BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/S./2022-23/19592-19593]

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) RULES, 1995

In respect of

Noticee No.	Name of Noticees	PAN
1.	Bhavin Pradyumna Pandya	AQTPP1988K
2.	Rakesh Natavarlal Bhatt	AHGPB9298L

In the matter of Global Infratech and Finance Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), conducted an investigation in the scrip of Global Infratech and Finance Limited (hereinafter referred to as "**GIFL/ Company/ by name**") for the period December 20, 2017 to Feb 15, 2018, (hereinafter referred to as '**Investigation period/ IP'**). The focus of the investigation was to ascertain whether there were any violations of any of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**) or the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') relating to the trading in the scrip of GIFL during the aforesaid investigation period. The shares of the Company are listed at BSE Ltd (hereinafter referred to as "**BSE**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Communique dated December 31, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15HA of SEBI Act, the alleged violation of Section 12A(a), (b), (c) of SEBI Act, Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(k) of PFUTP Regulations by the entities viz. Bhavin Pradyumna Pandya and Rakesh Bhatt (hereinafter referred to as '**Noticees 1 and 2**' respectively and collectively referred to as '**Noticees**')

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated January 29, 2021 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Sections 15HA of SEBI Act, as applicable, for the aforesaid violations alleged to have been committed by them.

4. The allegations levelled against Noticee 1 and 2 in SCN are as under:

ALLEGED VIOLATION OF SECTION 12A(a), (b), (c) OF SEBI ACT, READ WITH REGULATIONS 3(a), (b), (c), (d), 4(1) and 4(2)(k) OF PFUTP REGULATIONS

a) *"During the investigation, variation in share price and daily traded volume of the scrip of GIFL for the IP was analyzed by SEBI and the same was also compared with price and volume fluctuation in the scrip of GIFL, before and after the investigation period. The details of the same are reproduced as under-*

Period	**Dates**		**Opening Price (volume) on first day Rs.)**	**Closing price (volume) on last day (Rs.)**	**Low price (volume) during the period (Rs.)**	**High Price (volume) during the period (Rs.)**	**Avg. no. of (shares) traded daily during the period**
Before Investigation period	(01/09/2017 - 19/12/2017)	Price	106.15	105.65	103.5	108	28453
		Vol	7401	870003	33420	7157	
During Investig	(20/12/2017 - 15/02/2018)	Price	105.5	92.05	92.05	120.65	256218

ation Period		Vol	110029	116	116	572553	
After investigation period	(16/02/2018 - 30/06/2018)	Price	90.25	34.4	34.4	90.25	2241
		Vol	150	1	5	150	

”

b) *“SEBI received complaints with respect to website www.MidcapMantra.in and sms sent through SMS headers namely HP-MANTRA. On examination, SEBI observed from the payment details provided by the Godaddy that the payment.”*

c) *“Vide email dated Jan 24, 2020, HDFC Bank provided following the details of account holder from whose bank account the payment was made to Godaddy:*

Bank A/c No.	50200026821850
A/c Holder	BIZ BUDDY (Proprietorship account and **Mr. Bhavinkumar P Pandya** is signatory in this account)
PAN	AQTPP1988K
Address	C/O Bb 303 Shantinath Awas, Near Gujarat Gas Circle Adajan, Near Gujarat Gas Company, Surat - 395009
Email ID	bhavin@bizbuddy.co.in
Mobile	+917622009666 -

”

d) *“From the complaints received in the matter of GIFL and Call Data Record of the SMS header HP- MANTRA (used for sending sms with respect to the scrip GIFL), it was observed that in text messages, name of the website, www.midcapmanta.in was mentioned. Some of the messages sent through SMS header HP-MANTRA are as follows-*

BE READY FRIENDS! MULTIBAGGER STOCK 2018 WILL HIT YOUR SCREEN at 11:00 A.M. - INVEST AS PER YOUR REGISTRATION OR YOU CAN INVEST MORE AS WELL - **MIDCAPMANTRA.IN**
You Can Read Our Research Report For GLOBAL INFRATECH on This Link:- **http://www.midcapmantra.in/research** - Click on This Link or Copy And Paste on Your Browser
MidcapMantraJn - Welcomes You For MULTIBAGGER Stock 2018 - You Can Earn 60% PROFIT in 2 Months. Our Executive Will Contact You Soon To Confirm Your Investment.
Good Afternoon - OUR EXECUTIVES ARE QUICKLY CALLING YOUR NUMBER TO CONFIRM YOUR INVESTMENT IN OUR MULTIBAGGER STOCK 2018 COMING ON **MONDAY. WWW.MIDCAPMANTRA.IN**
5 Days To Go - MULTIBAGGER Stock 2018 Coming on MONDAY. It Will Go UP From 105 To 170+ in 2 Months & Every Week Price Will Go UP Minimum 5%-10% **MidcapMantra.in**
MidcapMantra.in - Welcomes You For MULTIBAGGER Stock 2018 - You Can Earn 70% PROFIT in 2 Months. Our Executive Will Contact You Soon To Confirm Your Investment.
4 Days To Go - MULTIBAGGER Stock 2018 Coming on MONDAY. This Stock Has All The Potential To Deliver MEGA GAINS of 60% in 2 Months - BE READY!! **MIDCAPMANTRA.IN**

"

e) *"As the above text messages were sent in the matter of GIFL, it was alleged that the sender of the sms and the owner of the website (midcapmantra.in) were related or connected to each other. Moreover, since the payment for the domain/ website www.midcapmantra.in was made by Noticee 2 (partner of Noticee 1 in Bizbuddy Media Marketing), it was alleged that Noticee 2 was the owner of the website www.midcapmantra.in."*

f) *"From the banks statement of BIZBUDDY (Noticee 1 is the proprietor), it was observed that the payment for the credit card bills of Noticee 2 was made by BIZBUDDY from its HDFC bank account regularly. Thus, it is alleged that the Noticees 1 & 2 are making payment of the website [www.midcapmantra.in.](http://www.midcapmantra.in) and therefore, owners of the website/ domain. Further, as the said website was referred by SMS sender in his messages to various investor/ general public. Thus, the Noticees 1 & 2 are directly/ indirectly connected to the SMS sender."*

g) *"In view of the above, it is alleged that the Noticees 1 & 2 have run the campaign/ circulated misleading information through the website www.midcapmantra.in and have thus violated Sections 12A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d), Regulations 4(1) and 4(2)(k) of the PFUTP Regulations."*

h) *"The alleged foresaid violations of the PFUTP Regulations by the Noticees, if established, make the Noticees liable for monetary penalty under the provisions of Section 15HA of the SEBI Act."*

5. The SCN was duly served on Noticees 1 and 2 by Speed Post Acknowledgement Due (**SPAD**) and vide Digitally Signed Email dated January 29, 2021. Subsequently, the Noticees submitted their similar replies vide letter dated February 15, 2021. Thereafter, vide Hearing Notice dated June 01, 2022, which was served by SPAD and Digitally Signed Email dated June 02, 2022 on Noticees, an opportunity of hearing was granted to Noticees on June 21, 2022. Noticee 2 personally appeared for the scheduled hearing and reiterated his submissions made in his letter dated February 15, 2021. However, Noticee 1 failed to attend the scheduled hearing, and vide its email dated June 21, 2022, requested for another opportunity of hearing. Thereafter, vide Hearing Notice dated June 27, 2022, which was served by SPAD and Digitally Signed Email dated June 27, 2022 on Noticee 1,

another opportunity of hearing was granted to Noticee 1 on July 15, 2022. Noticee 1 personally appeared for the hearing and reiterated his submissions made in his letter dated February 15, 2021.

6. The relevant extracts of the similar submissions made by Noticee 1 and 2 vide letter dated February 15, 2021, are given hereunder:-

Submissions regarding the alleged violation of Sections 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) & 4(1) and 4(2)(k) of PFUTP Regulations

i *"Me, My Partner, our company has no relation with the Company Global Infratech and Finance LTD (GIFL)."*

ii *"Also we don't know any of the promoters/director/manager/ employee of the company."*

iii *"Also, I have never purchased share of GIFL, or any other company during the said period. I have never purchased any shares through midcap mantra. I have never done any share transactions, frequent or quantitative with any share broker."*

iv *"I have made the only payment for the midcapmatra.in (On behalf of Mr. Hanif Shaikh, Who was our client during this period, his Contact details were already submitted in my statement recorded on 13th Jan 2020) on go daddy portal. We have just made the payment of for the domain purchase. We use to buy domains for our clients which is a regular practice. Doing payment was purely a business transaction."*

v *"In reference to point 7 of the notice me or my partner has never been involved in creating, managing and in promoting and any kind of misleading information. As stated above the websites www.midcapmantra.com dose not belongs to us. We have not hosted the website, nor did we create any content of the websites. We don't know who has circulated the sms with the sms header HP-Mantra."*

vi *"I clearly deny the ownership of the website www.midcapmantra.in and sms sent via sms header HP-Mantra. My IP address are not connected with website nor any hosting from my side."*

vii *"Also the domains purchased in shopper id 175937685 are not belong to me or my partner. The legal invoice from Go daddy for the shopper id no: 175937685, dose not reflects any kind of ownership to me, my partner or our company."*

viii *"Me, my partner and my company has never been involved in creating, developing, managing and promoting any kind of misleading information. As stated above the* *websites www.midcapmantra.com and www.safebulls.com were never owned, created and managed by us. We never had any control of the websites, we have just made the payment of for the domain purchase. We use to buy domains for our clients which is a regular practice and a part of our professional services."*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

   I) Whether Noticees have violated Sections 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(k) of PFUTP Regulations?

   II) Does the violation, if any, attract a monetary penalty under Section 15HA of SEBI Act?

   III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

8. The relevant provisions of the SEBI Act and PFUTP Regulations, which were in force at the time of the merger, are reproduced as under:

Relevant provisions of SEBI Act:

CHAPTER VA
PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

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

12A*. No person shall directly or indirectly—*

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

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

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

Relevant provisions of PFUTP Regulation:

***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:—

…

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.

Issue No. 1 - Whether Noticees have violated Sections 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(k) of PFUTP Regulations?

9. It has been alleged in SCN that Noticees 1 and 2 had run a campaign of circulating misleading information through the website www.midcapmantra.in and thereby violated Sections 12A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d), Regulations 4(1) and 4(2)(k) of the PFUTP Regulations. In this regard, from the Price-Volume data

pertaining to the scrip of GIFL, I observe the following movement in the Price and Volume of the said scrip before, during, and after the IP:

Period	Dates		Opening Price (volume) on first day Rs.)	Closing price (volume) on last day (Rs.)	Low price (volume) during the period (Rs.)	High Price (volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period
Before Investigation period	**(01/09/2017 - 19/12/2017)**	**Price**	106.15	105.65	103.5	108	28453
		Vol	7401	870003	33420	7157	
During Investigation Period	**(20/12/2017 - 15/02/2018)**	**Price**	105.5	92.05	92.05	120.65	256218
		Vol	110029	116	116	572553	
After investigation period	**(16/02/2018 - 30/06/2018)**	**Price**	90.25	34.4	34.4	90.25	2241
		Vol	150	1	5	150	

10. I note that SEBI received complaints with respect to website www.midcapmantra.in (hereinafter referred to as, "**the website/by name**") and bulk Short Message Service messages (hereinafter referred to as, "**SMS messages/text messages**") sent through SMS headers, namely, HP-MANTRA between Jan 8, 2018 and Jan 29, 2018. I observe from the Call Data Record of the aforesaid SMS header that the following text messages were allegedly circulated with the SMS header HP-MANTRA during the IP:

BE READY FRIENDS! MULTIBAGGER STOCK 2018 WILL HIT YOUR SCREEN at 11:00 A.M. - INVEST AS PER YOUR REGISTRATION OR YOU CAN INVEST MORE AS WELL - **MIDCAPMANTRA.IN**
You Can Read Our Research Report For GLOBAL INFRATECH on This Link:- **http://www.midcapmantra.in/research** - Click on This Link or Copy And Paste on Your Browser
MidcapMantra.in - Welcomes You For MULTIBAGGER Stock 2018 - You Can Earn 60% PROFIT in 2 Months. Our Executive Will Contact You Soon To Confirm Your Investment.
Good Afternoon - OUR EXECUTIVES ARE QUICKLY CALLING YOUR NUMBER TO CONFIRM YOUR INVESTMENT IN OUR MULTIBAGGER STOCK 2018 COMING ON MONDAY. **WWW.MIDCAPMANTRA.IN**
5 Days To Go - MULTIBAGGER Stock 2018 Coming on MONDAY. It Will Go UP From 105 To 170+ in 2 Months & Every Week Price Will Go UP Minimum 5%-10% **MidcapMantra.in**
MidcapMantra.in - Welcomes You For MULTIBAGGER Stock 2018 - You Can Earn 70% PROFIT in 2 Months. Our Executive Will Contact You Soon To Confirm Your Investment.
4 Days To Go - MULTIBAGGER Stock 2018 Coming on MONDAY. This Stock Has All The Potential To Deliver MEGA GAINS of 60% in 2 Months - BE READY!! **MIDCAPMANTRA.IN**

11. From the perusal of the above SMS messages, I observe that the messages pertained to the scrip of GIFL and made direct reference to the website www.midcapmantra.in. I further observe that the SMS messages claimed that the GIFL stock was a multibagger stock that would fetch high profits in a short period of time and gave recommendations to buy the scrip of GIFL.

12. In this regard, on perusal of the payment details provided by the domain service provider, Godaddy, vide email dated July 17, 2019, and information provided by HDFC Bank vide emails dated December 24, 2019, in respect of the purchase of the aforesaid website, I observe that the payment with respect to the website www.midcapmantra.in was made by Noticee 2 using HDFC bank account, details of which are as under:

Bank A/c No.	50200026821850
A/c Holder	BIZ BUDDY (Proprietorship account and Mr. Bhavinkumar P Pandya is signatory in this account)
PAN	AQTPP1988K
Address	C/O Bb 303 Shantinath Awas, Near Gujarat Gas Circle Adajan, Near Gujarat Gas Company, Surat - 395009
Email ID	bhavin@bizbuddy.co.in
Mobile	+917622009666

13. I also observe that in the statement of Noticee 1 dated January 13, 2020, as recorded during the investigation, Noticee 1 had stated as follows:
    a. He was involved in advertising activity. He is the proprietor of Bizbuddy since 2015, and also a partner in Bizbuddy Media Marketing alongwith the Noticee 2 and that he is running an advertising agency and does online and offline ad campaigns. He further stated that Noticee 2 is having one credit card with Citi Bank (CC no. 5546370230386358).
    b. He stated that Godaddy Shopper ID 175937685 was used for purchasing the domain/website www.midcapmantra.in and two payments of Rs. 801.14 by him and Rs. 502.88 by Noticee 2 were made for purchasing the domains, namely www.midcapmantra.in and www.safebulls.com, respectively.

14. I further observe from the Credit Card Statement of Noticee 2, for the period February 12, 2018 to March 11, 2018, that on January 01, 2018, a payment of Rs. 502.88 was made by Noticee 2 to GoDaddy for purchasing the website. I also observe from the Bank Account Statement of BIZBUDDY, a proprietorship concern of Noticee 1 that on February 13, 2018

Rs. 801 was paid by BIZBUDDY to GoDaddy for purchasing the website. I note that since BIZBUDDY was a proprietorship of Noticee 1, it is clear that the aforesaid payment was made using the funds of Noticee 1. I further note from the Credit Card statement of Noticee 2 and the Bank Account statement of Noticee 1 that the Noticees have purchased the website domain from GoDaddy by using their own funds.

15. In this regard, Noticees 1 and 2 have submitted in their replies vide letters dated February 15, 2021 that they had paid for the website www.midcapmantra.in. However, Noticees have contended that the aforesaid website had been purchased on behalf of their client, namely, Mr. Hanif Shaikh whose contact details had already been provided in the recorded statement of Noticee 1 dated January 13, 2020. Noticees have contended that even though they had purchased the aforesaid website, they did not own it. Noticees have also contended that the SMS header HP-Mantra was also not owned by them. In this regard, I note that apart from a mere assertion, Noticees 1 and 2 have not provided any evidence such as a domain purchase invoice pertaining to the website to substantiate their claim that the client had purchased the website. I also note that Noticees have not provided any documents to show that they were engaged by any client to purchase the aforesaid website. Thus, the contention that the website domain was purchased on behalf of the clients of the Noticees is devoid of merits. Therefore, I am not inclined to accept the contentions of Noticees in this regard. I also note that Noticees have not disputed the fact that the website had been purchased by them. Thus, I conclude that the website www.midcapmantra.in belonged to the Noticees.

16. As noted earlier in the order, the aforesaid circulated SMS messages stated that the scrip of GIFL was a multibagger stock that could fetch extraordinary high returns in the range of 60-70% in a short period of two months. In this regard, I note from the BSE price volume data that during a span of ten months, the price of GIFL had increased from Rs. 106.15 on September 01, 2017 to Rs. 150 as on June 30, 2018, i.e., the scrip price had appreciated only 29% during a span of ten months between September 01, 2017 and June 30, 2018 which was much below the 60-70% returns as claimed in the aforesaid SMS messages. I have also perused the BSE historical data pertaining to the scrip for the Financial Years ("**FY**") 2015-2016, 2016-2017 and 2017-2018. I observe that the price of GIFL had decreased from Rs. 101 on September 01, 2015 to Rs. 92.5 on August 08, 2016 during a span of 11 months, which was a decrease of 8.41%. I further observe that the price of GIFL had increased from Rs. 90.70 on September 16, 2016 to Rs. 106 on July 25, 2017 during a span of 10 months, which was an increase of a mere 16.86%. I note that

the aforementioned BSE price-volume data and BSE historical data demonstrate that the share price of GIFL had only recorded minimal appreciation between 16.86% and 29% and had also suffered a decrease of 8.41% in FY 2015-16, FY 2016-17, and FY 2017-18. which could only lead to returns far below the range of 60-70% return as claimed in the SMS messages. Therefore, I find that the claims made in the aforesaid SMS messages about the scrip of GIFL being a multibagger stock that could fetch extraordinary high returns in the range of 60-70% in a short period of two months were false and misleading and contained baseless claims which were designed to mislead investors about the returns which could be earned in the scrip of GIFL. I further note that the aforesaid SMS messages were disseminated between January 08, 2018 and January 29, 2018 ("**SMS period**"). I also note that during the period between September 01, 2017 and December 19, 2017 (hereinafter referred to as, "**pre-SMS period**"), the daily average trading volume in the scrip of GIFL was 28,453 shares. I further note that during the SMS period, the daily average trading volume in the scrip increased to 2,56,218 shares. Thus, I note that there was substantially higher trading volume (nearly 10 times) in the scrip of GIFL in the SMS period as compared to the pre-SMS and post-SMS period. Considering the aforementioned increase in the daily average trading volume in the scrip of GIFL during the SMS period, it would not be incorrect to infer that investors had been induced to trade in the scrip of GIFL on the basis of the aforesaid SMS messages. Therefore, I find that the aforesaid bulk SMS messages were false and misleading advertisements regarding the scrip of GIFL and were tantamount to a fraudulent device in order to lure investors into buying the scrip of GIFL.

17. I also observe that the aforesaid circulated SMS messages, while giving recommendations to buy the scrip of GIFL, encouraged recipients of the messages to read the purported research report for GIFL available at www.midcapmantra.in. Since the website belonged to Noticees, I am inclined to conclude that the Noticees, being owners of the said website were responsible for the dissemination of the aforesaid bulk SMS messages.

18. In this regard, I find that in cases of market manipulation, where direct evidence may not be available, transactions as indicated above are to be tested for any manipulative intent on the basis of conduct of parties and abnormality of practices. In other words, I find that the requirement under PFUTP Regulations is that fraud must be proved on a preponderance of probabilities. In this regard, I place reliance on the judgment of Hon'ble Supreme Court in the case of SEBI vs. Kishore R. Ajmera [(2016) 6 SCC 368], dated February 23, 2016 wherein Hon'ble Supreme Court has held as under:

"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…The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned… The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors."

19. Therefore, on the basis of the foregoing findings, and placing reliance on the aforesaid judgements, the facts and circumstances of the case lead me to conclude that the Noticees, who owned the website www.midcapmantra.in, had operated a campaign of circulating misleading and false bulk SMS messages pertaining to the scrip of GIFL by using the website www.midcapmantra.in to lure investors into buying the scrip of GIFL, which shows manipulative intent on the part of the Noticees to defraud investors.

20. In this regard, I note that Regulations 3(a)–(d) of the PFUTP Regulations, *inter alia,* prohibit employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. I note that Regulation 4(1) of the PFUTP Regulations provides for a prohibition on indulging in fraudulent or unfair trade practices in securities. I further note that Regulation 4(2)(k) prohibits an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.

21. At this juncture, I find it pertinent to refer to the judgement of Hon'ble Supreme Court of India in the matter of N. Narayanan vs. SEBI [(2013) 12 SCC 152] in which it was held as follows:

"*if market abuse is not properly curbed, then it would result in defeating the very object and purpose of SEBI Act......Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law…Market manipulation is normally regarded as the "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market... Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'*."

22. I also find it pertinent to refer to decision of Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Kanaiyalal Baldevbhai Patel (Civil Appeal No. 2595 of 2013; Decided on September 20, 2017). In the aforementioned judgment, the Hon'ble Supreme Court of India while discussing the ambit of fraud under PFUTP Regulations has held as under:

"*The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required… To attract the rigor of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities… The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified.*"

23. Therefore, placing reliance upon the aforesaid judgements, I find that the attending facts and circumstances in the instant case demonstrate manipulative intent and conduct of the Noticees. Thus, based on the facts and circumstances established above and on a preponderance of probabilities, I find that the dissemination of the aforesaid false and misleading SMS messages in order to lure investors into buying the scrip of GIFL,

constituted an “unwarranted” interference in the operation of ordinary market forces of supply and demand in relation to the scrip of GIFL and thus amounted to market abuse.

24. Thus, in view of the foregoing findings, facts and circumstances of the case and placing reliance on the aforesaid judgements, I conclude that the Noticees, who owned the website www.midcapmantra.in, had operated a campaign of circulating misleading and false bulk SMS messages pertaining to the scrip of GIFL by using the aforesaid website with the intent to manipulate the market. Therefore, I find that the allegation that the Noticees have violated Sections 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c), (d), Regulations 4(1) and 4(2)(k) of the PFUTP Regulations, stands established.

Issue No. II- Does the violation, if any, attract a monetary penalty under Sections 15HA of SEBI Act?

25. It has been established in the foregoing paragraphs that Noticees 1 and 2 have violated Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) and 4(2)(k) of PFUTP Regulations. In the context of the above, I refer to the observations of Hon’ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon’ble Court had 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...…..*”

26. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon’ble Supreme Court, I find that the aforesaid violations of Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d) and 4(1) and 4(2)(k) of PFUTP Regulations will attract monetary penalty under Section 15HA of the SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

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 which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue No. III - What should be the quantum of monetary penalty?

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

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 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.

28. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors listed in Section 15J of SEBI Act. In the instant case, having regard to the factors listed in Section 15J of SEBI Act, it is noted that the material available on record does not demonstrate any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default. I observe that there are no other records to show repetitive defaults by Noticees.

29. This is a case wherein Noticees disseminated false and misleading information through bulk SMS messages to gullible investors. I am of the view that the manipulative acts of the Noticees have the potential to mislead and induce genuine investors to trade in the scrip and harm them and therefore such acts violate the fundamental tenets of market integrity. Such acts of Noticees, if dealt with lightly, could seriously undermine investors' confidence in the securities market and therefore, merit stringent penalty commensurate with such serious violations. In this respect, I find it pertinent to refer to the judgement of the Hon'ble Supreme Court of India in the matter of Kishore Ajmera vs. SEBI (2016) 6 SCC 368 (Judgment dated February 23, 2016) in which it was held as follows:

"*The SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light."*

30. In view of the foregoing findings and placing reliance on the aforesaid judgement, I find that an appropriate penalty should be imposed on the Noticees, so as to serve as a deterrent against the aforesaid violations, considering the interest of investors and integrity of securities market.

ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees, and also the factors mentioned in Section 15J of SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalties on Noticees 1 and 2, jointly and severally, under Section 15HA of SEBI Act:

Penalty for violation of PFUTP Regulations

Name of Noticee	**Penalty under Section 15 HA of SEBI Act**	**For the violation of following provisions**
Bhavin Pradyumna Pandya	Rs. 10,00,000/- (Rupees Ten Lakhs only) jointly and severally	Sections 12A(a), (b), (c) of SEBI Act, and Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(k) of PFUTP Regulations
Rakesh Natavarlal Bhatt		

32. 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 online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, said Noticees may contact the support at portalhelp@sebi.gov.in.

33. The Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - 1, 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)	

34. 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 SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

35. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place:Mumbai **SOMA MAJUMDER**

Date: September 23, 2022 **ADJUDICATING OFFICER**