BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/AO/77-78/2018-19]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

S.No	Name of Entity	Pan No.	Order No.
1.	Mr. Rajiv Kumar Agarwal	AGGPA0436L	EAD/SR/VV/AO/77/2018-19
2.	Ms. Yogeswari Gupta	AETPG3131M	EAD/SR/VV/AO/78 /2018-19

In the matter of
BGIL Films & Technologies Limited
(CIN: L65993DL1989PLC035572)

BACKGROUND

1. A Department (OD) of Securities and Exchange Board of India (hereinafter, referred to as **SEBI**) conducted investigation in the scrip of BGIL Films & Technologies Ltd. (hereinafter, referred to as **BFTL/ Company**) for the period June 19, 2008 to March 20, 2009 (hereinafter, referred to as the **Investigation period**) on receiving information that the share price of the scrip shot up from below par to Rs.100/- on account of the company's merger announcements. The company was listed on Bombay Stock Exchange Limited (hereinafter referred to as **BSE**) during the investigation period. The Investigating Authority (hereinafter referred to as **IA**) identified a group of 22 connected entities i.e. (1) Prarthana Tarunkumar Brahmbhatt (Prarthana), (2)Tarunkumar Brahmbhatt (Tarun), (3) Krushnakumar Guruvachan Brahmbhatt (Krushna), (4) Jinesh Devendra Bhatt (Jinesh), (5) Zakirbhai Habibbhai Motani (Zakir), (6) Deendayal Atmaram Patodia (Deendayal), (7) Milan H Deliwala (Milan), (8) Jasu Joitalal Doshi (Jasu), (9) Prakash J Shah (Prakash), (10) Nilesh Kanakrai Vakharia (Nilesh), (11) Bipin Bhogilal Rawal (Bipin), (12) Tanuja Singh (Tanuja), (13) Jitendra Kumar Bhatia (Jitendra), (14) Rajiv Kumar Agarwal (Rajiv), (15) Yogeshwari Gupta (Yogeswari), (16) Kartik Share Traders Private Limited ("Kartik"), (17) Shabnam Uppal Kapoor (Shabnam), (18) Chetan Dogra (Chetan),

(19) Vishal Thapar (Vishal), (20) Chhaya Mitesh Mehta (Chhaya), (21) Puran Chand Choudhary (Puran) and (22) Kishor Mitesh Mehta (Kishor) hereinafter collectively referred to as **Brahmbhatt Group**. Rajiv and Yogeshwari are hereinafter collectively referred to as **Noticees.** IA observed that the Brahmbhatt Group had traded to the extent of buying 51.82% of the market volume and selling 44.96% of the market volum during the investigation period. IA also observed that Kartik which has Rajiv - the key managerial person of BFTL's group company BGIL had transferred 1.80 lakh share of the BFTL through off-market to Prarthana, Tarun and Krushna who thereafter manipulated the price and volume of the scrip of BFTL and created misleading appearance of trading in the securities market. IA also observed that Rs. 33.25 lakh worth of shares were transferred to Chetan by Kartik and subsequently six of the promoter/director connected group entities i.e. Kartik, Rajiv, Yogeshwari, Jitendra, Tanuja and Shabnam, had offloaded shares at the increased price for a profit of Rs. 71 lakh, In this regard OD initiated adjudication proceedings against Rajiv and his wife Yogeshwari for being connected to the promoters/directors of BFTL and its group companies, and being a part of the Bhrambhatt Group, which was involved in market and price manipulation of the scrip of BFTL and allegedly taken advantage of the price rise of the scrip of BFTL, by selling the shares of BFTL at increased prices in market thereby violating regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter, referred to as **PFUTP Regulations, 2003**).

APPOINTMENT OF ADJUDICATING OFFICER

2. As per communique dated July 26, 2016, Shri. Nagendraa Parakh was appointed as Adjudicating Officer (hereinafter, referred to as **AO**) to inquire into and adjudge under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as Adjudication Rules, 1995), for the alleged violation of provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP

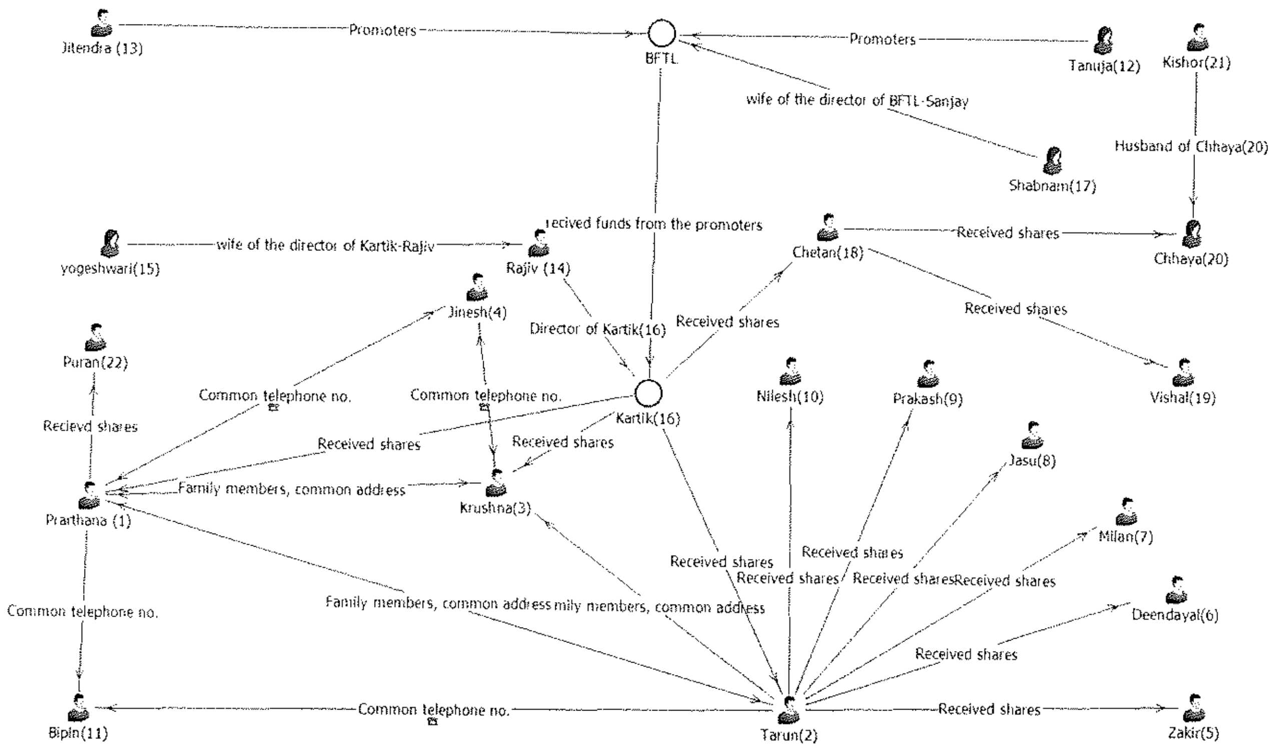
Regulations, 2003 by the Noticees. Subsequently, the matter was transferred to me and I was appointed as AO vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice no. EAD/NP/AS/OW/4045/1/2017 dated February 20, 2017 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of the rule 4 of the Adjudication Rules, 1995, requiring the Noticees to show cause as to why an inquiry should not be held against the Noticees and why penalty be not be imposed against the Noticees under section 15HA of the SEBI Act, 1992 for the alleged violations of provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 by the Noticees. The SCN was issued though speed post with acknowledgement due (**SPAD**) to the available address of the Noticees, individually. The SCN issued to the Noticees returned undelivered. The SCNs were attempted to be delivered through North Regional Office of SEBI by affixture. Affixture report is not on record. SCN levelled following allegations against the Noticees:

- *IA noted that during the Investigation period, BFTL made three corporate announcements on February 04, 12 and 24, 2009 respectively on proposal of the merger of certain divisions of Bhartiya Global Infomedia Ltd., (BGIL), a company under the same management with BFTL. BFTL informed BSE that the Board of Directors had considered and approved the merger of certain divisions of BGIL during the month of February, 2009. Thereafter, it was stated in the Annual Report of BGIL for the year 2009-2010 that the merger of digital post production division from its group company BGIL could not take place due to disagreement on the pricing and equity ratio. However, the said development was not intimated to the Stock Exchange.*

- *IA identified 22 entities (Brahmbhatt Group) who have traded in the scrip of BFTL during investigation period and were connected to each other through common address, telephone number, off-market transfers of shares and/or family members. The connection chart is given below:*



- *IA observed that Brahmbhatt Group had bought 21,98,073 shares (i.e. 51.82% of the market volume) and sold 19,07,165 shares (i.e. 44.96 % of the market volume) during the investigation period. The entity-wise trading details are provided in the following tabular format:*

S.N.	Client Name	Gross Buy	Gross Sell	Net (=Buy-Sell)	Gross Buy % to Market Buy volume	Gross Sell % to Market Sell volume	Net Trade % to Market trade volume
1.	Chetan	5,42,401	6,43,334	-100,933	12.79	15.17	-2.38
2.	Tarunkumar	4,51,107	3,44,082	107,025	10.64	8.11	2.52
3.	Prarthana	4,26,377	2,99,810	126,567	10.05	7.07	2.98
4.	Jinesh	2,83,853	1,67,652	116,201	6.69	3.95	2.74
5.	Krushnakumar	1,70,805	96,100	74,705	4.03	2.27	1.76
6.	Puran	1,26,998	68,682	58,316	2.99	1.62	1.38
7.	Kishor	86,234	86,134	100	2.03	2.03	0.00
8.	Vishal	33,198	14,800	18,398	0.78	0.35	0.43
9.	Zakir	30,787	15,318	15,469	0.73	0.36	0.37
10.	Chhaya	20,000	20,419	-419	0.47	0.48	-0.01
11.	Deendayal	10,254	8,254	2,000	0.24	0.20	0.05
12.	Milan	8,629	4,705	3,924	0.20	0.11	0.09
13.	Bipin	3,605	3,175	430	0.09	0.08	0.01
14.	Jasu	3,000	0	3,000	0.07	0.00	0.07
15.	Prakash	750	750	0	0.02	0.02	0.00
16.	Nilesh	75	75	0	0.00	0.00	0.00

S.N.	Client Name	Gross Buy	Gross Sell	Net (=Buy-Sell)	Gross Buy % to Market Buy volume	Gross Sell % to Market Sell volume	Net Trade % to Market trade volume
17.	Jitendra	0	14,000	-14,000	0.00	0.33	-0.33
18.	Shabnam	0	8,650	-8,650	0.00	0.20	-0.20
19.	Kartik	0	19,871	-19,871	0.00	0.47	-0.47
20.	Rajiv	0	20,370	-20,370	0.00	0.48	-0.48
21.	Yogeshwari	0	33,284	-33,284	0.00	0.79	-0.79
22.	Tanuja	0	37,700	-37,700	0.00	0.89	-0.89

- *IA observed that during the investigation period one of the Brahmbhatt group entities i.e Kartik, transferred 1.80 lakh shares through off-market to three Brahmbhatt group entities viz., Prarthana, Tarun and Krushna, who are inter-related as they are from the same family were alleged to have manipulated the price of the scrip of BFTL, creating a misleading appearance in the market by executing synchronized trades and self-trades.*

- *On enquiry by IA about the nature of transaction, Kartik had vide its letter dated 25.03.2014 stated that as Kartik was in need of funds, it had taken 15 lakh loan at interest rate of 24% p.a. from one of the group entity Chetan against security of 3,50,000 shares of the company at prevailing market rate of Rs.9.50 (with 55% margin). As per MoU, 1,00,000 shares were transferred to Chetan on June 18, 2008 and a signed blank delivery instruction slips (DIS) were given for remaining shares. Since the interest was not paid for a period of 5 months, the shares were transferred to Chetan's associates using the signed blank DIS given to Chetan. However it is observed that Kartik had given Rs. 33.25 lakh worth of shares of BFTL to Chetan as a security against a loan of 15 lakh i.e., with 55% margin. Further investigation revealed that Chetan started trading in the scrip in the month of June only after receipt of the one lakh shares from Kartik on June 18, 2008. It is further observed that Kartik had allowed transfer of remaining 2.5 lakh shares (valued at Rs. 75 lakh) when price of the scrip was Rs. 30 on December 08, 2008 to group entities instead of clearing loan alongwith interest by liquidating a fraction of 2.5 lakh shares already given to Chetan. Chetan and its group entities which received shares from Kartik thereafter were indulged in market and price manipulation in the scrip subsequent to the receipt of the shares. Hence, it is alleged that shares have transferred to the Group to manipulate the price and market of the scrip. Investigation further revealed that subsequent to the share transfer to Chetan by Kartik, six of the promoter/director connected group entities namely Kartik, Jitendra, Tanuja, Shabnam, Rajiv, Yogeshwari had offloaded their shares at increased price at a profit of 71 lakhs.*

- *It was observed from the Investigation that Jitendra is the brother of Rakesh, the promoter and CMD of BFTL. Tanuja is the wife of Jitendra. Kartik had fund transactions with Rakesh and Arti Bhatia, Directors of BFTL and its Group companies. Shabnam is the wife of Sanjay Kapoor, one of the Directors of BFTL.*

Rajiv is the key managerial person of BFTL's group company BGIL, is also one of the directors of Kartik and Yogeshwari is wife of Rajiv.

- *It was noted that the aforesaid six group entities connected to the promoters/director of BFTL and its group companies had together sold 1,22,705 shares at an average price of Rs 67.40 i.e., at the increased price subsequent to the share transfer to Chetan by Kartik. The profit, based on the average sell price of the shares and market price when the shares were transferred to Chetan is Rs. 71,04,620 [i.e., (Rs 67.40- Rs 9.50)*1,22,705]. The details of shares sold by these six group entities are given below:*

Sell PAN_NO	*Sell Client Name*	*Sell TQ*	*Sell TV*	*Sell AR*
AOIPS9379C	*TANUJA*	*37,700*	*30,58,549*	*81.13*
ACKPB5820H	*JITENDRA*	*14,000*	*11,25,659*	*80.40*
AGGPA0436L	*RAJIV*	*20,320*	*8,02,756*	*39.51*
AETPG3131M	*YOGESWARI*	*22,164*	*7,54,993*	*34.06*
AABCK7306F	*KARTIK*	*19,871*	*19,45,352*	*97.90*
AAAPU3842L	*SHABNAM*	*8,650*	*5,82,870*	*67.38*
Grand Total		***1,22,705***	***82,70,179***	***67.40***

- *In view of the above, it is alleged that the Noticees being connected to the promoters/director of BFTL and its group companies, were a part of the Bhrambhatt Group which was involved in market and price manipulation of BFTL, took advantage of the price rise of BFTL by selling the shares of BFTL held by the Noticees at increased prices in the market. The Noticees were alleged to be in violation of Regulations 3(a),(b), (c), (d) and 4(1) and 4(2) (a) of SEBI PFUTP Regulations, 2003.*

4. Subsequently, upon my appointment as AO, vide Hearing Notice dated February 09, 2018 bearing reference no. SEBI/HO/A&E/EAD/SR/4438/2 and SEBI/HO/A&E/EAD/SR/4438/7 sent by SPAD, I granted an opportunity of personal hearing to the Noticees on March 08, 2018. A copy of the SCN was also enclosed along with the Hearing Notices issued to the Noticees and Noticees were granted time till March 03, 2018 to reply to the SCN. The said Hearing Notices returned undelivered. Thereafter, the said Hearing Notices were delivered by Newspaper Publication on March February 27, 2018. A copy of the SCN and the said Hearing Notices was uploaded on the SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices". The Noticees vide their

letters dated March 15, 2018 replied to the Hearing Notices stating that they had not received the Notices issued to them initially as they had shifted to a new address i.e 135/15, Second Floor, East Patel Nagar, New Delhi – 11 008. The Noticees requested for rescheduling of the hearing and resending the Notices to provide the desired information/documents and accordingly the notices were forwarded to the Noticees vide the Hearing Notice dated April 06, 2018 bearing reference no. SEBI/HO/A&E/EAD/SR/10889/1 and SEBI/HO/A&E/EAD/SR/10889/2 wherein, I granted another opportunity of personal hearing. The Noticees vide their letter dated March 19, 2018, requested for further time of 40 to 50 days to collect and submit information and for rescheduling of the hearing. Therefore, vide Hearing Notice dated May 03, 2018 bearing reference no. SEBI/HO/A&E/EAD/SR/13242/4 and SEBI/HO/A&E/EAD/SR/13242/3, I granted an opportunity of personal hearing to Noticees on May 17, 2018. The Noticees vide their emails (*sender email id: rajeevagarwal65@yahoo.com* and *yogeshwarigupta77@gmail.com*) dated May 15, 2018, acknowledged the receipt of Hearing Notices, but requested for rescheduling of the hearing.

5. Subsequently, vide Hearing Notices dated May 17, 2018 bearing reference no. SEBI/HO/A&E/EAD/SR/14683/4 and SEBI/HO/A&E/EAD/SR/14683/3, I granted an opportunity of personal hearing to Noticees on May 30, 2018. The Noticees vide their Authorised Representative (AR) K.K.Singh sent email (*sender email id: kamalk@kksinghassocaites.com*) dated May 30, 2018 requesting for adjournment of hearing to third week of June or 1st week of July 2018. Acceding to his request on behalf of the Noticees, vide email dated June 06, 2018, a final opportunity of hearing was granted to the Noticees on June 21, 2018. The AR vide email dated June 20, 2018 confirmed attendance. The said hearing was held as scheduled on June 21, 2018 and hearing minutes are available on record. The AR of the Noticees requested for further time to make submissions on the SCN issued to the Noticees. I granted further time till August 06, 2018 to make submissions. The Noticees vide letters dated August 04, 2018 submitted their replies to the SCN.

6. The submissions of Noticees in brief are as follows:

a) Connections put forward by SEBI are not clear and Noticees have no business/personal relationship with Brahmabhatt Group. The trades were purely commercial in nature.
b) Rajiv was bound by MOU entered with its Company and lender i.e. Chetan. Shares were pledged by Kartik in favour of Chetan for business loan and there was no direct transactions carried in between Kartik and Prarthana, Tarun, Krusha as alleged by SEBI.
c) Kartik was a need of funds and thus pledged shares to Chetan. Chetan, thereafter transferred to Prarthna, Tarun and Krushna, no direct transfer of shared were made to Brahmabhatt Group. Alleged price manipulation took place thereafter. Noticees are not part of it.
d) Calculation of profit made by SEBI is based on assumptions. Alleged profit of Rs. 71 lakh mentioned by SEBI on the basis of price of Rs. 67.40 is not correct. Rajiv sold 20320 shares at an average price of Rs. 39.39 and Yogeswari sold 33284 shares at an average price of Rs. 32.21 as per ledger financial statements provided by broker. Accordingly, taking average price, profit made by Rajiv is Rs. 800404 (20320*39.39) and Yogeswari is Rs. 1072077.64 (33284*32.21).

7. After taking into account, the allegations levelled in the SCN, the replies and documents submitted by the Noticees and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES

8. I have carefully perused the material available on record, and the issues that merit consideration in the said case are:

(a) **Whether the Noticees have violated regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?**

(b) **Do the violations, if any, on the part of the Noticees attract any monetary penalty under section 15HA of the SEBI Act, 1992?**

(c) **If yes, then what should be the quantum of monetary penalty that could be imposed upon the Noticees?**

9. Before proceeding with the consideration of issues, the text of the provisions of 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations, 2003 read as given below:-

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:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

10. On perusal of the material available on record and after giving regard to the facts and circumstances of the case, I record my findings hereunder:

EVIDENCES AND FINDINGS

11. **Issue (a): Whether the Noticees has violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003?**

(a) I note that SCN alleges that the Noticees being connected to the promoters/director of BFTL and its group companies, were a part of the Bhrambhatt Group which was involved in market and price manipulation of BFTL and took advantage of the price rise of BFTL by selling the shares of BFTL held by the Noticees at increased prices in the market. The Noticees are alleged to be in violation of Regulations 3(a),(b), (c), (d) and 4(1) and 4(2) (a) of SEBI PFUTP Regulations, 2003.

(b) I note from record that connections have been established among Brahmabhatt Group entities through common address, telephone number, off-market transfers of shares and/or family members.

(c) I note that the Noticees in their reply have admitted that Kartik had taken a loan from Chetan for business exigencies and was bound by the terms of the MOU entered the company Kartik and Chetan. The Noticees stated that Kartik was in need of funds and thus pledged shares of BFTL to Chetan and Chetan thereafter transferred the said shares to Prarthana, Tarun and Krushna. Noticees contented that there was no direct transfer of shares made to the Brahmbhatt group and that the Noticees are not a part of the alleged price manipulation that took place thereafter. As per transaction statements for January 2009 by Monarch Project & Finmarkets Ltd. available on record, Kartik has made transfers of shares to Tarun and Prarthana. I disregard the said contentions of the Noticees. I also note that Rajiv is the key managerial person (KMP) of Kartik as seen from MOU dated June 16, 2008 available on record wherein Rajiv has signed on behalf of Kartik.

(d) I note that during the investigation period Kartik transferred 1.80 lakh shares through off-market to three Brahmbhatt group entities viz., Prarthana, Tarun and Krushna. Also as alleged in the SCN the Noticees have admitted that, Kartik was in need of funds and it had taken Rs. 15 lakh loan at interest rate of 24% p.a. from Chetan against security of 3,50,000 shares of the company at prevailing market rate of Rs.9.50 (with 55% margin). As per aforementioned MoU and as seen from record, 1,00,000 shares were transferred to Chetan on June 18, 2008. I note from the bank statements of the Kartik that a credit for Rs. 15 lakhs was received by Kartik. As also I note that Chetan received 1,00,000 shares on June 18, 2008 from Kartik. However, I observe that the Kartik had given Rs.33.25 lakh worth of shares of BFTL (i.e 3,50,000 shares * Rs. 9.50 /- per share) to Chetan as a security against a loan of Rs.15 lakhs only. Thereafter, Chetan started trading in the scrip after receipt of the 1,00,000 shares from the Kartik on June 18, 2008, so the shares did not appear to be pledged for loan but transferred for trading. The said transfer of one lakh shares and subsequent transfer of 2.5 lakh shares were used by Brahmbhatt Group for price and volume manipulation in the scrip of BFTL. Rajiv being the KMP of Kartik allowed Kartik to transfer of the remaining 2,50,000 shares to Chetan and three Brahmbhatt group entities on different dates between December 2008 and February 2009 i.e. December 8 and 11, January 7 and 19, and February 16 and 17. On the said dates, the price/share as seen from website of BSE were Rs. 30, 30.6, 43.75, 54.95, 100.9 and 95.9 respectively, which all were prices higher than the price at the time of the aforementioned loan MoU. Merely by selling some shares in the market, Kartik could have paid interest instead of letting affect transfer of 2,50,000 shares. I note that Chetan and other Bhrambhatt Group entities who received shares from Kartik, thereafter were indulging in volume and price manipulation in the scrip subsequent to the receipt of the shares. I conclude, that the Rajiv played a role by allowing Kartik to transfer shares of BFTL and also in the Brahmbhatt group entities manipulating the price and volume of the scrip of BFTL. I note that Yogeshwari is connected to Rajiv as she is the wife of Rajiv who is KMP of Kartik.

(e) I note from the trade log that Noticees have sold shares duing the investigation period as alleged in the SCN and the same was also admitted by the Noticees. The profit earned by Noticees by selling the shares after the price rise in the scrip of BFTL was Rs. 802756 {20320*(39.51-9.5)} by Rajiv and Rs. 754993 {22164*(34.06-9.5)} by Yogeswari.

(f) I note that regulation 3 of PFUTP Regulations, 2003 prevents any person from buying, selling or dealing in securities in fraudulent manner, use or employ any manipulative or deceptive device in contravention to the provisions of the SEBI Act, 1992employ any device, scheme or artifice to defraud in connection with dealing in securities or engage in any act, practice, course of business which operates as fraud or deceit upon any person in connection with any dealing in or issue of securities. Regulation 4(1) of PFUTP Regulations, 2003 provides that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations, 2003, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market.

(g) In this regard, it may be relevant to refer to the observations of the Hon'ble Securities Appellate Tribunal (SAT) in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI, wherein it was held that: "*When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations.*"

(h) In view of the above, as seen from the material available on record, I conclude that, as alleged in SCN, the Noticees were involved in creation of misleading appearance of trading in the scrip by transferring shares of BFTL to the Brahmbhatt Group entities which had manipulated the price and volume of the scrip and also made gain by off-loading the shares of the scrip at increased price, thereby violating provisions of PFUTP Regulations, 2003.

(i) Therefore, I conclude that the Noticees have violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 and the allegations against the Noticees thus stand established.

12. **Issue (b): Do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15HA of the SEBI Act, 1992?**

After taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticees, I am of the view that the Noticees are in violation of regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003 and the said violations by the Noticees attract imposition of monetary penalty under section 15HA of the SEBI Act, 1992, which is reproduced below:

The SEBI Act, 1992

15HA - Penalty for fraudulent and unfair trade practices.-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

13. **Issue (c) -If yes, then what should be the quantum of monetary penalty that could be imposed upon the Noticees?**

(a) While determining the quantum of penalty under section 15HA of the SEBI Act,1992 it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 read with rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

The SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

***15J** -: While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

(b) I observe, that the material available on record, quantifies gain to Noticees and does not quantify the loss, if any, suffered by the investors due to the said violation by the Noticees. The material available on record, does not show that the failure by the Noticees are repetitive.

(c) In view of aforesaid observations, that Noticees contributed to price and volume manipulation in the scrip of BFTL and took advantage of the price rise, thereby violated regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticees are liable for penalty of Rs. 20,00,000 jointly and severally for their violations of the said provisions of PFUTP Regulations, 2003.

ORDER

14. In exercise of the powers conferred under rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 20,00,000/- (Rupees Twenty Lakh only) jointly and severally on the Noticees viz. Mr. Rajiv Kumar Agarwal and Ms. Yogeshwari Gupta under section 15HA of the SEBI Act,1992 for the violations of the provisions of regulations 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(a) of PFUTP Regulations, 2003. I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

15. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

16. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

17. In terms of the rule 6 of the Adjudication Rules, 1995 copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: November 30, 2018
Place: Mumbai

SANGEETA RATHOD
ADJUDICATING OFFICER