

WTM/AB/IVD/ID2/8007/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Noticee No.	Name of the Noticees	PAN
1.	Rakesh Sharma	AGZPS8586N
2.	Rajesh Unnikrishnan	AAPPU3912J
3.	Dharmesh Shah	AWUPS8139L

In the matter of Pyramid Saimira Theatre Limited

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

1. On December 21 and 22, 2008, there were several media reports that the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had directed P.S. Saminathan, one of the promoters of Pyramid Saimira Theatre Limited (hereinafter referred to as “**PSTL**”/ “**the company**”), to make an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”) for an additional 20% stake at a price not less than Rs. 250/- within 14 days, for allegedly violating creeping acquisition norms. With the reports in the media appearing about the impending offer at Rs. 250/-, the price of the shares of the company increased on December 22, 2008, when the stock markets opened for the day. On December 22, 2008, PSTL first informed the

BSE Limited (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) in the morning that the company had not received any communication from SEBI regarding the media reports on Open Offer. BSE disseminated the denial by the company at 10:28:04 a.m. on December 22, 2008 on its website and NSE did so at 10:30:00 a.m. on same day.

2. Subsequently, on the same day i.e. December 22, 2008, at around 10:30 a.m., PSTL received the alleged SEBI order directing PSTL to make an open offer, when the courier company, Blue Dart, delivered the purported SEBI letter to the company. P.S. Saminathan informed BSE and NSE on December 23, 2008 about the receipt of the letter from SEBI. In this regard, on December 23, 2008, SEBI issued a Press Release clarifying that the SEBI had neither issued a letter nor an order to P.S. Saminathan for the said open offer and that the said letter was apparently circulated with ulterior motives. SEBI had lodged an FIR with regard to the forgery of the SEBI letter in Bandra Kurla Police Station, Mumbai and also initiated an investigation into the matter.
3. It was, *prima facie*, revealed that the forgery was done to manipulate the stock price of PSTL and that Nirmal Kotecha, one of the promoters and the then largest shareholder of PSTL, was one of the major beneficiaries of the said manipulation and appeared to have masterminded the forgery. It was further observed that several persons/ entities directly and indirectly related to Nirmal Kotecha had bought PSTL shares on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008 i.e. after the price rise in the shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. It was also found that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price rise which occurred due to the publication of the forged SEBI letter as well as the price fall which occurred due to a clarification on media reports on Open Offer provided by P.S. Saminathan

to the stock exchanges that the company had not received any communication directing P. S. Saminathan to make open offer.

4. Investigations into the publication of the news of forged letter and trading activities thereafter revealed that on December 21 and 22, 2008 several sections of the media reported the contents of the SEBI's purported letter that was issued to P.S. Saminathan. Business Standard headlined its report that was carried on Sunday on December 21, 2008 edition as "Pyramid Saimira promoters told to make open offer", whereas, "Share at Rs. 75, Open Offer Rs. 250," was the headline in DNA Money on December 22, 2008. The Economic Times on December 22, 2008 carried its report with the headline which read – "SEBI ask Pyramid promoter to make open offer at Rs. 250 or more". DNA Money in its article on December 22, 2008 also reported that a PSTL spokesperson told DNA Money on Saturday that the company has just received the notification and is looking into the matter.
5. It was also revealed that Nirmal Kotecha had offloaded substantial number of shares of PSTL on December 22, 2008 at artificially inflated prices. It was also revealed that the forgery was done to manipulate the price of shares of PSTL and that Nirmal Kotecha was one of the major beneficiaries of the said manipulation exercise.
6. Pending investigation, SEBI vide an *ad interim ex parte* order dated April 23, 2009 (hereinafter referred to as "**interim order**") issued under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") *inter alia* directed 257 entities and their proprietors/partners/directors who prima facie appear to have played a role in the forgery of the SEBI letter, dissemination of the information contained in the forged letter to the media, misleading the media to believe in the authenticity of the information that was circulated to them, carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining

advantage from the forgery and have channeled funds either directly or indirectly in the stock markets for manipulating the scrip of PSTL, not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions.

7. Rakesh Sharma (Noticee no.1) and Rajesh Unnikrishnan (Noticee no. 2) were some of the entities against whom such directions were passed vide the interim order. Subsequently, confirmatory orders to confirm the *ad interim ex parte* order dated April 23, 2009 against Noticee no. 1 and Noticee no. 2 was passed on January 28, 2010. I note that Noticee no. 2, aggrieved by the Confirmatory Order dated January 28, 2010, filed an appeal before the Securities Appellate Tribunal (hereinafter referred to as “**SAT**”). Vide Order dated April 20, 2010, the Hon’ble SAT directed SEBI to complete its investigations in the matter by July 31, 2010. Since the investigation could not be completed within the stipulated timeline, the Hon’ble SAT vide its Order dated October 27, 2010, stayed the operation of the Confirmatory Order dated January 28, 2010, against Noticee no. 2.
8. Upon completion of the Investigation, it was revealed that besides Noticee no. 1 and 2, there were others who were also involved in the manipulation in the scrip of PSTL and associated with Nirmal Kotecha. Accordingly, show cause notices were issued to 44 entities, including to the 3 Noticees herein vide Show Cause Notice dated December 02, 2015 (hereinafter referred to as “**SCN**”). Facts *inter alia* stated in the SCN and the allegations made therein are narrated hereunder:
 - a) The investigation revealed that Rakesh Sharma (Noticee 1), who worked with M/s. Adfactors PR Pvt. Ltd., was responsible in forwarding the letter that was sent to P. S. Saminathan, CMD of PSTL. Rakesh Sharma, an executive at M/s. Adfactors PR Pvt. Ltd. and one of the accused mentioned in the FIR filed by SEBI made certain claims before he was arrested. It was revealed that Noticee no. 1 played a major role

and was instrumental in publicizing the contents of the forged SEBI letter that was sent to P. S. Saminathan through his media circle of friends, and also, ensuring that they publish the news before the opening of the markets on December 22, 2008.

- b) Rajesh Unnikrishnan (Noticee No.2) was the Assistant Editor of Economic Times and a colleague of Noticee no. 1 when he was working in Business Standard nine years back. He had stated that he covered some stories for Economic Times on PSTL such as transfer of stake from one promoter to another, bidding for Reel Cinema etc. Noticee no. 2 introduced Noticee no. 1 to Nirmal Kotecha somewhere in October 2008.
- c) Nirmal Kotecha was found to have been using the mobile number registered in the name of one Amol Anand Kokane, who was a front entity of Nirmal Kotecha.
- d) The Call Data Records of Nirmal Kotecha's Amol Kokane number, Rakesh Sharma's number and Rajesh Unnikrishnan's number revealed that they were in close touch with Nirmal Kotecha around the period of the media publicity of the forged SEBI letter sent to S. Saminathan. It was revealed that Rajesh Unnikrishnan was in close touch with Nirmal Kotecha only from December 09, 2008 and Rakesh Sharma was in close touch with Nirmal Kotecha only during the period December 20-23, 2008.
- e) The tower locations of Nirmal Kotecha's Amol Kokane number, Rakesh Sharma's number and Rajesh Unnikrishnan's number indicate that the three had met in the afternoon of December 20, 2008 i.e. the day and around the time when the forged SEBI letter was circulated to the media circles through Rakesh Sharma's contacts in the media. The tower locations revealed that the three of them had met at Hotel Pritam at Dadar TT and that they had gone to Nirmal Kotecha's residence by taxi between 12:30 p.m. to 1:30 p.m. from where Rakesh Sharma had e-mailed the forged SEBI letter that was addressed to P. S.

Saminathan, CMD, PSTL, to some of his friends in the media. Investigation has alleged that the three of them had on December 20, 2008 i.e. the day and around the time when the forged SEBI letter was circulated to the media circles through Rakesh Sharma's contacts in the media met in the afternoon of December 20, 2008, first at/ around Pritam Hotel and then at Matunga (East).

- f) The SCN observed that Rakesh Sharma before being arrested claimed that the forged SEBI letter was e-mailed by him from Nirmal Kotecha's residence by using his own personal e-mail ID to his following media contacts, viz. Raj Nambisan of DNA; Partha Sinha of Times of India (TOI) and Ashish Rukhaiyar of Economic Times (ET). He had then gone to Ashok Jainani's office at M/s. Khandwala Securities Ltd. and that through Ashok Jainani's computer, he e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account, and then, Ashok Jainani sent the same to Business Standard (BS).
- g) Investigation revealed that Rakesh Sharma had also emailed the forged SEBI letter to one of his ex-colleagues in Adfactors, Dheer Kothari based in Kolkata. Dheer Kothari in his statements to SEBI had stated that, as per the mandate, he disseminated the information to three newspapers – Business Standard, Telegraph and Hindu Business Line. He stated that he got paid Rs. 10,000 for carrying out the job. The bank statement revealed that the funds were transferred from Rakesh Sharmas account with HDFC which was opened only in July 2008.
- h) Rajesh Unnikrishnan had vide his statements dated January 27, 2009 and letter dated May 25, 2009, stated that he did not meet Rakesh Sharma or Nirmal Kotecha on December 20, 2008 and that he had gone to meet one Shashi Kumar instead. Investigation observed that the aforesaid statements dated January 27, 2009 and letter dated May 25, 2009 were not in sync with one another, especially on the crucial aspect about the meeting with Shashi Kumar as claimed by Rajesh Unnikrishnan as it is seen that though Rajesh Unnikrishnan claims that

he met Shashi Kumar at Kabutarkhana which is located in Dadar (West) and travelled with him to Lower Parel, his tower location during the span of above one hour during the said time frame showed his cell IDs at Dadar (East) and near Matunga station.

- i) Rakesh Sharma had claimed that one of the reporters to whom Ashok Jainani had e-mailed the forged letter, desired to ascertain the authenticity of the information by counter checking with the company officials. Rajesh Sharma claimed that this reporter called back to check if they can speak to anybody in the company. Rakesh Sharma further claimed that he called Nirmal Kotecha at about 4.30 -5.00 p.m. on his mobile, who in turn, SMSed to him the Company Secretary's telephone number and gave his name as one Ganesan, serving at Chennai office, which was passed on by Ashok Jainani to the Business Standard reporter.
- j) Rakesh Sharma further claimed that Ganesan denied any such development on this front to the Business Standard reporter and that at about 6.00- 6.30 p.m., the reporter of Business Standard called back Ashok Jainani to inform the same. Rakesh Sharma claimed to have informed Nirmal Kotecha that the Company Secretary is denying the development and that, in turn, Nirmal Kotecha gave another Company Secretary, Kanhucharan Sahu's number and name by SMS to him between 7.00 to 8.00 p.m. He further claimed that Rajesh Unnikrishnan also sent two SMS's to him – one to inform the telephone number and the second to inform the name i.e. Kanhucharan Sahu. That he then sent the SMS to all those whom he had forwarded the e-mail earlier, so that, if they so desire, they can confirm the information by talking to Kanhucharan Sahu.
- k) Investigation has also noted the version of events as stated by the reporters who were approached by Rakesh Sharma for publishing news on the SEBI forged letter. The versions are as follows:
 - (i) As per the Statement of Raj Nambisan, Business Editor of DNA,

recorded on January 29, 2009 at SEBI, on December 20th, 2008, around 5-6 p.m., Rakesh Sharma called him to give the mobile number of Kanhucharan Sahu, the Company Secretary of PSTL, which was 9947219100. He stated that he passed on the said mobile number to his special correspondent, N. Sundaresha Subramanian, who called Kanhucharan Sahu on the said number, and the person who answered the call confirmed the receipt of the letter. Hence, DNA decided to publish the news. However, as per Nambisan's statement when Sundaresha Subramanian called on the same mobile number i.e. 9947219100 of Kanhucharan Sahu on Tuesday i.e. on December 23, 2008, nobody picked up the number. Later, Sundaresha Subramanian realized that a media release on BSE site on December 23, 2008 showed a different number of Kanhucharan Sahu. When N. Sundaresha Subramanian called on that number of Kanhucharan Sahu i.e. the true company secretary of PSTL, he denied having received any call from Sundaresha Subramanian on Saturday.

- (ii) As per the Statement of Partha Sinha, Asst. Markets Editor of Times of India recorded on January 29, 2009 at SEBI, he stated that he met Rakesh Sharma on Saturday, the December 20th, 2008 at around 2.30 p.m. in Howrah Restaurant in Hotel New Bengal near Crawford market and they had food together. Partha Sinha in his statement stated that during the time that they were having food together, Rakesh Sharma received a call, which he said was from Nirmal Kotecha, and he told him that he was having lunch and would call later. During lunch Rakesh Sharma told Partha Sinha regarding the contents of the forged SEBI letter and also told him that he will forward the contact number of Kanhucharan Sahu, the Company Secretary of PSTL, from whom he can confirm the details. Rakesh Sharma forwarded the mobile number of Kanhucharan Sahu by SMS in the evening. Partha Sinha stated

that he called to contact on that number after 7.30 P.M. on Saturday, but the number was not reachable. Partha Sinha stated that he again called that number on Sunday around 8.00 p.m. and the person who took the call confirmed that they had received the letter and are looking into the matter.

- (iii) As per the Statement dated February 2, 2009 of Ashish Rukhaiyar, Principal Correspondent of Economic Times, on Saturday, at around 9.45 p.m., Rakesh Sharma by SMS sent the mobile number of Kanhucharan Sahu, the company secretary and compliance officer of PSTL and mentioned that he can confirm from Kanhucharan Sahu. However, Ashish Rukhaiyar in his statement stated that he did not call Kanhucharan Sahu on Sunday and on Monday when he called on that number, the person who picked the call informed him that it was not the number of Kanhucharan Sahu.
- (iv) As per the statement dated March 26, 2009 of Jayanta Mallick, Special Correspondent, The Hindu Business Line, he got Saminathan's mobile number as 09840980111, the Company Secretary Kanhucharan's mobile number as 09947219100 and Rakesh Sharma's mobile number as 09821419263, and that all these numbers were SMSed to him by Dheer Kothari who passed on the e-mail of the forged letter to him. Mallick in his statement has stated that call to Saminathan's mobile did not elicit any response. On contacting the number of Kanhucharan Sahu that was provided to him, Mallick stated that the person who answered the call admitted that an order on Saminathan was received by the company. As per Mallick, the person further said that he would not be able to comment on it and that he was new to the company before disconnecting the line. When he contacted Rakesh Sharma on the number provided to him, Mallick claimed that Rakesh Sharma informed him that he got the release and the order from the company. Mallick in his statement has stated that he decided to

write the story as he had no reasonable basis to disbelieve the so called press release and the order as he was clearly told by Dheer Kothari and Rakesh Sharma that the release from the company.

- l) Kanhucharan Sahu is the compliance officer and company secretary of PSTL since March 2008 and vide his statement dated January 28, 2009, claimed that the he did not receive any calls on December 19, 20 and 21, 2008 in the matter of forged SEBI letter advising P.S. Saminathan to make an open offer. He stated that the phone number 9947219100 did not belong to him. Investigation revealed that the number 9947219100, which was passed on as one of Kanhucharan Sahu by Nirmal Kotecha to Rakesh Sharma who in turn circulated within his media circle of friends was actually registered in the name of Pratheesh Kumar V.K.
- m) Investigation revealed that the number 9947219100 was actually used by one Dharmesh Shah (Noticee no. 3) who was a childhood friend of Nirmal Kotecha. On June 12, 2009, before the Investigating team, Dharmesh Shah stated that he was using this mobile number for almost two years and that he had received the same from a distributor one M/s. Mohasin Enterprises at Ernakulum. In reply to whether any journalist/ media persons called on the mobile number 9947219100 used by him, between December 20, 2008 to December 25, 2008 regarding M/s. Pyramid Saimira Theatre Ltd., he stated that nobody had called for the issue of Pyramid Saimira during the period December (20-25), 2008. In reply to the query as to whether he was still using the mobile number 9947219100, Dharmesh Shah stated that he had lost the phone almost 3-4 months back.
- n) Investigation further revealed that Nirmal Kotecha had made multiple calls and was in touch with Dharmesh Shah on the number

9947219100 and also with his wife Meera Venugopal Shah on the number 9847298213. Hence, it was alleged that the above sequence of events brought to light the fact that the number 9947219100, though registered in the name of Pratheesh Kumar V.K, was being used by Dharmesh Shah, at the time the forged letter was circulated through the media circles for wide publicity.

- o) Accordingly, the SCN *inter alia* alleged that:
- (i) Rakesh Sharma and Rajesh Unnikrishnan played a key role in the circulation of the forged letter in the media by sending e-mails from Rakesh Sharma's e-mail ID to various reporters and misled the media to believe the authenticity of the said letter.
 - (ii) Dharmesh Shah had misled the media to believe the authenticity of the forged SEBI letter circulated to them by posing as the company secretary of PSTL and confirming them about the same.
 - (iii) Nirmal Kotecha masterminded the forgery and that he along with Rakesh Sharma and Rajesh Unnikrishnan was instrumental in disseminating of the false information contained in the forged letter to the media.
 - (iv) Rakesh Sharma, Rajesh Unnikrishnan and Dharmesh Shah together facilitated Nirmal Kotecha to offload his stake on December 22, 2008 when the market opened, at artificially inflated price as against the last traded price, and earn a sizable profit by playing a key role in an arrangement contrived to defraud investors in the market by being part of a scheme elaborate in its design with several elements which included forgery, dissemination of the false information contained in the forged letter to the media and an attempt to mislead the media to believe in the authenticity of the information that was circulated to them.

9. In view of the above, SCN alleged that the Noticees have violated Section 12A

of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”).

10. The SCN issued to the Noticees, contained relevant findings of the investigation report qua the each noticee along with certain annexures, list of which is as under:

Table: 1

S. No.	Particulars of Document
1.	Statement of Rajesh Unnikrishnan dated May 19, 2009
2.	Statement of Nirmal Kotecha dated September 22, 2009 and July 22, 2010
3.	Statement of Amol Kokane dated February 27, 2009 and Jun 29, 2009
4.	Call Data Records of Shri Nirmal Kotecha's Amol Kokane number
5.	Statement of Dheer Kothari dated March 26, 2009
6.	Statement of Rakesh Sharma dated June 23, 2009
7.	Statement of Raj Nambisan dated January 29, 2009
8.	Statement of Partha Sinha dated January 29, 2009
9.	Statement of Ashok Jainani dated February 02, 2009
10.	Statement of Ashish Rukhaiyar dated February 02, 2009
11.	Statement of Jayanta Mallik dated March 26, 2009
12.	Tower Location of Amol Kokane's number
13.	Tower Location of Rajesh Unnikrishnan's number
14.	Tower Location of Rakesh Sharma's number
15.	Statement of Dharmesh Shah dated June 29, 2009
16.	Statement of Meera Venugopal dated June 09, 2009
17.	Statement of Dharmesh Shah dated June 12, 2009
18.	Statement of Pratheesh Kumar V.K dated June 11, 2009
19.	Statement of Deepak Thakkar dated July 21, 2010
20.	Letter from MGF Motors
21.	Copies of email from Rakesh Sharma to Ashish Rukhaiyar
22.	Copies of email from Rakesh Sharma to Ashok Jainani
23.	Copies of email from Ashok Jainani to Priya Nadkarni

24.	Copies of email from Rakesh Sharma to Dheer Kothari
25.	Call records of Meera Menon
26.	Pratheesh Kumar Account opening documents
27.	Statement of Kanhu Charan Sahu
28.	Statement of Dharmesh Shah dated June 15, 2009
29.	Newspaper Reports of PSTL open offer
30.	Rajesh Unnikrishnan articles

Replies, Hearing and Written submissions:

11. It is to be noted that pending investigation an interim order dated April 23, 2009 was issued to around 257 entities and their proprietors/partners/directors in the present matter of PSTL. Further, confirmatory orders were passed on different dates against some of the entities. Upon completion of the investigation, SCN was issued to 44 entities, including the 10 noticees herein. I note that Adjudication proceedings under Chapter VIA of the SEBI Act, 1992 have also been initiated for some of the entities. The details of the entities to the show cause notices issued are given below in para 18. Since all the entities are alleged to be inter related with one another and connected to Nirmal Kotecha, opportunity of personal hearing were jointly given to all the entities in the matter of PSTL, including the Noticees to the present SCN, on July 27, 2015 and April 30, 2016 by the then Whole Time Member, before whom the proceedings were pending. I note that a separate show cause notice dated December 03, 2013 was issued to Nirmal Kotecha, the alleged mastermind behind the fraud in the scrip of PSTL, who had then filed a miscellaneous application before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") seeking inspection of documents and cross examination of certain entities. The Hon'ble SAT vide its Order dated May 19, 2016 disposed of the application directing that *"It is made clear that on 31.05.2016 the application to be filed by the appellant within one week from today shall be heard first and thereafter the Whole Time Member of SEBI shall proceed to hear the show cause notices subject to granting any short adjournment if any, sought by the appellant"*. Subsequently,

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

also been upheld by the Hon'ble SAT vide its order dated March 02, 2020 in Appeal no. 261 of 2018.

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

Noticees no. 1 and 2 on September 23, 2019 and cross examination of Nirmal Kotecha was granted to Noticee no. 1 on September 23, 2019. On September 23, 2019, Advocates on behalf of Noticees 1 and 2 appeared for the hearing and made submissions and Noticee no. 2 sought time to file his written submissions. Subsequently, vide letter dated September 30, 2019, Noticee no. 2 filed his written submissions. Further, the cross examination of Nirmal Kotecha by Noticee no. 1 could not be conducted as he did not appear for the cross examination on September 23, 2019. Since, this was the second time Nirmal Kotecha failed to appear for the cross examination, no more opportunities were granted for his cross examination.

14. As noted above, proceedings were first initiated against the main entity Nirmal Kotecha by issue of interim order dated April 23, 2009. Subsequently, a final order was passed on March 22, 2018 against Nirmal Kotecha. The SEBI order dated March 22, 2018 against Nirmal Kotecha was upheld by the Hon'ble SAT vide its Order dated March 02, 2020 in Appeal no. 261 of 2018. Further, a final order dated March 22, 2018 was also passed against the Shah Group and has been upheld by the Hon'ble SAT vide its Order dated March 17, 2020 in Appeal no. 179 of 2018. Such orders have a bearing on the proceedings given that Nirmal Kotecha was alleged to have masterminded the entire fraud and all the other entities, including the Noticees, were *inter alia* alleged to have colluded with him in manipulating the scrip of PSTL.
15. Subsequently, there was an outbreak of COVID-19 and consequential lock down was imposed. Accordingly, the SCN issued against the Noticees herein after giving an opportunity of personal hearing and filing of written submissions following the principles of natural justice, is being dealt with in the present order with directions in terms of para 56.

Submissions of the Noticees:

16. The various submissions made by the Noticees are as under:

a) Noticee no. 1 (Rakesh Sharma) vide letter dated July 20, 2018, *inter alia* submitted that:

- (i) *A mere perusal of the SCN under reply and earlier orders passed by SEBI and the criminal complaint and the final order against NK will clearly show that the only allegation against the Noticee Rakesh Sharma is that he "...abetted Shri Nirmal Kotecha in providing wide media publicity to the forged SEBI open offer letter that was sent to Shri Saminathan." (Para 15 of the captioned SCN) OR that Shri Rakesh Sharma and Shri Unnikrishnan played a key role in the circulation of the forged letter in the media by sending emails from his email ID to various reporters and misled the media to believe the authenticity of the said letter (para 63 of the captioned SCN).*
- (ii) *It is very pertinent to note that SEBI from its thorough investigation has not found a shred of evidence and rather had not even alleged against Mr. Rakesh Sharma that he ever had knowledge of the forgery of the letter at the time when he disseminated the same within his circle of friends in the media. Further, SEBI, after thorough investigation, has not found a shred of evidence to prove that dissemination of information pertaining to the alleged forged SEBI letter to his contacts in the media was deliberate, planned, intentional or deceitful.*
- (iii) *In the facts of the present case, it is no one's case or contention that it is illegal to provide potential news feeds to the persons associated with media. Rather, the job profile of the noticee Mr. Rakesh Sharma is such that all throughout he has been providing potential news to his acquaintances/friends in the media circle. As such, when the SEBI letter dated 19-12-2008 came to knowledge*

of the notice without the knowledge of the same being forged, he simply provided the said information as a potential news to his friends in the media (only those whom he knew or were his friends) expecting, as usual, that the said media persons will, as is the case in every other news, verify the authenticity of the information and only then publish the same.

(iv) It is abundantly evident from a mere reading of the said SCN/order that what is alleged against Mr. Rakesh Sharma is that he was instrumental in circulating the said letter to his friends in the media. There is not even a whisper in the SCN or in the criminal complaint that Mr. Rakesh Sharma had the knowledge about the forgery at the time of dissemination of the information about it. Neither the SEBI Act, 1992 nor any of the Regulations there under identify such an act as an offence. None of the events mentioned in the said SCN/order indicate that Mr. Rakesh Sharma had even the slightest of knowledge of the letter being forged when he admittedly circulated the said letter to his friends in the media. It is an admitted position that SEBI investigation officers do not have any direct or even indirect evidence about Mr. Rakesh Sharma's knowledge of forgery or that of the plot which was master minded by NK, as per SEBI.

(v) As stated herein above Mr. Rakesh Sharma is into media related profession since last almost two decades with an unblemished track record. It is also pertinent to note that his job profile is to handle media related activities of his clients. Thus, the allegation that Mr. Rakesh Sharma played a major role in publicizing the SEBI letter is exactly what Mr. Rakesh Sharma's job is and what he has been doing for the last so many years for his clients, without any notice or offence being issued or registered against him. It deserves mention that SEBI does not allege or have any material on record to prove/allege that Mr. Rakesh Sharma forged

the letter or he was part of the conspiracy in forging the letter nor is it SEBI case that he publicized the SEBI letter with knowledge of it being forged or that he was instrumental in making the alleged plot with NK. Further, it is submitted that SEBI Act or for that matter any other regulation thereunder does not consider publicizing data, information to media a crime.

(vi) Without prejudice to the fact that SEBI has found that the forged letter was couriered by NK himself, it further does not appeal to ordinary common sense that Mr. Rakesh Sharma while couriering the said letter to Mr. Saminathan, wrote his name as the sender. In fact, now that SEBI has found that the envelope containing the forged letter addressed to Mr. Saminathan bears handwriting of employee of NK and that NK himself couriered the letter with Blue Dart, and that the name of the sender was mentioned (deliberately) as Rakesh, it is clear that NK wanted to scapegoat Mr. Rakesh Sharma to cover up his own misdeeds. This also proves a vital fact that Mr. Rakesh Sharma was not part of the conspiracy. Mr. Sharma has been in the media industry since almost two decades now. He has complete knowledge rather it is common sensical that if it is SEBI's letter intended to be sent to Mr. Saminathan, it would be sent from SEBI's office. It would only be suicidal for Mr. Rakesh Sharma or for that matter any other individual to have sent the said letter through courier on his own name. Mr. Rakesh Sharma in his earlier replies and written arguments clearly submitted that this allegation completely defies logic and the same, if believed, would only mean that Mr. Rakesh Sharma wanted SEBI and police authorities to know that he is the perpetrator of the alleged crime.

(vii) Further, it is not even SEBI's case that Mr. Rakesh Sharma has been monetarily benefitted by this fraud, which in normal course is the only motive behind a crime of this magnitude.

(viii) It is further submitted that whether or not Mr. Rakesh Sharma had

the knowledge that the SEBI letter dated 19-12-2008 was forged is of vital import and the same cannot, at any cost, be ignored. The factor that almost all the correspondents of various media houses failed to realize that the said letter was forged, the factor that the said correspondents after all due diligence found it appropriate to publish it without doubting the credibility of the said letter and the factor that none of the correspondents have been even show caused by SEBI are all important factors since the role of this notice and the said correspondents is similar. None of the media persons whose statement is recorded says that Rakesh used to verify the news and pass it on to them or that it was Rakesh's duty to verify or that they published just because Rakesh Sharma had forwarded it.

b) Noticee no. 2 (Rajesh Unnikrishnan) vide letter dated September 30, 2019, *inter alia* submitted that:

- (i) The present show cause notice was issued on December 02, 2015, more than years after the events that formed the basis for the allegations against the Noticees. Although the Noticee submitted his reply to the said show cause notice vide his letter dated June 17, 2016, nothing was heard from SEBI till September 2019 when a personal hearing was granted to the Noticee. No reason are given in the hearing notice or otherwise for the delay in the proceedings. In view of the above, the Noticee submits that the present proceedings are vitiated by delay and laches on the Noticee ought to be discharged from the same on this ground alone.*
- (ii) That the introduction of Rakesh Sharma to Nirmal Kotecha happened much before December 19, 2008, the date on which the alleged forgery and misrepresentation took place.*
- (iii) With regard to the allegation that he met Rakesh Sharma and*

Nirmal Kotecha on December 20, 2008 at Dadar and at his residence, the Noticee has strongly rebutted this presumption and offered an alternative narrative that is supported by facts. The Noticee ought to be given the benefit of doubt, especially since he has not been held to play any significant role in the said alleged dissemination of information to journalists.

- (iv) A mobile number purportedly belonging to Kanu Sahu, the compliance officer of PSTL, which he received from Nirmal Kotecha, was forwarded to Rakesh Sharma. This is number, which SEBI has later found belonged to Dharmesh Shah, was used by journalists to confirm the veracity of the news relating to the letter allegedly issued by SEBI. However, it is not alleged that the Noticee knew that the said number was being used by Dharmesh Shah or that he had misrepresented to the journalists who called the said number that he was Kanu Sahu, a company secretary at PSTL or that he confirmed the fact of the letter issued by SEBI to Mr. Saminathan.*
- (v) Assuming but not admitting that Mr. Nirmal Kotecha had shown the original of the said alleged forged letter to the Noticee, he had no reason to assume that Mr. Nirmal Kotecha had forged the said letter. It is pertinent to note that infact, except for an ipse dixit in the said show cause notice, there is nothing on record to show that forgery (which is a criminal offence) was proven by legally permitted means such as a forensic examination. It is also relevant to note that a letter was in fact received by PSTL from SEBI but this could not have been the original allegedly shown by Mr. Nirmal Kotecha to the Noticee and Mr. Rakesh Sharma since it was received the very next day.*
- (vi) Thus, SEBI has been unable to prove that the letter which was scanned and sent to journalists by Mr. Rakesh Sharma was a forgery. Since it is not SEBI's case that the letter received by PSTL*

was a forgery, then no case is made out at all against the Noticee.

(vii) It is not alleged that Nirmal Kotecha ever told the Noticee that the letter was forged or that the news regarding SEBI's instruction to Saminathan to make the open offer was false. It is also not alleged that the Noticee knew that the mobile number sent to him by Nirmal Kotecha in the evening of December 19, 2008 was being used by Dharmesh Shah and that the same did not belong to Kanu Sahu. In fact, the Noticee did not know so therefore, he ought to be given that benefit of doubt.

(viii) Admittedly, the Noticee had no knowledge of the other details of the conspiracy including the forgery of a letter, impersonation of the compliance officer of PSTL etc.

(ix) The Noticee derived no benefit from the said alleged fraudulent act of Nirmal Kotcha and others. He did not sell any shares of PSTL or do any act to further the said alleged illegal acts of Nirmal Kotecha.

c) Noticee no. 3 (Dharmesh Shah) vide letter dated September 03, 2019, August 19, 2019 and August 05, 2019, *inter alia* submitted that:

(i) At the outset, my client repeats, reiterates and confirms all that has been stated in the aforesaid reply dated August 05, 2019 and written submissions dated August 19, 2019 and denies everything contrary thereto and inconsistent therewith.

(ii) As was also emphasized at the hearing, it is completely false and denied that my client had ever acted as an imposter of one, Mr. Kanu Charna Sahu. The said allegation is not based on any evidence, and is mere conjecture and surmise.

(iii) Alleged call made by Mr. N. Sundaresha Subramanian:

a) My client had categorically in his reply denied that he received any call from or had ever confirmed receipt of the "SEBI Letter"

as alleged in the SCN;

- b) No details or particulars of the telephone number from or the time at which the said Mr. N. Sundaresha Subramnian is alleged to have made the call to my client has been provided in the SCN.*
- c) No statement of the said Mr. N. Sundaresha Subramnian has been recorded by SEBI.*
- d) Instead, the SCN merely relies upon the statement of a third party who is not even alleged to have made any call to my client. The same is in the nature of hearsay evidence and thus, has no evidentiary value and ought to be disregarded by the Ld. WTM.*

(iv) Alleged call made by Mr. Partha Sinha:

- a) My clients has categorically denied that he received any call from Mr. Partha Sinha or that he had ever confirmed receipt of the “SEBI letter” as alleged in the SCN.*
- b) In fact, my client in his statement dated June 15, 2009, has confirmed that he did not give any such confirmation to any person.*
- c) Most pertinently, the said Mr. Partha Sinha has confirmed in his statement dated January 29, 2009 that he did not publish any article about the alleged “SEBI Letter” on December 22, 2008. Consequently, assuming whilst denying, that my client did indeed give any such alleged confirmation, it is submitted that the same was totally inconsequential, and no investor could ever have acted on the same.*

(v) Alleged call made by Mr. Jayanta Mallick:

- a) My client has categorically denied that he received any call from Mr. Jayant Mallick or that he had ever confirmed receipt of the “SEBI Letter” as alleged in the SCN.*
- b) No details or particulars of the telephone number from or the*

time at which the said Mr. Jayanta Mallick is alleged to have made the call to my Client has been provided in the SCN.

c) Consequently, the charge against my client must fail on this ground alone.

(vi) Alleged call made by Mr. Ahsih Rukhaiyar to Dharmesh Shah

a) It is submitted that the said Mr. Rukhaiyar himself admitted that when he purportedly called my clients number, he was correctly told that this was not the number of the said Mr. Sahu. Consequently, no fault whatsoever can be found with my client.

(vii) At this particular junction, it is pertinent to note that the allegation in the SCN against my client of posing as an imposter of Mr. Kanu Charan Sahu was solely concluded on the basis of the statements made by the aforementioned persons.

(viii) Further, when the statements and cross-examination of the aforementioned persons were sought by my client through his letter dated July 06, 2019 and hearing conducted on August 07, 2019, the same was not acceded to by the SEBI vide its email dated August 28, 2019.

(ix) Similarly the statement made by Mr. N. Sundaresha Subramnian against my client has not been provided to him, which also amount to gross violation of natural justice principle, as allegations are made without furnishing of requisite documentary evidence.

Consideration of Submissions and Findings:

17. I have perused the SCN dated December 02, 2015, along with its annexures, the replies and written submissions filed by the Noticees and the submissions made during the course of personal hearing. The issue for consideration before me is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCN. Before considering the above issue and dealing with the various contentions raised by the Noticees, the

relevant provisions of law which are necessary to advert to are extracted hereunder:

Relevant extract of provisions of SEBI Act, 1992:

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

12A. No person shall directly or indirectly –

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

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

Relevant extract of provisions of PFUTP Regulations, 2003.

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

.....

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

.....

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

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

Sr. No	Name of the entity	Date of SEBI Order	Date of SAT Order
1.	SCN dated 03.12.2013 Nirmal Kotecha	Final Order under Section 11 and 11B of SEBI Act dated	SEBI Order was upheld by the SAT Order dated

		March 22, 2018	March 02, 2020
2.	SCN dated 16.01.2014 Shah Group 1. Mr. Rajesh Jayantilal Shah 2. Mr. Shailesh Jayantilal Shah 3. Mr. Nirmal Rohitbhai Shah 4. Mr. Devang R Shah 5. Ms. Ritaben Rohitkumar Shah 6. Mr. Jayantilal Ratilal Shah 7. Ms. Binaben Shaileshkumar Shah 8. Ms. Namitaben Sachinkumar Shah 9. Mr. Sachin Jayantilal Shah 10. Ms. Manishaben Rajeshkumar Shah 11. Ms. Jinny Nirmal Shah	Final Order under Section 11 and 11B of SEBI Act dated March 22, 2018	SEBI Order was upheld by the SAT Order dated March 17, 2020
3.	SCN dated 16.01.2014 1. Mr. Maheshbhai Himatlal Sheth 2. Mr. Deepak Thakkar 3. Mr. Raju G. Shah 4. Ms. Sharda Pujara 5. M/s. Meet Shares and Services Pvt. Ltd. 6. Ms. Monali Harsh Doshi 7. Mr. Harsh Doshi 8. Mr. Mukesh Jain 9. Mr. Sanjay Gupta	Final Order dated June 23, 2020 passed by SEBI under Sections 11 and 11B of the SEBI Act, 1992.	

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

19. It has been alleged in the SCN that Noticee no. 1 (Rakesh Sharma) and Noticee no. 2 (Rajesh Unnikrishnan) played a key role in the circulation of the forged letter in the media by sending e-mails from Rakesh Sharma's e-mail ID to various reporters and misled the media to believe the authenticity of the said letter. Further, that Noticee no. 3 (Dharmesh Shah) had misled the media to believe the authenticity of the forged SEBI letter circulated to them by posing as the company secretary of PSTL and confirming them about the same.
20. **Rakesh Sharma (Noticee no. 1):** I note that Noticee no. 1 worked with M/s. Adfactors PR Pvt. Ltd. He was introduced to Nirmal Kotecha by Noticee no. 2. It has been alleged in the SCN that he played a major role in the fraudulent scheme of Nirmal Kotecha and was instrumental in publicizing the contents of the forged SEBI letter through his media circle of friends and also ensuring that they publish the news before the opening of the markets on December 22, 2008. I observe that Noticee no. 1 before being arrested by the Mumbai Police, claimed that the forged SEBI letter was e-mailed by him from Nirmal Kotecha's residence by using his own personal e-mail ID to his media contacts, viz. Raj Nambisan of DNA; Partha Sinha of Times of India and Ashish Rukhaiyar of Economic Times. He stated that he had then gone to Ashok Jainani's office at M/s. Khandwala Securities Ltd. and that through Ashok Jainani's computer, he e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account, and then, Ashok Jainani sent the same to Business Standard.
21. With regard to the allegations, Noticee no. 1 vide his reply dated July 20, 2018, submitted that the only allegation against the Noticee is that he abetted Nirmal Kotecha in providing wide media publicity to the forged SEBI letter. That there is neither a shred of evidence nor has it been alleged in the SCN that the Noticee ever had any knowledge of the forgery of the letter at the time when he disseminated the same to the media. Further, that SEBI has failed to prove any evidence that the dissemination of the information pertaining to the forged letter by the Noticee to his contacts in the media was deliberate, planned, intentional

or deceitful. Also that none of the events mentioned in the SCN indicate that the Noticee had even the slightest of knowledge of the letter being forged when he admittedly circulated the said letter to his friends in the media. The Noticee no. 1 has contended that the allegation that he played a major role in publicizing the SEBI letter is exactly what his job is and what he has been doing for the last so many years for his clients.

22 In this regard, I find it relevant to narrate the details of the meeting between Noticee no. 1 and 2 with Nirmal Kotecha, as submitted by Noticee no. 1 before he was arrested. Noticee no. 1 had submitted that:

- a) At around 12.00 p.m. on December 20, 2008, Noticee no. 1 called Noticee no. 2 and after 5-10 minutes, Noticee no. 2 called Shri Nirmal Kotecha;
- b) All three of them sat at Hotel Pritam at Dadar TT and ordered two fresh watermelon juices and one coffee and that the bill which came to Rs.180/- , was paid by Nirmal Kotecha;
- c) Nirmal Kotecha showed SEBI's original letter to Noticee no. 1 and asked him whether he can get some media coverage. To this, Noticee no. 1 claimed to have stated that he would try out with his friends;
- d) That all three of them then went to Nirmal Kotecha's house by taxi between 12.30 p.m. to 1.30 p.m. There Noticee no. 1 claimed that Nirmal Kotecha scanned the SEBI letter on the printer cum scanner available at his residence and then told him to e-mail it to his friends;
- e) From Nirmal Kotecha's house, Noticee no. 1 sent e-mails to three of his friends:
 - (i) Raj Nambisan of DNA;
 - (ii) Ashish Rukhaiyar of Economic Times; and
 - (iii) Partha Sinha of Times of India;
- f) Since Noticee no. 2 does not cover SEBI and since the document had to be e-mailed to media persons who covered SEBI, probably for this reason, Noticee no. 1 claimed, that he may have been approached by

Nirmal Kotecha through Noticee no. 2. However, Noticee no. 1 claimed that Noticee no. 2 covers Pyramid for ET;

- g) After that Noticee no. 1 claimed that he and Noticee no. 2 went to Dalal Street side in a cab around 2.00 – 2.30 p.m.;
- h) That from there, Noticee no. 2 went to his office and Noticee no. 1 went to one Ashok Jainani's office at M/s. Khandwala Securities Ltd.;
- i) Through Ashok Jainani's computer, Noticee no. 1 claimed to have e-mailed the scanned letter from his e-mail account to Ashok Jainani's email account and then, Ashok Jainani sent the same to Business Standard at around 3.00 – 3.30 p.m.;
- j) That after meeting Ashok Jainani, Noticee no. 1 went to Howrah restaurant near J.J. Art for lunch with Partha Sinha, the Times of India reporter, however, he claimed that he did not discuss about the e-mail with him during lunch;
- k) After that Noticee no. 1 claimed that he came back to Ashok Jainani's office, when they got a call from Business Standard reporter asking them whether anybody in the company can be spoken to;
- l) After that Noticee no. 1 claimed to have called Nirmal Kotecha at about 4.30 -5.00 p.m. on his mobile;
- m) Noticee no. 1 claimed that Nirmal Kotecha then sent an SMS to him the Company Secretary's telephone number and gave his name as one Ganesan, serving at Chennai office;
- n) That Ashok Jainani at around 5.30 – 6.00 p.m. passed on Ganesan's number to the Business Standard reporter. Noticee no. 1 recalled her name as one Priya Nadkarni;
- o) Noticee no. 1 claimed further that Ganesan denied any such development on this front to the Business Standard reporter;
- p) That at about 6.00- 6.30 p.m., the reporter of Business Standard called back Ashok Jainani to inform the same;
- q) Noticee no. 1 claimed to have told Ashok Jainani to inform the reporter that if she is not certain about the news, she should not publish it. That, in

turn, Ashok Jainani told the same to the reporter;

- r) After that Noticee no. 1 claimed to have informed Nirmal Kotecha that the Company Secretary is denying the development;
- s) That, in turn, Nirmal Kotecha gave another Company Secretary, Kanu Sahu's number and name by SMS to Noticee no. 1 between 7.00 to 8.00 p.m.;
- t) Noticee no. 1 claimed that Noticee no. 2 also sent two SMS's to him – one to inform the telephone number and the second to inform the name i.e. Kanu Sahu;
- u) That Noticee no. 1 then SMSed it to all those whom he had forwarded the e-mail earlier, so that, if they so desire, they can confirm the information by talking to Kanu Sahu;
- v) On Sunday morning at about 10.15 a.m., after the article appeared in Business Standard, Noticee no. 1 claimed that Nirmal Kotecha called him on his mobile stating that Saminathan is upset and wants to get in touch with the reporter;
- w) Noticee no. 1 further claimed that Noticee no. 2 probably called before Nirmal Kotecha called, around 9.30 – 10.00 a.m. on Sunday, to say that the story has appeared in Business Standard;
- x) That later Nirmal Kotecha called Noticee no. 1 at about 11.00 a.m. -12.00 p.m. to post for coverage in other newspapers;
- y) Thereafter, Noticee no. 1 claimed, that an SMS received by Nirmal Kotecha from Saminathan, which read as follows – FYI: These guys are behind you, please take care; - was forwarded by Nirmal Kotecha to him.

23. I note from the call data records of Nirmal Kotecha's Amol Kokane number and Noticee no. 1 and 2's respective numbers that they were in close touch with Nirmal Kotecha only around the period of the media publicity pursuant to the forged letter that was sent to P.S. Saminathan. I note that Noticee no. 1 has admitted to the meetings with Nirmal Kotecha and Noticee no. 2 and his main contention is that he was not part of the forgery or had any knowledge of the

letter being forged when he had circulated it among his media circle, as he was just doing what his job is and that is to publicize data and information to the media.

24. In this regard, I note that the forged SEBI letter was addressed to Mr. Swaminathan directing him to make an open offer. The said original forged letter was shown by Nirmal Kotecha who told Noticee no. 1 to give the letter a wide publicity. These facts in itself raises many suspicions as to why an original letter that was addressed to one P.S. Saminathan was with Nirmal Kotecha. Secondly, why such a letter is required to be given wide publicity. Further, after the Business Standard reporter had called back stating that Ganesan (the company secretary) whose number was given by Nirmal Kotecha, had denied such development, why did the Noticee not get suspicious of the information given to him by Nirmal Kotecha. I observe that thereafter, upon getting another company secretary's number, Noticee no. 1 has forwarded it to all the other journalists who he had earlier sent emails regarding the forged SEBI letter. Noticee no. 1 claims to be a person who have been in the media related profession for two decades. In view of the peculiar facts narrated above regarding the SEBI's forged letter, would have alerted an ordinary media professional unless such media professional deliberately choose not to be so alerted as he himself was part of the fraudulent scheme of Nirmal Kotecha.
25. Further, I observe that in the aforesaid narration of events by Noticee no. 1, he had failed to mention about one Dheer Kothari, who is his ex-colleague from M/s. Adfactors PR Pvt. Ltd. to whom he had emailed the forged SEBI letter. I note that he had forwarded the email to Dheer Kothari at 1:43 PM, which would be around the time the Noticee was in Nirmal Kotecha's house from where he had emailed Raj Nambisan of DNA, Ashish Rukhaiyar of Economic Times and Partha Sinha of Times of India. However, I find that he did not mention that he had also emailed Dheer Kothari around the same time. I also observe that Dheer Kothari in his statements before SEBI, had stated that he disseminated

the information to three newspapers i.e. Business Standard, Telegraph and Hindu Business Line and he got paid Rs. 10,000 for carrying out the job. I find that Noticee no. 1 has also left out this information that he paid Dheer Kothari for disseminating the information. Noticee no. 1 has now submitted that he paid the money to Dheer Kothari because he sought for some financial help from him.

26. Furthermore, I observe that Noticee no. 1 in his narration of events had stated that after sending the email from Ashok Jainani's house to the person from Business Standard, he had gone to have lunch with one Partha Sinha, a reporter from Times of India and claimed that he did not discuss about the email with him during this meeting. However, Partha Sinha in his statement before SEBI, stated that during the lunch meeting Noticee no. 1 had discussed the contents of the forged letter and told him that he would later forward the contact number of Kanhucharan Sahu, the Company Secretary of PSTL, to him. In this regard, I observe that post the lunch meeting, Noticee no. 1 stated that he went back to Ashok Jainani's house and then the reporter from Business Standard had called asking for someone from the company she could speak to. Noticee no. 1 claims he then spoke to Nirmal Kotecha who gave him Ganesan's number. Thereafter, the reporter from Business Standard said that Ganesan had denied such development and then Noticee no. 1 got the name and number of Kanhucharan Sahu from Nirmal Kotecha as another reference to give to the reporter. I find that if this is the narration of events stated by Noticee no. 1, how did he know and give the name of Kanhucharan Sahu to Partha Sinha much earlier to that. It appears that Noticee no. 1 was already mindful and complicit of the situation and has deliberately misrepresented facts in his statements. Therefore, I find that the facts alleged in the SCN brings out the knowledge on the part of Noticee no. 1 about the forged letter and the contention of the Noticee no. 1 in this regard is untenable. Further, with regard to the Noticee's contention that he has not monetarily benefitted by this fraud, I find that profit or monetarily benefit per se is not necessary to prove that the Noticee was part of

the fraudulent scheme.

27. I further find that Noticee no. 1 had met with Nirmal Kotecha and Noticee no. 2 on December 20, 2008 at Dadar, after which they went to Nirmal Kotecha's house and sent emails to various reporters. This has been corroborated by the tower location of each of their numbers on December 20, 2008. The three of them first met at Dadar and subsequently at Matunga. I note that the meeting between Noticee no. 1 and 2 with Nirmal Kotecha at Dadar and Matunga has been established in the Order dated March 22, 2018 passed against Nirmal Kotecha and the same has been upheld by the Hon'ble SAT vide its Order dated March 02, 2020. Further, I note that Noticee no. 1 has not denied, but admitted that these meetings took place with Noticee no. 2 and Nirmal Kotecha. Hence, I find the Noticee's contention that it was Nirmal Kotecha who had couriered the letter with Blue Dart as irrelevant
28. The Noticee no. 1 has also submitted that the factor that almost all the correspondents of various media houses failed to realize that the said letter was forged, the factor that the said correspondents after all due diligence found it appropriate to publish it without doubting the credibility of the said letter and the factor that none of the correspondents have been even show caused by SEBI are all important factors since his role and the said correspondents is similar. However, I find the same untenable as the other reporters and correspondents of various media houses were not in the same position as Noticee no. 1. I find that it was Noticee no. 1 who had met with Nirmal Kotecha to circulate the forged letter. It was Noticee no. 1 who had circulated the forged letter to all the reporters and correspondents of various media houses. It was Noticee no. 1 who had given the wrong number of the company secretary to all the reporters and correspondents of various media houses to verify the information of the forged letter. Hence, Noticee no. 1 is on a completely different footing from the other reporters. I find that he is the one who had misled all the reporters and correspondents of various media houses into believing that the letter was

authentic.

29. Furthermore, I also find the Noticee's contention that it was Nirmal Kotecha who had couriered the letter with Blue Dart and Nirmal Kotecha's employee's handwriting on the envelope as irrelevant since I find that Noticee no. 1 was aware of the forged letter. I find that the making or delivery of the forged letter is irrelevant as the role of the Noticee no. 1 in the scheme of things was to disseminate the information of the forged letter to reporters and correspondents of various media houses and mislead them into believing that the letter was authentic, which I find stands established. In this regard, I place reference to the Order of the Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading Pvt. Limited (MANU/SC/0096/2018)**, wherein, it was held that:

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

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

30. In view of the above, I find that Noticee no. 1 was not simply a PR executive who was simply doing his job as canvassed by him, but that from the facts and

circumstances of the case, I find that Noticee no. 1 was aware that the letter was forged and was part of the fraudulent scheme of events orchestrated by Nirmal Kotecha in disseminating the forged letter to the media and misleading them in believing the authenticity of the said forged letter, which in turn, upon its publication, has misled investors to trade in the scrip of PSTL. Thus, I find that Noticee no. 1 (Rakesh Sharma) has violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.

31. **Rajesh Unnikrishnan (Noticee no. 2):** I observe that Noticee No. 2 was the Assistant Editor of Economic Times and a colleague of Rakesh Sharma when he was working in Business Standard. In his statement dated May 19, 2009, Noticee no. 2 stated that he had covered some stories for Economic Times on Pyramid Saimira such as transfer of stake from one promoter to another, bidding for Reel Cinema etc. He also stated that from his investment banking circle, he got the contact number of Nirmal Kotecha sometime around Jan-Feb, 2008 and he contacted Nirmal Kotecha for a story regarding Dhanush Technologies. Further, he also stated that he used to contact Nirmal Kotecha regularly for stories and he came to know P.S. Saminathan, the CMD of PSTL through Nirmal Kotecha. Further, that he introduced Noticee no. 1 to Nirmal Kotecha somewhere in October 2008.
32. With regard to the allegations that Noticee no. 2 had a meeting with Noticee no.1 and Nirmal Kotecha on December 20, 2008, the Noticee has strongly denied this and vide his statement dated January 27, 2009, submitted the following alternative narrative:
- a) Rakesh Sharma had called him at 12:00 noon to say that there was a story regarding SEBI order in PSTL and asked him whether he can meet;
 - b) that, he in response asked him to come to his office or call later as he had a meeting at 12:30 pm with Shashi Kumar, fund manager of Birla Sunlife Real Estate Fund in Lower Parel;

- c) that he travelled from his home at Bellapur by train and got down at Wadala and took a cab to Dadar where he met Shashi Kumar at around 12:30 pm;
 - d) that from Dadar he travelled with Shashi Kumar to Lower Parel where they had lunch together at Shri Krishna Udipi Hotel in Lower Parel at around 1:00 pm., and
 - e) that at 2:30 pm he reached office.
33. However, I note that vide his letter dated May 25, 2009, the Noticee no. 2, in reply to the ex-parte ad interim order dated April 23, 2009, had inter alia also submitted the following narrative:
- a) That on and around December 19, 2009, Rakesh Sharma called him and informed him that he wanted to meet him and give him an exclusive story;
 - b) that he told him that he had a prearranged meeting with Shashikumar of Birla Sunlife Ltd. on December 20, 2008 at Kabutarkhana at Dadar and that he could meet him after the said meeting at Dadar;
 - c) Further that on December 20, 2008, Sharma once again reminded him about the meeting with him;
 - d) that he travelled to Wadala Station by train from his residence at Bellapur and then took a taxi to Dadar to meet Shashikumar and that he did not meet Sharma or Kotecha on December 20, 2008;
 - e) That when he reached somewhere near Dadar, he received a call from Sharma enquiring about his location;
 - f) That since the meeting with Shashi Kumar was very important and related to his beat, he told Sharma that he would meet him only if time permits after his prearranged meeting or that he could come to his office;
 - g) That he spoke to Kotecha regarding news relating to corporate developments in companies such as Bihar Tubes, Usher Agro, Dhanush Technologies etc.,
 - h) That he met Shashi Kumar at near Kabutarkhana in Dadar around 12:50 pm;

- i) That Shashi Kumar requested him to travel with him since he had another meeting at Lower Parel and was late for the same;
- j) That thereafter he travelled with Shashikumar in his car till Parel and thereafter went to office;
- k) That he reached office at around 2:15 pm.

34. I observe that the statement dated January 27, 2009 of Noticee no. 2 and his aforesaid letter dated May 25, 2009 are not consistent with one another. In his statement dated January 27, 2009, he stated that from Dadar he travelled with Shashi Kumar to Lower Parel, where they had lunch together at Shri Krishna Udipi Hotel in Lower Parel at around 1:00 p.m. and that at 2:30 p.m. he reached office. However, vide his reply dated May 25, 2009, he has submitted that he met Shashi Kumar near Kabutarkhana in Dadar around 12:50 p.m. and travelled with him up to Lower Parel as he had another meeting and was late for the same and thereafter, went to office. I find that there is no mention in his aforesaid letter about the lunch together at Shri Krishna Udipi Hotel in Lower Parel as claimed in his statement, instead it has been stated that he had another meeting and was late for the same. It appears that the lunch with Shashi Kumar did not take place and he went for another meeting to Parel. Hence, I find that the Noticee has given conflicting narrations of the events in his own statements and replies.

35. Be that as it may, even if there is no clarity on whether he had lunch with Shashi Kumar, what I find relevant is that the Noticee no. 2 claims that he met Shashi Kumar at Kabutarkhana, which is located in Dadar (West), Mumbai around 12:50 pm on December 20, 2008. However, as per the cell ID locations provided by the mobile service provider, it was found that the Noticee no. 2 was at/around Royal Status, Sir Bhalchandra Road, Near Pritam Hotel Dadar (East) at 12:03, 12:09 and 12:23 on December 20, 2008. Further, his cell ID locations at 12:57, 13:14 and 13:44 on the same day as provided by the service provider indicated that he was at/ around Jamnadas Mansion, Near Matunga Station

(East), which is where Nirmal Kotecha stays. Hence, I find that even though the Noticee claims that he was at Kabutarkhana which is located in Dadar (West) to meet Shashikumar and then travelled with him to Lower Parel, his tower location during the span of about one hour during the said time frame showed his cell IDs at Dadar (East) and Near Matunga Station (East). In this regard, I note that the Noticee no. 2 vide his reply dated May 25, 2009, submitted that the times relating to the location of his mobile telephone and the findings in the ex-parte, ad-interim order seem to be incompatible, because as per the SEBI ex-parte, ad-interim order he was at Matunga (East) at 1:44 pm and that he had left for office along with Noticee no. 1 at 2:00 p.m., whereas, his office records shows that he logged in at 2:17 p.m. He therefore claims that he could not have travelled from Matunga (East) to his office at D.N. Road (opposite CST) within 17 minutes by road or alternatively that a person making calls at Matunga at 1:45, cannot be near the Times of India Building at 2:15 pm, given the traffic in Mumbai. In this regard, I rely on the tower locations readings of the Noticee's cell ID rather than the office records of the Noticee no. 2. Further, I find that this contention, rather than assisting him, further corroborates the fact that he was with Noticee no. 1 and Nirmal Kotecha, as admittedly it was impossible for him to be at his office at D. N. Road when his cell ID showed him to be at Matunga (East).

36. With regard to the alleged meeting, the Noticee no. 2 vide his reply dated September 30, 2019, has sought for the benefit of doubt as he contends that he has not been held to play any significant role in the said allegation of dissemination of information to journalists. However, I find the submissions of the Noticee untenable as I find that the Noticee has given conflicting statements and replies and has failed to satisfactorily prove that he did not meet Nirmal Kotecha and Noticee no. 1 on December 20, 2008, when the corroborative evidence of his cell ID location makes it clear that the three of them had met together. I note that provisions of Evidence Act are not strictly applicable to the proceedings under Section 11(1), 11(4) and 11B of SEBI Act, 1992 and Section

12A of SCRA, and hence strict evidence is not applicable in such proceedings. In fact, as held in the Order of **SEBI Vs. Kishore R. Ajmera (2016) 6 SCC 368**, I find that the test of preponderance of probabilities is applicable and in the present case, I find that the corroborative evidence available from the tower locations of the Noticee is reasonable evidence to infer that the Noticee no. 2 had met Noticee no. 1 and Nirmal Kotecha on December 20, 2008. Further, I note that the meeting between Noticee no. 1 and 2 with Nirmal Kotecha at Dadar and Matunga has been established in the SEBI Order dated March 22, 2018 passed against Nirmal Kotecha which has been upheld by the Hon'ble SAT vide its Order dated March 02, 2020 in Appeal no. 261 of 2018, wherein, it was held that:

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

37. I note that the Noticee no. 2 had also sent an SMS to Noticee no. 1 informing him of the name of the compliance officer and the mobile number on December 20, 2008. It was revealed that the mobile number did not belong to Kanhucharan Sahu, the compliance officer, but to one Dharmesh Shah (Noticee no. 3) who misled the reporters that called him to verify the authenticity of the forged letter. With regard to the same, Noticee no. 2 has submitted that the

mobile number purportedly belonging to Kanhucharan Sahu, the compliance officer of PSTL, which he received from Nirmal Kotecha, was forwarded to Noticee no. 1. However, it is not alleged that he knew that the said number was being used by Dharmesh Shah or that he had misrepresented to the journalists who called the said number that he was Kanhucharan Sahu, a company secretary at PSTL or that he confirmed the fact of the letter issued by SEBI to P.S. Saminathan. At this point, it begs to question as to why Nirmal Kotecha had forwarded the (wrong) number of Kanhucharan Sahu to Noticee no. 2 in the first place if by what Noticee no. 2 contends, that he has not played any significant role in the alleged dissemination of information to journalists or that he didn't meet Nirmal Kotecha and Noticee no. 1 to discuss the forged letter. In this regard, I find that from the call records of the Noticees that Noticee no. 1 had called Nirmal Kotecha (on his Amol Kokane number) at 18:13 on December 20, 2008. Immediately thereafter, Nirmal Kotecha called Noticee no. 2 at 18:14 and again at 18:35. Noticee no. 1 also called Noticee no. 2 at 18:41 and Ashok Jainani at 18:51. Thereafter, there has been continuous long exchange of calls between the Noticee no. 1 and 2 and Nirmal Kotecha before Nirmal Kotecha sent four SMSs, of which two were sent to Noticee no. 1 and two to Noticee no. 2 between 19:31 to 19:33. Noticee no. 2 thereafter also sent two SMSs to Noticee no. 1 at 19:36. The flow of calls and SMSs continued between the three till 19:40. Further, after receiving the SMSs from Nirmal Kotecha's number and from Noticee no. 2, Noticee no. 1 had sent SMSs to the reporters and correspondents of various media houses. Hence, I find that not only did Noticee no. 2 meet Nirmal Kotecha with Noticee no. 1 on December 20, 2008, but also had multiple telephonic conversations and SMSs with Nirmal Kotecha and Noticee no. 1 on that day. Therefore, the reasonable inference from the above facts and circumstances is that Noticee no. 2 was also actively involved with Nirmal Kotecha and Noticee no. 1 on December 20, 2008, which he has actively denied.

38. Further, I observe that this is not the first time that Noticee no. 2 had dealt with

Nirmal Kotecha with regard to PSTL. I note that Noticee no. 2 vide his letter dated May 19, 2009 had submitted that Nirmal Kotecha used to give him stories on various companies such as Usher Agro, Dhanus Technologies and PSTL and that the main source of the articles that he wrote about on PSTL promoter stake sale was Nirmal Kotecha only. I note that Noticee no. 2 along with one Bobby Kurian had written an article titled *"Pyramid Saimira: US' Regal Entertainment, PEs eye 14% in Pyramid"* in The Economic Times dated July 07, 2008. The article declared that the World's largest theatre chain, US-based Regal Entertainment Group, and the private equity funds such as Bain Capital, Goldman Sachs and Texas Pacific Group were in talks with the promoters of PSTL to pick up around 14% stake in the company and that the deal, if concluded, will be in the range of Rs 250-300 crore. The article further stated that Nirmal Kotecha, one of the promoters of the company, was in an exit mode and that NYSE-listed Regal Entertainment, controlled by billionaire Philip Anschutz, and, the PE funds are in discussions to pick up Nirmal Kotecha's stake in the company (which was stated to be around 14%) through a negotiated price of over Rs 350 per share. However, I note that on the same day i.e. July 7, 2008, PSTL had clarified to BSE that with reference to the news item appearing in a leading financial daily titled "US' Regal Entertainment, PEs eye 14% in Pyramid", the Company does not subscribe to any of the news expressed in those columns and that the Company has nothing to do with this information, which seems to be speculative report emanating from the media and Economic Times had also carried the said clarification. Investigations revealed that the trading volume in the scrip of PSTL on July 7, 2008 (when the article was published) on both BSE and NSE was exceptionally high. On the said day, 2,618,759 shares were traded on BSE and 2,795,947 shares were traded on NSE. It was revealed that the top three trading clients on BSE and NSE on gross volume basis on July 7, 2008 were persons/ entities associated with Nirmal Kotecha and I note that separate proceedings have been initiated against these entities associated with Nirmal Kotecha in this regard.

39. Hence, I find that the news article published by Noticee no. 2 led to huge trading volumes in the scrip of PSTL on July 07, 2008. What is interesting is that the main source of the article was admittedly from Nirmal Kotecha and even after the company PSTL dismissed the news article as the information was false and speculative, Noticee no. 2 still proceeded to write a second article titled “*PS Saminathan to hike Pyramid stake to 51%*” on October 14, 2008, wherein it had been reported that P.S. Saminathan would be acquiring around 25% stake in the company from the other two promoters N.C. Ravichandran and Nirmal Kotecha, for around Rs. 150 crore, by paying Rs. 200 per share. It was emphasized in the article that this price was almost three times the company’s then ruling market price. It was further reported that Nirmal Kotecha held a little over 24% stake in PSTL while N.C. Ravichandran held less than 1% stake. It was also reported that P.S. Saminathan’s move follows the ambitious expansion plans of the company and its subsidiaries, and that, this expansion will require funding from outside and the promoters will be better placed with a higher shareholding for the same. Further, despite the clarification given by PSTL to BSE and carried by Economic Times in the first article, it was again reiterated in this article by Noticee no. 2 that many US based Regal Entertainment Group and PE funds such as Bain Capital, Goldman Sachs and Texas Pacific Group were in talks with the promoters to pick up equity in the company and that Shri Kotecha who originally held 30% stake in the company has been reducing his exposure in PSTL. Furthermore, I note that Noticee no. 2 wrote a third article on December 10, 2008 titled “Market slide forces companies to give more shares” covering that many companies like PSTL, GTL Infrastructure, Hotel Leela venture and GHCL, which issued Foreign Currency Convertible Bonds (FCCBs), are revising their conversion price downwards after negotiations with institutional investors after a sharp fall in the share prices. I note that this article emphasized only on PSTL.
40. In this regard, I find that the relationship between Noticee no. 2 and Nirmal Kotecha is so conspicuously evident from the fact that despite PSTL and

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

41. From the facts and circumstances of the case and the relationship of the Noticee no. 2 with Nirmal Kotecha, I find that Noticee no. 2 had met Nirmal Kotecha and Noticee no. 1 on December 20, 2008 to discuss the dissemination of the forged letter and was aware that the letter was forged. Hence, I find that Noticee no. 2 has colluded with Nirmal Kotecha and Noticee no. 1 in disseminating a forged letter and misleading the reporters and correspondents of media houses by circulating the wrong number of the compliance officer of PSTL. In this regard, I place reference to the Order of the Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading Pvt. Limited** (supra), wherein, Hon'ble Supreme Court has also emphasized the duties of print and electronic media, that they should not mislead the public.
42. In view of the above, I find that Noticee no. 2 was aware that the letter was forged and was part of the fraudulent scheme of events orchestrated by Nirmal Kotecha in disseminating the forged letter to the media and misleading them in

believing the authenticity of the said forged letter, which in turn, upon its publication, has misled investors to trade in the scrip of PSTL. Thus, I find that Noticee no. 2 (Rajesh Unnikrishnan) has violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.

43. **Dharmesh Shah (Noticee no. 3):** As brought out in the aforesaid paras, it has been alleged in the SCN that Nirmal Kotecha had given the number of Kanucharna Sahu, the Compliance Officer and Company Secretary of PSTL, to Noticee no. 1 and 2 as 9947219100. Noticee no. 1 in turn, provided the same to all his media friends to whom he had provided information on the forged SEBI Letter. However, the said number 9947219100 was actually being used by Noticee no. 3 (Dharmesh Shah), who was not a Compliance Officer or Company Secretary or representative of the company PSTL.
44. It has been alleged in the SCN that certain reporters, who had been given the number from Noticee no. 1, had called on this number 9947219100 to verify the information of the SEBI letter from the company PSTL and the person who answered the call had confirmed the receipt of the SEBI letter by PSTL. I note that N. Sundaresha Subramanian of DNA, Partha Sinha of Times of India and Jayanta Mallick of the Hindu Business Line had all called on the number 9947219100 and the person who answered the call, admitted that the SEBI letter was received by the company PSTL. It has been alleged that Noticee no. 3, to whom this number 9947219100 belonged, was impersonating Kanuchama Sahu and misled the reporters in believing that the company had received such letter from SEBI.
45. In this regard, I note that Kanhucharan Sahu is the Compliance Officer and Company Secretary of PSTL since March 2008. In his statement recorded on January 28, 2009 at SEBI, he claimed that mobile numbers 9790910824 and 9940249404 belonged to him. He further claimed that he did not receive any

calls on December 19, 20 and 21, 2008 in the matter of forged SEBI letter advising P.S. Saminathan to make an open offer. He also stated that neither any person from the media or any reporter called him on those days, nor did he receive any calls from Nirmal Kotecha on those days. He further claimed that he had not confirmed to anybody regarding the receipt of the letter by the company and that he spoke to Nirmal Kotecha only after issue of SEBI's press release and that the conversations were in the routine matters including the forged SEBI letter. Hence, I observe that the number 9947219100 which was given to Noticee no. 1 by Nirmal Kotecha and then circulated among the media houses, did not belong to Kanhucharan Sahu, the Compliance Officer and Company Secretary of PSTL. The number in fact was found to belong to one Pratheesh Kumar V.K. that lived in Thrissur, Kerala. A detail analysis of the calls made by Nirmal Kotecha to the number 9947219100 was done and it was revealed that Nirmal Kotecha was in touch with the number 9947219100 on December 20, 2008 and thereafter. It was also revealed that immediately prior to calling the number 9947219100, Nirmal Kotecha had made calls and sent SMSs to a number 9847298213. Upon ascertaining to whom the number 9847298213 belonged to, it was found that the number belonged to one Meera Venugopal, wife of Noticee no. 3, with the address in Cochin. From a detailed analysis of Meera Venugopal's number 9847298213, it was found that she had also made various calls to the number 9947219100 that belonged to Pratheesh Kumar, as per the registered details provided by the service provider. When the investigation team had met Meera Venugopal for her statement and enquired about her call records with the number 9947219100, she stated that the number 9947219100 belonged to her husband Dharmesh Shah, the Noticee no. 3. The investigation team then took the statement of Noticee no. 3 again on June 12, 2009, wherein, he admitted that he has been using the number 9947219100 for the last 2 years and lost the phone almost 3-4 months back. I note that Noticee no. 3 denied then that he had not received any calls on the issue of PSTL during the period December 20-25, 2008. I also note that the statement of Pratheesh Kumar V.K. was also taken on June 11, 2009, and he claimed that

the signature on the KYC and the handwriting on the KYC of the service provider was not his and that the number 9947219100 did not belong to him. Hence, from the above facts, I find that the number 9947219100 was being used by Noticee no. 3 during the month of December 2008, when the said number was provided by Nirmal Kotecha to Noticee no. 1 who in turn circulated it to various reporters and correspondent media houses.

46. I note that though Noticee no. 3 in his statement taken on June 12, 2009 had denied having received any calls from anybody in the matter of PSTL during the period December (20-25), 2008, an analysis of calls received on number 9947219100 during the said period revealed that Partha Sinha of The Times of India and Ashish Rukhaiyar of The Economic Times had called on the number 9947219100 that was being used by Noticee no. 3 on December 21 at 19:52 and on December 22, 2008 at 11:41 a.m. respectively. Partha Sinha had informed SEBI that he called that number on Sunday around 8.00 p.m. and the person who took the call confirmed that they had received the letter and are looking into the matter. Ashish Rukhaiyar in his statement stated that on Monday when he called on the number 9947219100, the person who answered the call informed him that it was not the number of Kanhucharan Sahu. Hence, I find that the reporter from Times of India who was given the number 9947219100 by Noticee no. 1, had called the number assuming that it was the number of Kanhucharan Sahu, the Compliance Officer/Company Secretary of PSTL, and the person who answered the call confirmed that PSTL had received the said letter from SEBI. However, it appears that the person who answered the call was not Kanhucharan Sahu but someone else impersonating him and I find that it was Noticee no. 3 who was using the number 9947219100 during that period.
47. In this regard, the Noticee no. 3, vide his replies dated September 03, 2019, August 19, 2019 and August 05, 2019, has denied that he acted as an imposter of Kanhucharan Sahu, the company secretary of PSTL. With regard to the

statements made by various reporters who had called on the number 9947219100, the Noticee submitted the following:

- a) With regard to the statement made by Raj Nambisan for DNA, who had stated that his correspondent Sundaresha Subramanian had called on the number 9947219100 to verify the information of the SEBI letter to PSTL, the Noticee has submitted that he did not receive any call from Sundaresha Subramanian and that no details or particulars of call records have been provided in the SCN in this regard. Further, that the statement of Sundaresha Subramanian has not been recorded by SEBI but that the SCN relies upon the statement of a third party who had not made the call.
- b) With regard to the statement made by Partha Sinha of Times of India, the Noticee has denied that he received such call from Partha Sinha and states that Partha Sinha has confirmed that he did not publish any article about the alleged SEBI letter on December 22, 2008. Therefore, assuming whilst denying that he did indeed give any such alleged confirmation, the Noticee submits that the same was totally inconsequential as no investor could ever have acted on the same.
- c) With regard to the statement made by Jayanta Mallick of the Hindu Business Line, the Noticee has denied that he received any call from him and no details or particulars of call records have been provided in the SCN in this regard.
- d) With regard to the statement made by Ashish Rukhaiyar of Economic Times, the Noticee submits that Rukhaiyar himself admitted that when he purportedly called the number 9947219100, he was correctly told that this was not the number of the said Kanhucharan Sahu and therefore, no fault whatsoever can be found with the Noticee.

48. Further, the Noticee no. 3 has submitted that since the allegations against him rest on the statements made by the said reporters, he would require to cross examine N. Sunderesha Subramanian, Raj Nambisan, Partha Sinha, Ashish

Rukhaiyar, Jayanta Mallick and Gopinath Shenoy. However, that SEBI has not acceded to his request and cross examination of the said entities was not granted to the Noticee. Therefore, the charges against him should be dropped on this ground alone. Also that the statements of N. Sunderesha Subramanian have also not been provided to him.

49. In this regard, I observe that the Noticee no. 3 was not given the opportunity to cross examine the aforementioned reporters on whose statements the allegations have been made against the Noticee. Therefore, I agree with the Noticee no. 3 that the statements of the reporters cannot merely be relied upon. However, I do not agree with the Noticee no. 3 that the allegations against the Noticee no. 3 were solely concluded on the statements made by the said reporters. Further, even if the statements of the reporters cannot be relied upon, the facts deposed by reporters to the extent that they are corroborated by other documents available on record cannot be dismissed as unreliable. In this regard, I observe that the call records of the number 9947219100, reveal that a call was made by Partha Sinha on December 21, 2008 around 8:00 pm to the number 9947219100 and the person who took the call confirmed that they had received the letter and are looking into the matter. I find that the Noticee no. 3 had contended that the same becomes irrelevant since Partha Sinha did not publish any news article on the forged letter to PSTL. However, I find the submissions of the Noticee untenable. The fact is that a call was made to the number 9947219100 which was provided by Nirmal Kotecha to Noticee no. 1 and 2, and Noticee 1 in turn circulated the same to various reporters who wanted to confirm whether the SEBI letter to PSTL was credible information as provided to them by Noticee no. 1. The fact further is that, even if it was one call, the Noticee no. 3, who admittedly was using the number 9947219100 then, had confirmed to that one caller that the information about the letter to PSTL was true. Hence, I find that Noticee no. 3 has in fact impersonated Kanhucharan Sahu, the compliance officer and company secretary of PSTL. I find that the number of persons to or number of times he impersonated

Kanhucharan Sahu is not relevant to prove that he acted in a fraudulent manner. I find that the one act itself is sufficient to prove that he impersonated Kanhucharan Sahu and has colluded with Nirmal Kotecha in misleading the media to believe in the authenticity of the information that was circulated to them.

50. Further, I also observe that Noticee no. 3 has in his statements recorded on June 09, 2008, admitted that he knows Nirmal Kotecha as they are childhood friends and he is in touch with him at times. Further, he also stated that his wife Meera Venugopal Shah and Nirmal Kotecha's first wife Shweta Menon were also childhood friends and they were in touch with each other. Furthermore, I note that the Noticee no. 3 has also stated that he knew Deepak Thakkar, who is the maternal uncle of Nirmal Kotecha against whom separate proceedings have been initiated for his alleged role in manipulating the scrip of PSTL. Therefore, it is not the case that the Noticee no. 3 did not know Nirmal Kotecha, but in fact, I find that Nirmal Kotecha was very good friends and well connected with Noticee no. 3. I find that the evidence to test the preponderance of probability in the present case is not dependent on thin parameters of association between the Noticee with Nirmal Kotecha, but on a well connected and admitted association between the two.
51. Hence, in the given facts and circumstances of the case, I find that Noticee no. 3 was in fact associated with Nirmal Kotecha and from the call records of Partha Sinha with the Noticee, it is established that the Noticee no. 3 was impersonating the compliance officer/company secretary of PSTL in December 2008. In view of the above, I find that Noticee no. 3 (Dharmesh Shah) has violated Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of the PFUTP Regulations, 2003.
52. I observe that some of the Noticees have, in their submissions, placed reliance on certain judgements in order to establish that for the charge of fraud, cogent

and compelling evidence is required. The Noticees have *inter alia* relied upon the findings in the following cases to buttress their argument that when fraud is alleged, mere concern or probability is not sufficient to prove the charge of fraud and it must be based on cogent evidence:

- (i) *SEBI vs. Kanaiyalal Baldevbhai Patel*, (2017) 15 SCC 1
- (ii) *Union of India vs. Chaturbhai M. Patel* (AIR 1976 SC 712)
- (iii) *Union of India vs. H.C. Goel* (AIR 1964 SC 364)
- (iv) *Sterlite Industries vs. SEBI* (SAT Appeal no. 20/2001 dated Oct 22, 2001)
- (v) *L.D. Jaisinghani vs Naraindas N Punjabi* (1976) 1 SCC 354: AIR 1976 SC 373
- (vi) *Razikram vs. J.S. Chauhan* – AIR 1975 SC 667: (1975 4 SCC 769)
- (vii) *Ambalal vs. Union of India*, AIR 1961 SC 264.
- (viii) *Seth Gulabchand vs. Seth Kudilal* (AIR 1966 SC 1734)
- (ix) *Roop Singh Negi vs. Punjab National Bank* [(2009) 2 SCC 570]
- (x) *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi* [(1991) 2 SCC 716]
- (xi) *Parsoli Corporation Ltd. vs. SEBI* (SAT Order dated August 12, 2011)

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

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

“.....While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis

which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

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

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

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

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

securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.”

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

(emphasis supplied)

54. I have considered the submissions of the Noticees and the various judgments relied upon by the Noticees to substantiate their arguments that there is not enough evidence to hold them in violation of manipulating the scrip of PSTL. I find the submissions untenable as sufficient evidence has been put forward in the above paras to prove their association with Nirmal Kotecha and how they have played a key role in the circulation of the forged letter and misled the media to believe the authenticity of the said letter. I note that there is no allegation in the SCN that the Noticees have traded in the scrip of PSTL. However, I find that the Noticees, have failed to exercise due diligence and by disseminating false information to the reporters and media houses, have misled investors to trade in the securities of PSTL, which led to a high rise in the price of the shares of PSTL on December 22, 2008, due to the news reports that were circulated by them to the reporters and media houses. As noted above, Hon'ble Supreme Court in the matter of **SEBI Vs. Rakhi Trading Pvt. Limited** (supra) held that the duties of print and electronic media are such that they should not mislead the public who are present and prospective investors, in their forecast on the securities market. The present case is not simply one where allegations have been made against a reporter or media house for reporting false or incorrect information, but a case where the intention of the entities to mislead the market through the circulation of the false information have been established. As further held by the Hon'ble Supreme Court in the aforesaid Order:

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

55. In view of the findings as given in the above paras 20 to 54, I conclude that the Noticees no. 1 to 3 have contravened the provisions of section Section 12A of SEBI Act, 1992 and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(e) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”).
56. I note that the Noticee no. 1 has already undergone debarment from the securities market for a period of more than 10 years pursuant to SEBI’s ad interim order dated April 23, 2009. I am of the view that the period of restraint or prohibition undergone by the Noticee no. 1 is commensurate with the violation of the SEBI Act and PFUTP Regulations committed by him. Therefore, I am of the considered view that no further period of restraint or prohibition is required in the instant case against the Noticee no. 1. I also note that Noticee no. 2 has undergone a debarment for a period starting from the date of the *ex parte ad interim* order dated April 23, 2009 and ending on October 27, 2010 when the interim order of SEBI was stayed by Hon’ble SAT qua the Noticee no. 2. Hence, having regard to all the aforesaid facts and circumstances including the nature of violations and conduct of the Noticee no. 2, I find that issue of directions

under Sections 11, 11A and 11B of the SEBI Act, 1992, is called for in the present matter as given in para 56.

57. Further, having regard to all the aforesaid facts and circumstances including the nature of violations and conduct of the Noticee no. 3, I find that issue of directions under Sections 11, 11A and 11B of the SEBI Act, 1992, is called for in the present matter as given in para 58.

DIRECTIONS:

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

- a) Revoke the directions passed against Noticee no. 1 (Rakesh Sharma), vide interim order dated 23 April, 2009 with immediate effect, for the reasons stated in para 56.
- b) The Noticees no. 2 (Rajesh Unnikrishnan) and 3 (Dharmesh Shah) are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or indirectly, for a period of 1 (one) year from the date of coming into force of this Order; and
- c) Obligation of the aforesaid Noticees, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the

aforesaid Noticees in the F&O segment of the stock exchange, are directed to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

Place: Mumbai

Date: June 23, 2020

Sd/

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA