

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
CONFIRMATORY ORDER**

**Under Sections 11 (1), 11 (4) and 11B (1) of the Securities and Exchange Board of
India Act, 1992**

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

In respect of:

Sl. No.	Name of the Entity	PAN
1.	Hemant Ghai	AHMPG0327K
2.	Shyam Mohini Ghai	AHSPG1017G
3.	Jaya Hemant Ghai	ADWPT5210G

In the matter of CNBC Awaaz “Stock 20-20” Show co-hosted by Mr. Hemant Ghai

Background

1. On analysis of the trading pattern of two entities viz. Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai for the period between January 1, 2019 to May 31, 2020 (**‘Relevant Period’**), high correlation of the trades of the aforesaid entities was observed with the recommendations made in the show Stock 20-20 (**“Show”**) aired on news channel CNBC Awaaz.
2. Based on the aforesaid, Securities and Exchange Board of India’s (**“SEBI”**) conducted a preliminary examination for the Relevant Period to look into the possible violations of provisions of Securities and Exchange Board of India Act, 1992 (**“SEBI Act”**) and various regulations framed thereunder including SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (**“PFUTP Regulations”**) by certain entities including Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai.

SEBI's Examination

3. SEBI's preliminary examination brought out the following:

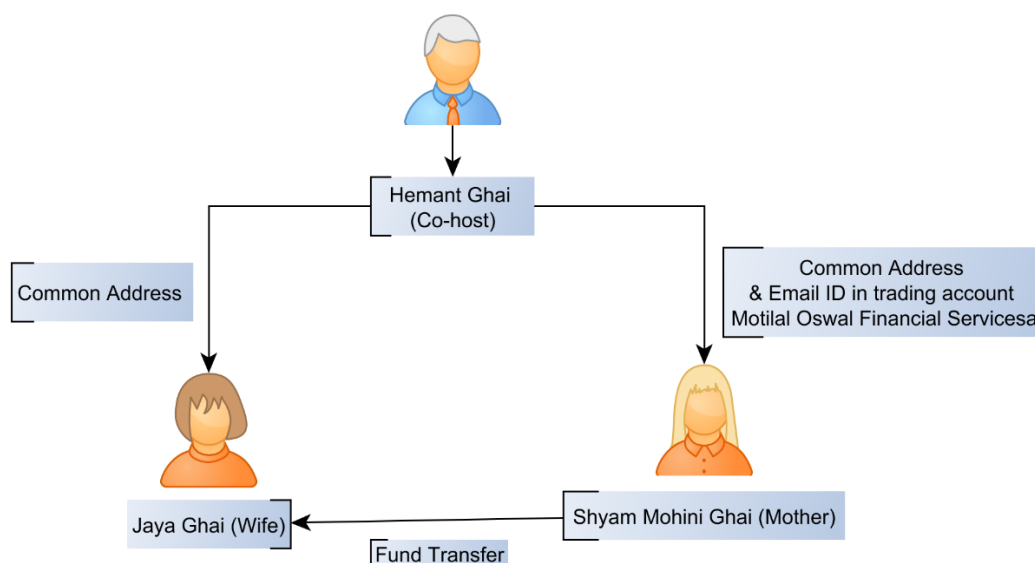
- 3.1. Mr. Hemant Ghai was hosting / co-hosting the show, Stock 20-20 ("**Show**") wherein recommendations on certain stocks to be bought / sold during the day, were made.
- 3.2. It was observed that Ms. Jaya Hemant Ghai, spouse of Mr. Hemant Ghai and Ms. Shyam Mohini Ghai, mother of Mr. Hemant Ghai have undertaken a large number of Buy-Today-Sell-Tomorrow ("**BTST**") trades during the Relevant Period in synchronization with the recommendations made in the Show. Shares were bought on the previous day to the recommendations being made on the Show and sold immediately on the recommendation day.
- 3.3. Trades were executed in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai which were *prima facie* in violation of provisions of SEBI Act and PFUTP Regulations and had *prima facie* earned proceeds amounting to Rs. 2,95,18,680/- through the limited number of trades examined during the Relevant Period.

Interim Order

4. In light of the aforesaid findings of the examination, an interim order dated January 13, 2021 ("**Interim Order**") was passed by SEBI *inter alia* against Mr. Hemant Ghai, Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai, (collectively referred to as "**Noticees**"). The interim order against the Noticees was passed taking into account the facts and circumstances described therein, which are, *inter alia*, summarised as under:

- 4.1. Mr. Hemant Ghai is the co-host of the Show which airs on trading days at 7:20 am and it recommends certain stocks to be bought during the day with a target price and a stop loss price.
- 4.2. Based on KYC details from Motilal Oswal Financial Services Ltd., Kotak Securities Ltd., Ohm Stock Brokers Pvt. Ltd. and ICICI Securities Ltd, and bank statement of Kotak Mahindra Bank (A/c No. 06670120011117- Ms. Jaya Hemant Ghai), the

Noticees involved in the extant matter were *prima facie* connected with each other as depicted pictorially, here under:



- 4.3. On an analysis of trades executed in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai, it was observed that buy positions were created by placing orders in the trading account of the entities in the respective scrips one day prior to the recommendations being given on the Show co-hosted by Mr. Hemant Ghai. These buy positions have been exited by selling the said shares, on the recommendation day at a price higher than at which the shares were bought just a day before, thereby generating significant proceeds.
- 4.4. The aforesaid pattern of BTST trades were executed repeatedly in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai, synchronised with the recommendations given on the Show co-hosted by Mr. Hemant Ghai.
- 4.5. It was *prima facie* noted that the recommendation in the Show to buy the scrip had a significant impact on the price, particularly opening price, and volume of the scrip as there was no other material price sensitive corporate announcement supporting the significant price and volume variation in the scrip on the day of the recommendation or the prior day. This *prima facie*, discernable increase in price and volume of the recommended scrip on the day of recommendation has taken place frequently over the course of the Relevant Period.

- 4.6. Based on the cumulative effect of circumstantial evidence viz., frequent and repeated pattern of trading, proceeds generated, trading strategy, attempt to avoid regulatory detection and not presenting material facts on the Show coupled with the relationship / connection among the Noticees, on a preponderance of probability basis, *prima facie*, it was held that that Mr. Hemant Ghai had advance information on the buy recommendation of shares to be made on the next day and the trades in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai were *prima facie*, designed to take advantage of the advance information of the buy recommendation given on the Show, as the buy recommendation would have a positive impact on the price and volume of the shares.
- 4.7. It was *prima facie* observed based on call data records (“**CDRs**”), CTCL ID, Dealer who was executing trades, geographic location, Noticees and Authorised Person of the broker, KYC details of Ms. Shyam Mohini Ghai and expertise of Mr. Hemant Ghai in securities market that Mr. Hemant Ghai pursuant to a *prima facie* scheme was controlling and operating the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai.
- 4.8. It was *prima facie* held that all the three Noticees played an equal role in the *prima facie* scheme to exploit the advance information about the buy recommendation to be given on the Show co-hosted by Mr. Hemant Ghai and have therefore, *prima facie* violated Sections 12A (b) and (e) of SEBI Act, regulations 3 (c), 3(d) and 4(1) of PFUTP Regulations. The *prima facie* proceeds generated by the scheme was Rs. 2,95,18,680/-.
- 4.9. Based on the aforesaid findings, certain directions were issued against the Noticees vide the interim order which *inter alia* were as follows:
- 4.9.1. The Noticees were restrained from buying, selling or dealing in the securities market, either directly or indirectly, in any manner whatsoever till further directions.

- 4.9.2. Mr. Hemant Ghai was directed to cease and desist from undertaking, directly or indirectly, any activity related to giving investment advice, sell or buy recommendations, publishing of research reports etc., related to the securities market, till further directions.
- 4.9.3. The bank accounts of the entities to the extent of Rs. 2,95,18,680/- was impounded. The said entities were directed to open an escrow account with a nationalised bank, jointly and/or severally and deposit the impounded amount mentioned herein. The impounded amount has to be deposited within 15 days from the date of service of the Order. The escrow account/s shall be an interest bearing escrow account and shall create a lien in favour of SEBI. Further, the monies kept therein shall not be released without permission from SEBI.
5. Vide the aforesaid interim order, the Noticees were advised to submit their replies, if any, within 21 days from the service of the interim order and they were also advised to indicate whether they desire to avail an opportunity of hearing on a date and time to be fixed on a specific request to be made in that regard.

Service of interim order, reply and hearing

7. The interim order was served on the Noticees vide emails dated January 13, 2021 and by Speed Post Acknowledgment Due. Proof of service is on record. Pursuant to the interim order, Noticees had opened escrow accounts and deposited the entire *prima facie* proceeds generated from the front running trades as directed in the interim order. Further, Noticees have declared their assets to SEBI.
8. The Authorised Representative (“AR”) of the Noticees vide letter dated January 16, 2021 requested for inspection in the matter and four weeks’ time to submit a reply in the matter. Noticees were granted the inspection on February 8, 2021. Post inspection of documents, vide email dated February 10, 2021, Noticees were advised to submit a reply within two weeks from the date of inspection. However, no reply was received from the Noticees.

9. Considering the facts and circumstances of the matter, Noticees were granted an opportunity of hearing in the matter on March 18, 2021 via Webex. Hearing Notice was served on the Noticees vide emails dated March 1, 2021. The hearing scheduled on March 18, 2021 was adjourned due to administrative exigencies.
10. In the meantime, Noticees had filed a settlement application with SEBI in the extant matter vide their letter dated February 20, 2021. However, vide an email dated April 15, 2021, Noticees were informed that their settlement application is being returned to them as the matter was under investigation. Subsequently, Noticees were granted an opportunity of hearing in the matter on May 11, 2021 via Webex. Hearing Notice was served on the Noticees vide emails dated April 20, 2021.
11. Prior to the scheduled hearing, the AR vide its letter dated May 7, 2021 *inter alia* submitted as follows:
 - 11.1. It is evident that the recommendations made in the course of each episode of the Show during the Relevant Period has not been considered. This is confirmed by the fact that the dates of the Show and/ or recommendations are not set out in the annexures to the ex-parte order.
 - 11.2. Even as per the KYC documents of Motilal Oswal Financial Services Limited ("**MOFSL**"), Ms. Jaya Hemant Ghai had opened the trading account with the broker on December 16, 2019 and Ms. Shyam Mohini Ghai opened the trading account with the broker on February 11, 2020. Therefore, the Relevant Period would be December 2019 to May 2020 and not January 1, 2019 to May 31, 2020.
 - 11.3. Despite a specific request Noticees have not been provided with any report of the investigation / preliminary investigation conducted by SEBI. Therefore, Noticees are unable to confirm the findings of the preliminary examination of SEBI.
 - 11.4. Noticees deny that the trades were synchronised with the Show or that the shares were bought prior to the Show in anticipation of a rise in price as a result of the recommendations.

- 11.5. It is relevant to understand the manner in which the stock recommendations are prepared and then made in order to determine whether the trades in the accounts of the wife and mother of Mr. Hemant Ghai were dependent on the recommendations. On every trading day, after trading hours, the hosts of the Show gathered news from various sources i.e. news that was reported post market hours and is not factored by the stock market. Often news that broke in the morning of the following day was also considered. Based on the above, the hosts compile a list of upto 10 stocks by the morning of the following day and these lists were emailed to a common group including producers and directors of the Show; the hosts also prepared their recommendations and sent the same to the producer of the Show so that she/ he could prepare the show graphics. While making the recommendation, the hosts of the Show also discloses the basis/reasons of making the same and at the end of trading hours, a scorecard was aired which showed the extent to which the recommendation made by the host was borne out in the market.
- 11.6. It is pertinent to note that the scrips in respect of which recommendations were made were of fundamentally sound companies.
- 11.7. It is also pertinent to note that it is not SEBI's case that Mr. Hemant Ghai intended to or was able to influence the movement in the price of the scrip in order to make his recommendations come true.
- 11.8. It is pertinent to note that SEBI has not considered the recommendations made by Mr. Hemant Ghai in respect of the scrips which his wife and mother purchased on the previous day or the proportion of such scrips to the stocks where recommendations were made by him on the following day. SEBI has also not considered an alternate explanation for the choice of scrips by Ms. Jaya Ghai and Ms. Mohini Ghai i.e. that the said scrips exhibited a price momentum that justified a BTST trade.
- 11.9. The *prima facie* observation that trades in the accounts of Ms. Jaya Ghai and Ms. Shyam Mohini Ghai were an attempt to avoid regulatory surveillance or

code of conduct is not only vague and lacking in material particulars, the same indicates an intrusive action not having the sanction of law. There is no regulatory requirement that a person who is a "market expert" in a family alone should trade in securities and there is no code of conduct that prevented the relatives of Mr. Hemant Ghai from trading in securities which were mentioned on the Show of which he was a co-host.

- 11.10. The term "family and friends mule account" and the concept of lending of trading accounts are not recognized by SEBI Act or the Rules and Regulations framed thereunder and appears to be a construct of a regulator after indulging in intrusive surveillance and based on conjectures and surmises; without even considering the recommendations made by Mr. Hemant Ghai on the Show. It is also pertinent to note that no benefit by way of "lending" the trading account has been attributed to Ms. Jaya Ghai and Ms. Shyam Mohini Ghai.
- 11.11. It is pertinent to note that while SEBI has set out details of the calls between Mr. Hemant Ghai and persons associated with MAS Consultancy, an Authorised Person of MOFSL, the content of the conversations has not even been enquired into by SEBI. On the other hand, MAS Consultancy has confirmed that orders for trading in securities was placed by Ms. Jaya Ghai and Ms. Shyam Mohini Ghai.
- 11.12. SEBI appears to have taken umbrage at the fact that Ms. Jaya Ghai and Ms. Shyam Mohini Ghai opened a trading account with an Authorised Person of a stock broker who is based in Mehsana, Gujarat even though they reside in Mumbai. Once again, it is submitted that drawing adverse inferences based on conduct that violates no rules is erroneous, illegal and unsustainable.
- 11.13. It is not an illegal or an unheard of practice for one member in a family to operate trading accounts of other family; such a practice, especially in small families, does not however mean that such other members have ceded

control or "lent" their accounts to the family member who placed orders or gave instructions.

12. On the day of scheduled hearing, the AR of the Noticees made the following submissions:

12.1. Due to the Covid pandemic and medical emergency, the ARs requested to liquidate certain securities and the proceeds of the said sale may be allowed to be kept in a liquid mutual fund. The ARs were advised to submit their request in writing.

12.2. The ARs further requested that investigation in the matter may be completed soon so as to enable the Noticees to prepare a detailed empirical response. Further, it will also enable the Noticees to file a settlement application in the matter.

13. The AR vide its letter dated May 14, 2021 submitted in writing the requests of the Noticee made at the time of hearing. Further, the AR vide its email dated May 25, 2021 submitted that at present, the Noticees hold securities i.e. mutual fund units worth Rs. 7,27,482/- (as of May 19, 2021) and they are seeking permission to liquidate the said holdings.

Findings & Considerations

14. I have considered the allegations levelled against the Noticees in the interim order, oral submissions, their replies/written submissions and other material available on record. I note that in the instant case, the directions issued against the Noticees are interim in nature and have been issued on the basis of *prima facie* findings. SEBI had issued directions vide interim order in the matter in order to protect the interests of investors and the securities market. Detailed investigation in the matter is still in progress. Thus, the following issue needs to be considered at this stage:

Issue No. 1- *Whether in light of the findings of the interim order, the facts and circumstances of the case and the submission of the Noticees in response to the interim order, the directions issued against the Noticees vide the interim order need to be confirmed, revoked or modified in any manner, during the pendency of investigation in the matter?*

15. Before I proceed to deal with the Noticees replies/written and oral submissions, it will be appropriate to reproduce the text of *prima facie* applicable provisions in the matter which is regulations Sections 12A (b) and (e) of SEBI Act, regulations 3 (c), 3(d) and 4(1) of PFUTP Regulations. The same reads as follows:

SEBI Act

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

12A. No person shall directly or indirectly—

...

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

...

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

...

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

16. The aforesaid provisions deal with 'fraud' in the securities market. Fraud has been defined under regulation 2 (1)(c) of PFUTP Regulations as follows:

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent;

(7) deceptive behavior by a person depriving another of informed consent or full participation;

(8) a false statement made without reasonable ground for believing it to be true;

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

17. During the Relevant Period, it was *prima facie* noted that Noticees who are immediate family members, pursuant to a *prima facie* scheme, had executed BTST trades which were *prima facie* designed to take unfair advantage of the advance information of the buy recommendation to be given on the Show co-hosted by Mr. Hemant Ghai during

the period between January 1, 2019 to May 31, 2020. The specific contentions raised by the Noticees have been considered and dealt as follows:

- 17.1. Noticees have submitted that the recommendations made in the course of each episode of the Show during the Relevant Period has not been considered. In this regard, it is observed that the *prima facie* findings arrived at in the interim order is based on the preliminary examination of SEBI. In the said preliminary examination, the impugned pattern of trading pursuant to a *prima facie* scheme was repeated on 90 occasions aggregating to gross traded value of over Rs. 100 crore and the said pattern was designed to take advantage of the price rise following the buy recommendations given on the Show. Each and every recommendation made on the Show need not be examined to establish the charge of violations of PFUTP Regulations, so long as adequate evidence of a repeated trading pattern is *prima facie* demonstrated vis-à-vis the recommendation made on the Show. Further, a detailed investigation in the matter is ongoing which may bring out further such instances of trading. In any event, if some of the recommendations given on the Show were not acted upon, does not detract from the fact that *prima facie* trades were executed from the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai which were in sync with the recommendation given on the Show. Thus, the submission of the Noticees is without any merit.
- 17.2. The contention of the Noticees with respect to the KYC documents of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai that as per the KYC with MOFSL they have opened their trading account on December 16, 2019 and February 11, 2020, is factually incorrect. It is observed from the KYC document of Ms. Jaya Hemant Ghai with MOFSL that the account was opened on September 1, 2014 and from the KYC document of Ms. Shyam Mohini Ghai with MOFSL, it is observed that the account was opened on August 9, 2017. Thus, the trading accounts which were used in the extant matter were opened much prior to the

Relevant Period (January 1, 2019 to May 31, 2020) and therefore the Relevant Period cannot be December, 2019 to May, 2020, as suggested by the Noticees.

- 17.3. With respect to the submission of the Noticees that they have not been provided with any report of the investigation / preliminary investigation conducted by SEBI, it is noted that the Noticees have undertaken inspection of documents in the present matter. All documents that were relied upon in the interim order were provided to the Noticees. As the relied upon documents have been inspected, the principles of natural justice have been complied with. There is no requirement to provide an examination report to the Noticees.
- 17.4. Noticees have denied that the impugned trades were synchronized with the recommendations in the Show. It is observed that the *prima facie* allegation of impugned trades being in sync with the recommendations in the Show is *inter alia* based on the cumulative effect of frequent and repeated pattern of trading of the Noticees and the trading strategy employed by them, pursuant to their scheme. As noted in the interim order, the impugned pattern of trading was repeated 90 times over the Relevant Period. Each of the 90 sets of the trades barring a few had positive generation of proceeds, and in aggregate, the proceeds generated were almost Rs. 3 crore in respect of transactions related to the recommendations in the Show. Noticees on the other hand have not demonstrated that they had similar trading activity sustained over a period of time including generation of proceeds, in scrips which were not recommended on the Show. Therefore, mere submission of the Noticees without any trading data to substantiate the same, is untenable.
- 17.5. With respect to the submission of the Noticees regarding the manner of preparation of stock recommendations wherein *inter alia* the Noticees have submitted that after trading hours' hosts of the Show gather news and compiles a list by the morning of following day, it is noted that the procedure as explained by the Noticees does not counter how the first leg of transaction was unconnected with the recommendations. Moreover, the procedure is neither

from an independent third party nor is supported by any documentary evidence. Whereas, it has been demonstrated on a preponderance of probability basis in the interim order that there are not a few instances but numerous instances when the Noticees pursuant to their *prima facie* scheme have bought shares of the same company whose shares were about to be recommended on the Show, a day prior and as soon as the market opened on the recommendation day, the Noticees have sold the shares. The frequency with which the aforesaid kind of trades were taking place, cannot *prima facie* be a coincidence but has to be by design. Therefore, the submission of the Noticees is unacceptable.

- 17.6. Noticees submission that the scrips in respect of which recommendations were made were of fundamentally sound companies may be acceptable. However, it is not the case of the Noticee that the *prima facie* scheme brought out in the interim order cannot be executed on fundamentally sound companies. The *prima facie* findings of the interim order are with respect to the trades regarding those companies which were executed pursuant to a *prima facie* scheme from the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai which were in sync with the recommendation made in the Show co-hosted by Mr. Hemant Ghai.
- 17.7. With respect to the submission of the Noticees that it is not SEBI's case that Mr. Hemant Ghai intended to or was able to influence the movement in the price of the scrip in order to make his recommendations come true, it is observed from the *prima facie* findings of the interim order, based on the price-volume analysis of scrips in which the buy recommendation was given on the Show co-hosted by Mr. Hemant Ghai, that even in the absence of any corporate announcements, there was a significant change in the opening price of that scrip compared to its previous day closing price. Similarly, there was also a significant increase in the volume of the shares being traded on the recommendation day. The said *prima facie*, discernable increase in price and volume of the recommended scrip on

the day of recommendation has taken place frequently over the course of the Relevant Period. Therefore, *prima facie*, on a preponderance of probability basis, it is SEBI's case that recommendation given on the Show co-hosted by Mr. Hemant Ghai, had a significant effect on the price and volume of the scrips. Moreover, in order to sustain the *prima facie* findings in the interim order, there is no need to prove that Mr. Hemant Ghai intended to or was able to influence the movement in the price of the scrip in order to make his recommendations come true. It is noted that the basis of *prima facie* finding is that of taking undue advantage of the advance information regarding the recommendation to be made in the Show in the expectation that price / volume of the scrip would go up (based on past experience).

17.8. The contention of the Noticees that SEBI has not considered an alternate explanation for the choice of scrips by Ms. Jaya Ghai and Ms. Mohini Ghai is devoid of any merit. The interim order based on the cumulative effect of circumstantial evidence has *prima facie* established that the trades in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai pursuant to a scheme were *prima facie*, designed to take advantage of the advance information of the buy recommendation given on the Show. Thus, the burden of proof is now on the Noticees to counter the aforesaid *prima facie* finding of the interim order by demonstration along with adequate evidence that the impugned trades were trades which were executed during the normal course independent of the advanced information for instance by showing trades in scrips which were not recommended on the Show. It is observed from the material available on record that Noticees have not substantiated their submission with documentary evidence to establish their trading behavior / trading strategy.

17.9. Noticees have submitted that the allegation that the trades in the accounts of Ms. Jaya Ghai and Ms. Shyam Mohini Ghai was an attempt to avoid regulatory surveillance is vague and lacks material particulars. Further, there is no

regulatory requirement that a person who is a "market expert" in a family alone should trade in securities. I note that it is not the case of SEBI in the interim order that no family member other than the "market expert" should trade. What has been considered is the fact of using other family members accounts as a part of the scheme for reaping the undue advantage of the advance information regarding the recommendation made on the Show. Further, trading in the family members account would help camouflage the direct trading by the "market expert" for exploiting the undue advantage of the advance information regarding the recommendation. Moreover, based on the particulars of the impugned trades in terms of volume and total exposure, generation of proceeds on a regular basis, the declared gross annual income of Ms. Jaya Ghai and Ms. Shyam Mohini Ghai in their KYC documents which was below Rs. 1 lakh coupled with the association of Mr. Hemant Ghai with the securities market for a long period of time when seen along with the other circumstantial evidence of CDRs, placement of orders and other KYC details, it was *prima facie* held that the impugned trades were executed from the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai, pursuant to a *prima facie* scheme, wherein each Noticee has played his / her role. The Noticees have neither specifically refuted the aforesaid circumstantial evidence nor have supported their submission with any documentary evidence. Thus, the submission of the Noticees is unacceptable.

17.10. It has been contended by the Noticees that the concept of lending of trading accounts is not recognized by SEBI Act or the Rules and Regulations framed thereunder. The same is devoid of any merit. Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Mahavirsingh N. Chauhan and Others vs. SEBI* decided on October 18, 2019 has held as follows:

"We are of the opinion that by renting their demat account, trading account etc., the appellants were concealing the identity of the fraudster and, thus, were acting not only in concert but in connivance with the said fraudster. The appellants

cannot, thus, escape from the liability of debarment and the wrongful gains made by them."

Further, Hon'ble SAT in the matter of *Rahul H Shah vs. SEBI* decided on May 11, 2012, has held as follows:

"We fully appreciate the contention of the learned counsel for the Board that name lending is a fraudulent activity and it requires to be curbed for maintaining the sanctity of the securities market."

The aforesaid orders of Hon'ble SAT make it clear that the concept of lending / renting of trading and demat accounts and name lending is a fraudulent activity recognized under the securities laws. Moreover, the submission of the Noticees that no benefit by way of "lending" the trading account has been attributed to Ms. Jaya Ghai and Ms. Shyam Mohini Ghai is also untenable. The relevant fact which need to be proved / established in matters of lending of trading and demat accounts, is that someone other than the registered owner, is controlling and operating the said account(s). The benefit, if any accruing to the registered owner, either in cash or otherwise, is not an essential requirement for determination of fraud. Furthermore, in matters where family members are involved, benefit may not necessarily accrue in monetary form as the person who is controlling the account / placing the orders gets access to the trading account based on trust or on the strength of relationship between him and the registered owner of the trading account, and the "consideration" to the account lenders is non-monetary.

- 17.11. Noticees have submitted that SEBI has placed reliance upon the CDRs between Mr. Hemant Ghai and persons associated with MAS Consultancy. However, the content of the conversations has not even been enquired into by SEBI. In this regard, it is noted that the reliance upon CDRs have been made to *prima facie* establish that Mr. Hemant Ghai, pursuant to a scheme, was operating and controlling the trading accounts of other two Noticees as he was the person who was in regular communication with the Dealer of MAS

Consultancy who was executing the trades. This was further corroborated by the fact that there were no calls from the registered mobiles of Ms. Jaya Hemant Ghai and/or Ms. Shyam Mohini Ghai to the Dealer(s) of MAS Consultancy for the impugned trades. Thus, the submission of the Noticees that content of the conversations has to be enquired into by SEBI, is not pertinent to the present matter. Moreover, the submission of the Noticees that MAS Consultancy has confirmed that orders for trading in securities was placed by Ms. Jaya Ghai and Ms. Shyam Mohini Ghai, is without any merit as the submission of MAS Consultancy with respect to the placement of orders in the trading accounts of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai has been dealt with and dismissed in the interim order as not being credible. Noticees have not specifically refuted the reasons and basis given in the interim order for the same, in their current submissions.

- 17.12. The contention of the Noticees that SEBI appears to have taken umbrage at the fact that Ms. Jaya Ghai and Ms. Shyam Mohini Ghai opened a trading account with an Authorised Person of a stock broker who is based in Mehsana, Gujarat even though they reside in Mumbai, is untenable. The geographical location of the Authorised Person vis-à-vis the registered owners of the trading account, is relevant in the present matter as MAS Consultancy has submitted that Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai have placed orders during the period January 1, 2019 to March 30, 2020 by visiting the Branch. It was noted from the trade details of Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai that trades in their trading accounts have been executed on successive days and sometimes on 3 out of 5 trading days. The approximate distance between Mumbai where the Noticees reside and Mehsana, where the trading member is located, is approximately 600 kms. Further, on the analysis of CDR data it was observed that during corresponding dates of trades in the year 2020, Noticees location was only in Mumbai and not in Mehsana, Gujarat. Therefore, considering the

distance between Mumbai and Mehsana and the CDR data, the geographic location of the Authorised Person has become relevant in the present matter.

17.13. Noticees have submitted that it is not an illegal or an unheard practice for one member in a family to operate trading accounts of other family members. It is noted that the interim order has not proceeded merely on the basis that one member in a family is operating the trading accounts of other family members and therefore it is *prima facie* a fraud. The interim order is on the basis of how pursuant to a *prima facie* scheme, trading by one family member in the account of another family member coupled with the advance information regarding recommendations has resulted in the *prima facie* fraudulent scheme.

17.14. Noticees have also made a request to liquidate mutual fund units worth Rs. 7,27,482/- (as of May 19, 2021) due to Covid pandemic and medical emergency. It is observed from the list of assets submitted by the Noticees that among them they have 17 bank accounts. Noticees have not submitted any details of money lying in the said bank accounts. Further, it is also observed that Noticees have 4 residential properties and 2 commercial properties. Noticees have not submitted any details with respect to the said properties whether the properties are in use or have been rented out. Moreover, the bank accounts of the Noticees have been unfrozen as they have deposited the proceeds in an escrow account. Therefore, considering the Noticees bank accounts are active and in the absence of any material particulars submitted by the Noticees with respect to their bank accounts or their real estate properties, the request of the Noticees to liquidate their mutual fund holdings, cannot be entertained at this stage.

18. I, therefore, find that the submissions / explanations submitted by Mr. Hemant Ghai, Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai cannot be accepted because of the reasons as discussed in preceding paragraphs. Thus, the *prima facie* findings in the interim order dated January 13, 2021, that Mr. Hemant Ghai is in *prima facie* violation of Section 12A (e) of SEBI Act, stand confirmed. Also, the *prima facie* findings in the

interim order dated January 13, 2021, that Mr. Hemant Ghai, Ms. Jaya Hemant Ghai and Ms. Shyam Mohini Ghai have *prima facie* indulged in unfair trade practice and have *prima facie* employed a fraudulent scheme to execute the impugned trades, resulting in the *prima facie* contravention of the provisions of Section 12A (b) of SEBI Act and regulations 3 (c) and (d) and 4(1) of PFUTP Regulations, stand confirmed.

Order

19. Considering the material on record, reply of the Noticees and findings thereupon mentioned in the preceding paragraphs, pending investigation, I in exercise of the power conferred upon me under Sections 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and in the facts and circumstances of the case, hereby confirm the directions of the interim order dated January 13, 2021.
20. I note that a detailed investigation in the matter is in progress which may bring out additional roles of omission or commission, of the Noticees, if any, in detail, depending on the material and after considering the facts and veracity of their submissions. The findings in the extant order are *prima facie* findings in a matter under investigation.
21. A copy of this order shall be served on all recognized stock exchanges, depositories and registrar and share transfer agents to ensure compliance with the above directions.

-sd-

DATE: September 2, 2021

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA