 to October 18, 2013 and Ms. Nila R Shah has died on February 26, 2012 which is before the period of violation, secondly, on the ground that the cause of action against Ms. Nila R Shah was personal in nature. It is true that Ms. Nila R Shah has expired (February 26, 2012) before March 03, 2012 which is the date of first transfer of funds in the whole scheme of fraud and therefore, her question of involvement in the whole scheme does not arise in any case. However, on the point of whether a cause of action which is in the nature of disgorgement would survive on the death of a wrong doer, I have already discussed in detail above.

131. In summary, overall I find that in the present case on March 13, 2012 SMS Tech had allotted 3,00,00,000 shares on preferential basis to 31 entities (including 3 promoters) at

a price of Rs. 10 per share. Further, after stock split in ratio 1:10 in November 2012, these 3 crore shares became 30 crore shares. I also note that all the Noticees are connected with each other through common email-id, mobile number, addresses, fund transfer etc.

132. I note that Shri Rajesh Ranka with active participation of Mr. Jagadish Vital, Mr. Mahesh Shah, circulated funds back and forth between the company and 31 preferential allottees and thereafter, the amounts funded by Shri Rajesh Ranka for the purpose of the purported preferential allotment were ultimately returned to him by the company on March 19/21, 2012 i.e. shortly after preferential allotment. Thus, I find that on account of the repeated circulation of same money between different allottees, the receipt of allotment money for 3,00,00,000 equity shares had been shown merely as book entry. Thus, I am of the view that the SMS Tech issued 3,00,00,000 new equity shares for value of Rs. 30,00,00,000/- in the names of the above mentioned 31 allottees without receipt of any consideration for the shares allotted in the said purported preferential allotment. Thus, the noticees, acting in concert, illegally devised a scheme of preferential allotment without consideration, which resulted in acquisition of 80.59% shares in the company by the preferential allottees and sale of those allotted shares after lock in to reap illegal gains.

133. I further note that company had never utilised any such money purported collected for the purchase of any land as claimed by it and had made false disclosures in its balance sheets for the financial years 2011-12 and 2012-13 suggesting utilization of proceeds of preferential allotment for purchase of land and had deliberately misrepresented facts in its annual report for the financial year 2011-12 with regard to the financial transactions wherein the money had been circulated by it.

134. I also note that after the expiry of lock-in period, preferential allottees had sold the shares and exited a large portion of their position in the scrip of SMS Tech (details are mentioned at Table-9) and made a profit (including notional profit) of Rs. 6.79 crores (except Nila R Shah). This profit is ill-gotten as the shares which were sold were obtained through fraudulent process. Thus, Noticees by playing their respective roles in this elaborate scheme, adopted fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying the transactions as a genuine preferential allotment and offloading the shares allotted in the preferential allotment in the market thereby earning

illegal profits. I find that the concerted tradings of the connected entities under a premeditated plan or strategy not only erode the market integrity but also are detrimental to the interests of investors who might have been lured to invest in the scrip due to such manipulative and fraudulent trading in the scrip and price movement trend.

135. The aforesaid facts indicate that the acts, omissions and concealment of the Noticees were ‘fraudulent’ as defined in regulation 2(1)(c) of the PFUTP Regulations which reads as under:-

Definition of ‘fraud’ – Regulation 2(1)(c).

“

(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it;
- (5) a representation made in a reckless and careless manner whether it be true or false;
- (6) any such act or omission as any other law specifically declares to be fraudulent;
- (7) deceptive behaviour by a person depriving another of informed consent or full participation;
- (8) a false statement made without reasonable ground for believing it to be true;
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

.....”

136. The acts, omissions, misrepresentations, active concealments, false statements, deceptive behaviour, reckless representation etc. in respect of the preferential allotment without consideration compel the finding that the preferential allotment in this case was not a genuine preferential allotment rather it was irregular, illegal and fraudulent. Upon considering all facts and circumstances in totality, I find that such acts and omissions were with deliberate design of the Noticees as part of their manipulative and deceptive device,

plan or artifice. Such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors. Such entities are not allowed to unjustly enrich themselves at the cost of innocent investors.

