BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/MG/2019-20/6918]

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

In respect of

Shri Devendra Suresh Gupta (PAN: ALLPG9738R)

In the matter of Gemstone Investments Limited

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed huge rise in the traded volumes and/or price of the shares of the Gemstone Investments Limited (herein after referred to as '**Gemstone /Company**'). In view of the same, SEBI conducted an investigation in the scrip of **Gemstone** which is listed on the Bombay Stock Exchange (hereinafter referred to as '**BSE'**) for the period January 06, 2009 to December 30, 2009 (hereinafter referred to as '**Investigation Period /IP'**). It is noted that during the investigation period, the share price of Gemstone increased from Rs. 21.20 to Rs. 78.35.

2. The Adjudicating Officer (hereinafter referred to as '**AO**') of SEBI in its order dated November 28, 2014 (hereinafter referred to as '**AO order**') concluded that certain entities including Shri Devendra Suresh Gupta (hereinafter referred to as '**Noticee/ by name'**) has created artificial volume in the scrip of Gemstone

and imposed penalties accordingly. The aforesaid AO order was challenged by the Noticee in the Hon'ble Securities Appellate Tribunal (hereinafter referred as '**SAT**') in Appeal No. 117 of 2015 and SAT vide order dated March 18, 2016 (herein after referred to as '**SAT Order**') set aside the AO order with respect to the Noticee and restored the matter to the file of AO.

APPOINTMENT OF ADJUDICATING OFFICER

3. Considering the directions of SAT, the Competent Authority of SEBI, vide order dated May 17, 2018 appointed Shri Suresh B. Menon as AO under Section 19 of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Section 15I (1) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**AO Rules**') to conduct the adjudication proceedings in the manner specified under Rule 4 of the AO Rules and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the AO Rules and Section 15HA of the SEBI Act. Pursuant to the posting of Shri Suresh B. Menon to another department of SEBI, the undersigned was appointed as the Adjudicating Officer vide order dated March 18, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. SEBI/EAD/AA/MKG/34979/2019 dated December 30, 2019 (herein after referred to as **'SCN'**) was issued to the Noticee by the undersigned under Rule 4(1) of the AO Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty not be imposed upon it under section 15HA of the SEBI Act for the alleged violation of the Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relation to Securities market), 2003 (hereinafter referred to as the '**PFUTP Regulations'**). The details in respect of violation/ non-compliance by the Noticee as observed from the SCN are as given below:

a) *Price Volume variation details of the shares of GEMSTONE during the investigation period, are given in Table – 1:*

<u>Table - 1</u>

Name of scrip	***Examination Period***	***Price variation (based on closing price) (in Rs.)***	***Daily high-low traded Volume; (number of Share)***
Gemstone Investments Limited	*January 06, 2009 to December 30, 2009*	*21.20 to 78.35*	*1 to 2,46,015*

b) *The shares of GEMSTONE were listed at the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') at the relevant period. SEBI observed that a group of thirty one (31) entities including the Noticee (hereinafter collectively referred to as the 'Pabari-Parikh Group/ PPG entities') were connected to each other and had traded heavily in the scrip of GEMSTONE. The list of 31 Pabari-Parikh Group entities along with the connection within the group is given in Table – 2:*

<u>Table – 2</u>

Client Name	***KYC Relation***	***Fund Movement***	***Share movement through off market***	***Client Name***	***KYC Relation***	***Fund Movement***	***Share movement through off market***
1.Rajesh Pravin Bhanushali	*Sl. no.1, 16 & Narendra Ganatra have common office address.*			*17.Anand Kalu Marathe*	*Sl. no. 4 is witness in nomination form.*	*With Sl. No. 19, 26, 4.*	
2.Bhupesh Rathod	*Introduced sl. no.22, 19, 16, 9 for trading a/c and knows sl. No. 28*	*With Sl. No. 30*		*18.Rekha Bhandari*	*Common contact no. as that of Sunil Bhandari.* *Sl. no. 18 is the wife of Sunil Bhandari.*	*With Sl. No. 26, 4.*	*With Sl. No. 4,*
3.Spectrum Chemicals Pvt. Ltd	*Common address as that of Khodiyar Industry (Ramniklal Patel). Ramniklal Patel has same address as that of sl.no. 15 who has share and fund movement with sl. no. 16.*			*19.Prem Mohanlal Parikh*	*Sl. no. 19 is cousin of sl. no.16.* *Common email with sl. 30, 19 & 31.* *Sl. no. 22 is nominee of sl. no.19.* *BR* with sl. no. 5, 6, 8, 9, 16, 22, 30, 31.*	*With sl. no. 16, 22, 9.*	*With sl. no. 16, 22, 9, 5, 6, 22, 30, 31.*
4.Amar Premchand Walmiki		*With Sl. No. 12, 17, 16, 11, 18, 26, 25,*	*With Sl. No. 16, 7, 11, 12, 24, 27,*	***20.Devendra Suresh Gupta#***	***Has traded with sl. no. 2, 5, 19 & 30, who all have off market share and fund movement with sl. no. 16.***		
5.Bharat Shantilal Thakkar	*Sl. no. 16 is his nephew.* *Same address with sl. no.16.* *Sl. no. 16 is his nominee.* *Joint a/c with sl. no. 16.* *BR* with sl. no. 6, 8, 9, 19, 22, 30, 31.*	*With sl. no. 16, 19, 30.*	*With sl. no. 16, 12.*	*21.Nareshbhai Devabhai Patel*	*sl. no. 21 is the client of Samir Shah, who has off market transfer with Amar Premchand Walmiki and who in turn has off market transfer with sl. no. 16.*		
6.Bipin Jayant Thaker	*Same Tel. no. with sl. no. 16.* *BR* with sl. no. 5, 8, 9, 16, 19, 22, 30, 31,*	*With sl. no. 16.*	*With sl. no. 8, 16, 19, 22.*	*22.Hemant Madhusudan Sheth*	*Sl. no. 16 & 22 both directors of Rajnandi Yarns Pvt. Ltd.* *Same email with sl. no. 31.* *BR* with 2, 5, 19, 30, 31, 6, 8, 9, & sl. no. 28 is his wife & sl. no. 29 is his nephew.*	*With sl. no. 16, 19, 9.*	*With sl. no. 16, 19, 9, 28, 30, 31, 6, 26.*

Client Name	KYC Relation	Fund Movement	Share movement through off market	Client Name	KYC Relation	Fund Movement	Share movement through off market
7.Navneetlal Jeevanlal Gandhi	**Sl. no. 26 introduced him for trading a/c.**		**With sl. no. 4, 11, 20, 21, 24,**	23.Ashokkumar Bhikhalal Parmar	Sl. no. 11 introduced him for trading a/c. He knows sl.no. 11 who is a stock broker. Sl. No.	With sl. no. 26, 11,	With sl. no. 11, 25, 26,
8.Chirag Rajnikant Jariwala	Same Tel. no. with sl.no.16. Sl. no. 16 is his uncle. BR* with sl. no. 5, 6, 9, 16, 22, 30, 31.	With sl. no. 16, 22.	With sl. no. 6	24.Manisha Navneetlal Gandhi	Sl. No. 4 has off market transactions with sl. No. 16 & has fund movement with sl. No. 26.		With sl. no. 4, 11, 7,
9.Kishore Chauhan	Join a/c with sl. no. 16 Sl. no. 16 & 22 are witness for demat a/c. BR* with sl. no. 5, 6, 8, 16, 19, 22, 30.	With sl. no. 16, 19, 22.	With sl. no. 16, 19, 22, 31.	25.Pandya Yaminiben M	Same address with sl. No. 26. Knows sl. No. 11 & sl. No. 26 is his relative.	With sl. no. 26, 11, 31,	With sl. no. 11, 23, 26,
10.Manish Suresh Joshi				26.Pandya Hardik M	Having common Tel. no. with sl. no. 11. Sl. No. 11 is the promoter of Samir Shah & Co. and sl. No. 26 is one of its employees. Knows sl. No. 11 & sl. No. 25 is his relative.	With sl. no. 12, 18, 4, 11, 17, 25,	With sl. no. 11, 23, 25, 16, 22.
11.Samir Sureshbhai Shah	Sl. No. 7 is his father. Sl. no. 6, 13, 14, 21, 23, 25, 24 are his clients. Sl. No. 4, 12, 15, 26, 17, are Paras Chaplot friend. He came in touch with Paras Chaplot as a stock broker.		With sl. no. 4, 7, 14, 21, 23, 24, 25, 26, 27,	27.Bharatkumar Baldevbhai Parmar	Having common Tel. no. with Rameshbhai Parmar.		With sl. no. 4, 11.
12.Manoj Bhandari		With sl. no. 4, 11, 26.	With sl. no. 4, 5, 16, 30, 9,	28.Mala Hemant Sheth	Sl. no. 28 is the wife of sl. no. 22 and sl. no. 29 is the nephew.	With sl. no. 16, 19.	With sl. no. 22.
13.Jignesh C. Shah	Sl. no. 26 introduced him for trading a/c. Sl. No. 26 has off market transactions with sl. No. 16 & 22.			29.Gaurang Ajit Seth	Has common address & Tel. no. with sl. no. 22. & sl. no. 22 and 16 both directors of Rajnandi Yarns Pvt. Ltd.		
14.Shalin Kiritkumar Parikh	Sl. no. 11 introduced him for trading a/c and sl. No. 11 has off market transactions with sl. No. 4 & sl. No. 4 has off market transactions with sl. No. 16.		With sl. no. 11	30.Ankit Sanchaniya	Same Tel. no. with sl. no. 19 and also shares Tel. no. with sl. no. 16 who is the nominee for his a/c. BR* with sl. no.5, 6, 8, 9, 16, 19, 22, 31.	With sl. no. 16, 19.	With sl. no. 16, 19, 22, 8, 31.
15.Bipinkumar Gandhi			With sl. no. 16.	31.Vivek Kishanpal Samant	Sl. no. 16 is the brother in law & shares common Tel. no. & sl.no. 16 is the nominee of sl. no. 31 for trading a/c & bank a/c. Shares email with sl. no. 22. Shares email with sl. no. 19.	With sl. no. 22.	With sl. no. 16, 22, 8, 9, 19, 30.
16.Bhavesh Pabari	Sl. no. 5 is his uncle & sl. no. 31 is his brother in law. Sl. no. 19 is cousin of sl. no.16 Sl. no. 16 & 22 both directors of Rajnandi Yarns Pvt. Ltd. Share common Tel. no. with sl. no. 30, 31, 6. Sl. no. 2 introduced him for trading a/c.		With sl. no. 4, 12, 25, 19, 22, 5, 6, 30, 31, 15.				

 # The Noticee had off market transfer of 5000 shares on February 04, 2009 in the scrip of Well Pack Papers & Containers Limited with Navneetlal Jeevanlal Gandhi. The details of off market transfers of the Noticee are annexed in Annexure EE.

**BR - Business relation*

Client Name	KYC Relation	Fund Movement	Share movement through off market	Client Name	KYC Relation	Fund Movement	Share movement through off market
	BR* with sl. no. 6, 8, 9, 19, 22, 28, 30.						

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c) *It was observed from the trade log analysis that 31 Pabari-Parikh Group entities purchased 19,67,956 shares accounting for 39.67% of the total traded volume and sold 34,24,824 shares accounting for 69.05% of the total traded volume during the period under investigation. Further, the Noticee purchased 4,000 shares accounting for 0.08% of the total traded volume and sold 5484 shares accounting for 0.11% of the total traded volume, within the PPG entities, in the scrip during the period under investigation. 31 PPG entities including the Noticee, had traded 12,41,518 shares (25.03% of the market volume) within PPG entities which accounts for 63.09% of the total purchase of the group and 36.25% of the total sale of the group.*

d) *SEBI has observed that the scrip was traded on 226 trading days during the investigation period. Out of 226 trading days, the group entities traded among themselves on 90 days, i.e., 39.82% of the total no of days the scrip was traded during the period of investigation. It was observed that the PPG entities contributed 100% daily market volume on January 06, 2009 and February 12, 2009. It was observed that the contribution of PPG entities to daily market volume ranged from 0.09% on April 09, 2009 to 99.61% on July 23, 2009. Further, out of 90 trading days, on which the PPG entities traded among themselves, on 44 trading days they contributed more than 50% of the total market volume. It was further observed that out of 90 trading days on which the PPG entities traded among themselves, on 40 trading days both buy and sell orders were placed within time difference of one minute, by the PPG entities and out of these 40 trading days, on 7 trading days PPG entities contributed more than 50% of the total market volume by placing both buy and sale order within a time difference of one minute. Further, it was observed that out of the aforesaid 40 trading days, on 13 trading days, the trades executed by the PPG entities were synchronised in nature. It was also observed that by executing synchronised trades among the group entities, the contribution of PPG entities to the total market volume ranged from 1.90% on April 02, 2009 to 82.84% on May 27, 2009. It was also observed that on 4 trading days, by entering into synchronised trading, the group entities contributed more than 50% of the market volume.*

e) *SEBI further observed that certain entities of the Pabari-Parikh group had made off-market transfers of 23,37,086 shares of GEMSTONE amongst themselves during the period January 01, 2009 and January 31, 2011. The off-market deals and fund movements would further support the connection among the group entities as brought out in Table - 2.*

f) *In view of the above, it is alleged that that the Noticee being part of Pabari-Parikh Group entities indulged in trading within the group, resulting in no change of beneficial ownership and thereby, created artificial volume in the scrip of GEMSTONE which gave a false and misleading appearance of trading in the scrip. Therefore, it is alleged that the Noticee has violated provisions of Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of the PFUTP Regulations.*

5. The SCN was duly served upon the Noticee. The Noticee vide letter dated January 10, 2020, responded and made submissions on the preliminary issues such as issuance of new SCN, while earlier SCN dated November 01, 2013, is not withdrawn in the matter. The Noticee also sought for an opportunity of inspection of documents and data in the matter. The request of the Noticee was acceded to and the Noticee was granted another opportunity of inspection of documents vide email dated January 17, 2020. Inspection of documents was completed on January 21, 2020. The Authorized Representative of the Noticee (herein after referred to as '**AR**') vide email dated January 23, 2020 submitted that all the documents including trade & order log, Investigation Report and KYC documents of all the entities of the group were not provided. Vide email dated February 03, 2020, the AR was provided copies of the trade and order logs in the matter. Thereafter, the Noticee was granted an opportunity of personal hearing on February 12, 2020, vide email dated February 03, 2020, in the interest of natural justice. The Noticee vide email dated February 11, 2020 submitted reply to the SCN dated February 10, 2020, and *inter alia* made the following submissions:

i. *I am making my submissions to the present SCN dated 30-12-2019 by assuming that the earlier SCN dated 01-11-2013 has been replaced with the present SCN dated 30-12-2019.*
ii. *It is submitted that there is inordinate delay in initiation of Adjudication proceedings after SAT set aside the AO order dated November 28, 2014.*
iii. *I deny each and every statement, allegation, observation etc. made in the captioned SCN. I deny and refute that I had violated the provisions of PFUTP Regulations as alleged in the SCN.*

iv. I deny and refute that I was part of any group including Pabari Parekh Group. I had not purchased a single share of GIL through off market transactions from any entities.

v. Erstwhile AO in his order dated 26-09-2014 had dropped allegation of 4(2)(e) of PFUTP Regulation i.e. allegation of price manipulation against all the Noticees including me.

vi. Further, since no details has been provided regarding manipulation of the price of the scrip of Gemstone, I am not making any submission for the alleged violation of 4(2)(e) of the PFUTP Regulation i.e. for price manipulation.

vii. Since in the present SCN, no allegations of synchronized has been made against me and I had admittedly not executed any synchronized trade, I am refraining myself from making any submissions on the same.

viii. It is alleged against my name under the Column of the "KYC Relationship" in the Table -2 given under Para 3 of the SCN at serial number 20 that "had traded with S. No. 2, 5, 19 & 30, who all have off market share and fund movement with s. no. 16". It is humbly submitted that this cannot be an allegation of connection. I have no connections with Bhupesh Rathod, Bharat Shantilal Thakkar, Prem Mohanlal Parekh and Ankit Sanchariya who were alleged counterparties to my buy and sell trades.

ix. It is very pertinent to mention that the detail provided in the Annexure "X" to the SCN is not correct as the Hon'ble Tribunal in various Orders made negative remarks against the connection shown in the SCN. The evidence to strengthen the connection such as KYC documents etc. are not provided with the SCN and also during the inspection of the documents.

x. That the connection details provided in the SCN are not reliable and documents supporting fund movement were not provided to me.

xi. It is further submitted that my trades on buy and sell side in the scrip of GIL was 4000 and 5484 shares, respectively, which were negligible and too miniscule as against the total volume 49,60,252 shares of the scrip during the Investigation Period. These trading volumes itself show that my volume was too negligible and minuscule. However, the matching of negligible quantity of the my trades within the purported group was merely a coincidence as all the trades were delivery based

xii. It is further submitted that my off market transaction in other scrip with certain purported entities are not illegal and in the SCN no such allegation has been made on the validity of such off market transactions.

xiii. The scrip was traded on 226 trading days during the investigation period out of which the group entities traded among themselves on 90 days. However, my trades have matched with PPG entities only on 2 days.

xiv. That mere connection cannot be an allegation.

xv. The Investigation failed to prove any connivance amongst the Noticees.

xvi. The evidence to strengthen the connection such as KYC documents etc. are not provided with the SCN and during the inspection of the documents. Therefore, the principle of natural justice has not been followed in the present proceeding.

xvii. It is further submitted that there has to be sufficient evidence on record to clearly prove connivance on the part of the Noticee with a counter party. In the present SCN, no such iota of evidence of collusion with the counterparties to my trades has been found.

xviii. The Noticee also cited various case laws and judgments in support of its submissions.

The AR attended the hearing on the scheduled date and reiterated the submissions made by the Noticee vide letter dated February 10, 2020. The AR was granted time till February 20, 2020 to make additional submissions in the matter. The AR vide letter dated February 14, 2020 made additional submissions wherein it *inter alia* submitted that the fresh SCN has been issued with inordinate delay. The AR in its aforesaid letter also cited various case laws in support of its submissions.

CONSIDERATION OF EVIDENCE AND FINDINGS

6. I have perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
    a) Whether the Noticee has violated Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a), (b), (e) & (g) of PFUTP Regulations by indulging in manipulative trades.
    b) Does the violation, if any, attract monetary penalty under Section 15HA of the SEBI Act?
    c) If yes, what should be the quantum of penalty?

7. The Noticee in its letter dated January 10, 2020 submitted that fresh SCN dated December 30, 2019, is issued to the Noticee while SCN dated November 01, 2013 is not withdrawn yet. In this regard, I note that the SCN dated November

01, 2013, issued to the Noticee along with other entities, was concluded vide adjudication order dated November 28, 2014. The aforesaid AO order was challenged by the Noticee in the Hon'ble SAT in Appeal No. 117 of 2015 and SAT vide order dated March 18, 2016 set aside the AO order with respect to certain entities including the Noticee and restored the matter to the file of the Adjudicating Officer citing reason that the relationship of the Noticee with other PPG entities was not set out. Thereafter, in view of the discrepancies pointed out by the SAT, a fresh SCN dated December 30, 2019, was issued to the Noticee.

8. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations read as under:

> ***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 there under;*
> ***(c)*** *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
> ***(d)*** *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*
>
> ***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;*
> ***(b)*** *dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
> *(c)............*
> *(d)............*
> ***(e)*** *any act or omission amounting to manipulation of the price of a scrip*

(g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

9. The first issue for consideration is whether the Noticee has violated provisions of Regulation 3(a), (b), (c), (d) and Regulation 4(1) & 4(2)(a), (b), (e) and (g) of PFUTP Regulations. On consideration of the SCN, its annexures and other material available on record, I observe that a Group of thirty one (31) entities (hereinafter collectively referred to as the '**Pabari-Parikh Group / PPG entities**') including the Noticee were connected to each other and had traded heavily in the scrip of Gemstone.

10. I note from the SCN that the Noticee is alleged to be connected to the PPG entities on the basis of its trades with other PPG entities viz. Shri Bhupesh Rathod, Shri Bharat Shantilal Thakkar, Shri Prem Mohanlal Parikh and Shri Ankit Sanchaniya who in turn have share and fund movement with other PPG entities. In this regard, I note that the trading of the Noticee with few PPG entities is not enough to establish his connection with those PPG entities and thus find such allegation of connection is unacceptable. It is also alleged in the SCN that the Noticee had off market share transactions with other PPG entity viz., Mr. Navneetlal Jeevanlal Gandhi and thus the Noticee is connected to these PPG entities. In this regard, I note from the annexures to the SCN that the Noticee had off market transfer of 5000 shares on February 04, 2009 in the scrip of Well Pack Papers & Containers Limited with Mr. Navneetlal Jeevanlal Gandhi. Therefore, I find that the Noticee is connected to the PPG entity, Mr. Navneetlal Jeevanlal Gandhi, (Mentioned at Sr. No. 7 at Table – 2 above).

11. The Noticee in its reply to the SCN has submitted *'…that the details provided in Annexure X of the SCN are not correct as the SAT has made negative remarks against the connections shown in SCN…*'. In this regard, I note that the connections with respect to the PPG entities as alleged in the instant SCN

are established on the basis of details explained at paragraphs 10 above of this order. Thus, the contention of the Noticee is not acceptable.

12. I note from the available records that the Noticee, in collusion with the other PPG entities, was alleged to have contributed to the creation of artificial volume in the scrip of Gemstone during the Investigation period. I observe that out of 226 days on which the scrip of Gemstone was traded during the period of investigation, the trades amongst Pabari-Parikh Group were executed on 90 days, i.e., 39.82% of the total no of days the scrip was traded during the period of investigation. Further, the PPG entities purchased 19,67,956 shares accounting for 39.67% of the total volume traded during the period under investigation and sold 34,24,824 shares accounting for 69.05% of the total volume traded during the period under investigation. Further, 31 PPG entities including the Noticee, had traded 12,41,518 shares (25.03% of the market volume) within the PPG entities which accounts for 63.09% of the total purchase of the group and 36.25% of the total sale of the group. Thus, I find that the Pabari-Parikh Group including the Noticee contributed significant volume in the scrip of Gemstone during the IP.

13. I observe from the available records and the trade log, that the Noticee and other PPG entities have executed following trades, in the scrip:

Table – 3

Client Name	Total Buy (Market)	Percentage of Market Volume	Buy amongst Group	Total Sell (Market)	Percentage of Market Volume	Sell amongst Group
Rajesh Pravin Bhanushali	0	0.00	0	118700	2.39	30553
Bhupesh Harishchandra Rathod	5555	0.11	5403	148990	3.00	51451
Spectrum Chemicals Pvt. Ltd(Praveen Venugopal)	0	0.00	0	10000	0.20	10000
Amar Premchand Walmiki	40900	0.82	39900	74148	1.49	33848
Bharat Shantilal Thakkar	10500	0.21	6950	85387	1.72	18674
Bipin Jayant Thaker	52890	1.07	27900	43450	0.88	12000
Navaneetlal Jeevanlal Gandhi	5000	0.10	5000	5000	0.10	0
Chirag Rajnikant Jariwala	19550	0.39	19550	19550	0.39	0
Kishorbhai Balubhai Chauhan	52200	1.05	44800	92050	1.86	34125

Client Name	Total Buy (Market)	Percentage of Market Volume	Buy amongst Group	Total Sell (Market)	Percentage of Market Volume	Sell amongst Group
Manish Suresh Joshi	0	0.00	0	31416	0.63	20000
Samir Sureshchandra Shah	28005	0.56	27635	28005	0.56	0
Manoj B Bhandari	119000	2.40	103900	14000	0.28	14000
Jignesh Chandrakant Shah	5000	0.10	5000	5000	0.10	0
Shalin Kiritkumar Parikh	2000	0.04	2000	2000	0.04	0
Bipinkumar Ramniklal Gandhi	535	0.01	0	56833	1.15	24250
Bhavesh Prakash Pabari	395464	7.97	203164	683133	13.77	239193
Anand Kalu Rapu Marathe	53300	1.07	50300	10699	0.22	10699
Rekha Bhandari	31191	0.63	30440	30433	0.61	11463
Prem Mohanlal Parikh	449439	9.06	257866	554399	11.18	211785
Devendra Suresh Gupta	**4000**	**0.08**	**4000**	**5484**	**0.11**	**5484**
Nareshbhai D Patel	10000	0.20	9998	10000	0.20	0
Hemant Madhusudan Sheth	143503	2.89	60179	612700	12.35	236406
Ashokkumar Bhikhalal Parmar	9000	0.18	8997	9026	0.18	0
Manishaben Navneetlal Gandhi	61495	1.24	61495	61495	1.24	31995
Yaminiben Maheshbhai Pandya	4101	0.08	4000	4000	0.08	0
Pandya Hardik M	44007	0.89	44000	14000	0.28	14000
Bharatkumar Baldevbhai Parmar	22000	0.44	22000	22000	0.44	14725
Mala Hemant Sheth	72566	1.46	15742	265721	5.36	85741
Gaurang Ajit Sheth	16965	0.34	5829	18063	0.36	7593
Ankit Rajendre Sanchaniya	279790	5.64	168802	373142	7.52	108033
Vivek Kishanpal Samant	30000	0.60	6668	16000	0.32	15500
Total	**1967956**	**39.67**	**1241518**	**3424824**	**69.05**	**1241518**

14. I note from the available records that the Noticee's buy quantity was 4,000 shares which contributed to 0.08% of the total market volume in the scrip of Gemstone. The Noticee's sell quantity was 5,484 shares, which contributed to 0.11% of the total market volume in the scrip during the IP. The Noticee's trades are within the Pabari-Parikh Group only. From the above, I find that the Noticee, by trading amongst the Pabari-Parikh Group, has contributed to the volume in the scrip of Gemstone.

15. The Noticee has contended that "*…..there has to be sufficient evidence on record to clearly prove connivance on the part of the Noticee with a counter party. In the present SCN, no such iota of evidence of collusion with the counterparties to my trades has been found*". In this regard, I note that it is extremely difficult to prove facts which are especially within the knowledge of parties concerned and the legal proof in such circumstances depends upon the attending circumstances and, therefore, circumstantial evidence has to be

taken into consideration. In this connection, it would be appropriate to refer to the Order of the Hon'ble Supreme Court of India in SEBI vs. Kishore Ajmera; Civil Appeal No. 2818 of 2008 (dated February 23, 2016), wherein the following has been observed with respect to market manipulations:

> *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"*

Therefore, I do not find any merit in the submission of the Noticee.

16. In view of the above, I conclude that the Noticee being part of the Pabari-Parikh Group has indulged in trading among the group entities, thus resulting in no change of beneficial ownership. I find that the trading of the Noticee has also contributed to the creation of artificial volume and such trading is fraudulent in nature. Therefore, I find that the dealings of the Noticee are manipulative and therefore, the charges levelled against them in the SCN regarding the contravention of the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a), (b) & (g) of PFUTP Regulations stand established.

17. I find from the investigation report that the buy order rate at which the Noticee placed the orders was close to the best available sell orders and as such the price rise on account of the said trades cannot be attributed to the Noticee. In view of the above, the allegation against the Noticee for violation of the

provisions of Regulation 4(2)(e) of the PFUTP Regulations does not stand established.

18. I note that the Noticee has *inter alia* stated that the evidence to strengthen the connection such as KYC documents etc. are not provided with the SCN. However, as discussed in paragraph 11 of this order, the Noticee is connected to the PPG entity, Mr. Navaneetlal Jeevanlal Gandhi, who in turn is connected to other PPG entity viz. Shri Hardik M Pandya who appear as introducer of Mr. Navneetlal Jeevanlal Gandhi. Mr. Navneetlal Jeevanlal Gandhi is also connected to PPG Entities viz. Shri Amar Premchand Walmiki, Shri Samir Sureshbhai Shah, Shri Nareshbhai Devabhai Patel and Shri Manisha Navneetlal Gandhi on the basis of Off market share transactions. Further, it is seen that the data pertaining to the market trades and off market transaction of the PPG entities including that of the Noticee, relied upon in the instant proceedings have already been provided to the Noticee.

19. The Noticee further, submitted that there is an inordinate delay in the proceedings. In this regard I note that the SAT, set aside the AO order vide its order dated March 18, 2016. Thereafter, Shri Suresh B Menon, was appointed as AO vide order dated May 17, 2018. Subsequent to the transfer of Shri Suresh B Menon to another department of SEBI, the undersigned was appointed as the Adjudicating Officer vide order dated March 18, 2019, only. However, upon an examination of details pertaining to the case an SCN was issued, in view of the discrepancy pointed out by Hon'ble SAT about the relationship of the Noticee with the PPG entities.

20. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by*

the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

21. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA of the SEBI Act, which reads as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. 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.

22. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the relevant factors as stipulated in the Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account while adjudging quantum of penalty.

15J.While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation.— For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

23. I note that the available records do not mention the specific profits made by the Noticee or loss suffered by the investors due to price manipulation committed by the Noticee in the instant case. However, I cannot ignore the nature of violations involved in the matter. Having established that the Noticee had executed trades through which he contributed to the volume manipulation, in my opinion, such trades are certainly in the nature of causing adverse impact in disturbing the equilibrium of fair market mechanism. I also note that the other PPG entities have contributed significantly to the artificial volume creation by trading among themselves and by indulging in synchronized trades and self-trades in the scrip during the investigation period. However, in respect of the Noticee, the only charge is that of creation of artificial volume by trading among the PPG entities.

ORDER

24. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee viz. Shri Devendra Suresh Gupta under the provisions of Section 15HA of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

25. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of

any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

26. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA- II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

28. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to Shri Devendra Suresh Gupta and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: February 25, 2020

Dr. ANITHA ANOOP
ADJUDICATING OFFICER