137. Considering the sequence of events and pattern of transactions in this case I find that Noticees playing their respective roles in this elaborate scheme, adopted fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying the transactions as a genuine preferential allotment and offloading the shares allotted in the preferential allotment in the market thereby earning illegal profits i.e. preferential allottees have earned profit (including notional profit) to the tune of Rs. 6.79 crore. Therefore, I am of the view that the alleged violation of provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (b), (c), (d), 4 (1), (2)(a) of PFUTP Regulations against Noticees stands established.

ISSUE No. 2- *If issue No. 1 is determined in affirmative, then what directions should be issued against the Noticees?*

138. It is noted that Mahavir had questioned the joint and several liability on the ground that except knowing Mr. Mahesh Shah, he does not know any other person who are stated to be allotted any shares in the company. He stated that he may know Mr. Mahesh Shah and so many other persons may also know Mr. Mahesh Shah or the company directors, but that alone does not make him known to all other persons. Therefore, he submitted that he cannot be held responsible for the acts done by others. He also disputed the liability for disgorgement stating that as per account of the broker through whom the shares of SMS Tech were sold by him, the net profit made out by him is Rs. 27,65,953/-. Out of said amount substantial amount is already paid back to Mr. Mahesh Shah or his nominees. Therefore, he argued that no amount needs to be disgorged from him.

139. In this context, I note that the entire scheme/artifice was one large fraud where several entities played different roles. Therefore, it is a fit case where joint and several liability of disgorgement has to be imposed. The law of joint and several liability itself permits the bearers of the liability to apportion among themselves the individual liabilities inter se, or,

seeking contribution from the other bearers of the liability, after discharging their joint and several liability, through proper civil remedies. It is also not necessary in a large fraud, the participants should know the entire gamut of fraud and should know or be connected with every participant in the larger scheme of fraud.

140. It is noted that demat accounts and bank accounts are opened with proper compliance of Know Your Client (KYC) norms. One of the objectives of KYC is to ensure that the said accounts are operated by and for the beneficial interest of the persons whose identity has been verified at the time of account opening. KYC also ensures proper tracking and accountability of the person holding the said accounts in cases such accounts are used for illegal or fraudulent purposes. The requirement of KYC and purpose behind the KYC clearly shows that the said accounts are to be owned and operated by the persons whose identity is verified indicating that the accounts are personal in nature. The owner of such accounts may constitute another person as valid power of attorney holder to operate the accounts. However, such accounts are operated on the owner's behalf by the validly constituted power of attorneys.

141. But the practice of renting the accounts by name lending account holders to third parties entails not only the operation of accounts by third persons but practically results in ownership and custody of those funds/securities. Such persons employ their own resources in the form of shares and money mostly for their own illegal or fraudulent purpose, while the real identity of the owner of the funds and shares in the records of the operating institutions continue to vest with name lending account holder. This devious practice helps the wrong doers to conceal their identity behind the name lending account holders while the name lenders receive gratification in an easy way by being part of the wrong doing by renting their accounts. SEBI has found that this illegal practice is being followed by wrong doers in the market in new and diverse ways. The consequence of such dubious practice facilitates fraud in a camouflaged way disguised to evade detection. Thus, such practices need to be strongly curbed in order to limit market fraud. Therefore, I find this to be a fit case to impose exemplary period of debarment.

142. In view of the findings above, I am of the considered view that under Sections 11B and 11(4) of the SEBI Act, 1992, for the violation of provisions of Section 12A (a), (b), (c) of

SEBI Act, 1992 read with Regulations 3 (b), (c), (d), 4 (1), (2)(a) of PFUTP Regulations, Noticees except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar are liable for disgorgement of ill-gotten gains and all the Noticees should be restrained for a suitable period of time.

143.I note that preferential allottees have earned profit (including notional profit) of approximately Rs. 6.79 crores. The calculation of profit earned by the preferential allottees is mentioned at Table – 9 above. The profit (including notional profit) earned by the 30 preferential allottees are as under:

Table -11

S. No.	Name of Entity	Profit (including notional profit)
1	Dharmendra R. Shah HUF	10,14,915
2	Jagadish Vital	9,98,590
3	K Rajagopal	9,98,000
4	Chhaya U. Trivedi	9,97,500
5	S Rajaganesh	9,97,000
6	Vinod Jain	9,97,000
7	Bafna S R	9,96,000
8	Akash Jagadish Vital	4,51,000
9	Anita S. Kadanthalai	2,97,000
10	Maheshchandra C. Shah	39,66,444
11	Vinit Kamleshkumar Shah	56,43,550
12	Keval Kirtikumar Shah	52,44,750
13	Minaben Prafulbhai Shah	51,54,200
14	Suresh Nenmalji Malvi	50,55,950
15	Himanshu P. Shah	47,55,250
16	Pruthvi Himanshu Shah	45,70,200
17	Kaliyaben Himansu Shah	45,69,000
18	Mahavirsingh N Chauhan	41,35,011
19	Himadri Kamleshbhai Shah	39,76,000
20	Mulchand Ganeshmal Jain	24,15,250
21	Karan Kirtibhai Shah	16,87,250
22	Vaishali Natvarlal Thakkar	9,98,500
23	Kanubhai Narandas Thakkar	9,97,000
24	Natubhai Shantilal Thakkar	9,97,000
25	Mitesh Kanaiyalal Thakkar	9,96,356
26	Alakaben Kirtibhai Shah	9,96,000
27	Mukeshbhai S. Thakkar	9,96,000

S. No.	Name of Entity	Profit (including notional profit)
28	Meenaben Natubhai Thakkar	9,95,000
29	Navinchandra K. Thakkar	9,95,000
30	Kirtikumar Rasiklal Shah	9,95,000
	Total	6,78,85,716

144. As found earlier, the above said fraud has been committed with the active participation of Jagadish Vital, Maheshchandra C. Shah, Rajesh Ranka, and other noticees. Therefore, all the Noticees except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar are jointly and severally liable to disgorge the above the amount of Rs. 6,78,85,716 plus simple interest at the rate of 12% per annum from the date of end of investigation period i.e. November 05, 2013.

ORDER

145. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions:

- a. All the Noticees except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar, shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of 10 (ten) years from the date of completion of disgorgement; further the said Noticees except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 10 (ten) years from the date of completion of disgorgement.
- b. Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar, shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of 10 (ten) years from the date of this order; further, Devaraj Siddiah

Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 10 (ten) years from the date of this order.

- c. All the Noticees (including legal representatives of Late Maheshchandra Shah as per applicable law) except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar shall, jointly and severally, disgorge an amount of Rs. 6,78,85,716/- as ascertained in para 143 above along with simple interest calculated at the rate of 12% per annum from the date of end of investigation period i.e. November 05, 2013, till the date of payment.
- d. All the Noticees (including legal representatives of Late Maheshchandra Shah as per applicable law) except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar shall, jointly and severally, pay the above amount within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment* to SEBI account as detailed below.

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

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

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	

4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details:	

- e. Noticees except Devaraj Siddiah Pera Naidu, Dashrathkumar Keshaji Khatri and Dilipbhai Jaswantlal Gajjar shall, jointly and severally, pay the amount mentioned at Para 145 (c) and if there is a failure to pay the said amount, SEBI, on the expiry of 45 days period from the date of the service of this order may consider recovery of such amounts, from Jagadish Vital at first, legal representatives of Late Maheshchandra Shah as per applicable law at second , Rajesh Ranka at third, Manjulaben Shah at fourth, other preferential allottees at fifth and at last from SMS Tech.

146. It is noted, Maheshchandra Shah is deceased, and his legal representatives have not been brought on record. Therefore, the directions against Late Maheshchandra Shah are made contingent on SEBI serving this order to his legal representatives. Therefore, this order will take effect as final order against legal representatives of Late Maheshchandra Shah only on the expiry of 60 days from the date of service of this order to the legal representatives of Late Maheshchandra Shah, unless legal representatives of Late Maheshchandra Shah, file reply or seeks by written request for personal hearing receivable by SEBI within such period of 60 days from the date of service of this order. If reply/request for personal hearing is filed by legal representatives of Late Maheshchandra Shah, the directions passed herein against legal representatives of Late Maheshchandra Shah shall be made applicable subject to the determination on the objections/reply. In the meantime, the legal representatives of Late Maheshchandra Shah shall not buy, sell or otherwise deal in securities for creation of any third party rights, from the date of this order till the disposal of the objections/reply, if such objections or reply are filed, or till the date of completion of disgorgement, if no objections/reply are filed.

147. The order shall come into force with immediate effect.

148. A copy of this order shall be served upon all the Noticees, Stock Exchanges and Depositories for necessary action and compliance with the above directions.

-Sd-

DATE: JULY 27, 2018

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA