

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12 (3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No./PAN No.
1.	Prashant J. Patel	INZ000266511/(PAN: AABPP2156M)

In the matter of fictitious transactions in the scrip of Global Telesystems Limited

BACKGROUND

1. The present proceeding is originating from the Enquiry Report dated June 30, 2021, submitted by the Enquiry Officer in terms of regulation 26 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred as “**Intermediaries Regulations**”), wherein the Enquiry Officer /Designated Authority (hereinafter referred to as “**DA**”), based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that a regulatory direction in the nature of ‘censure’ may be issued to Shri Prashant J. Patel (hereinafter referred to as “**PJP/Noticee**”) directing the *Noticee* to be more careful in future with respect to the dealings and conduct in the securities market and to adopt due diligent measures such as proper checks and balances in his operations as a stock broker in order to avoid any regulatory lapse. The *Noticee* is a registered trading member of the National Stock Exchange of India Ltd. (hereinafter referred to as “**NSE**”) and the Metropolitan Stock Exchange (hereinafter referred to as “**MSE**”).

Final Order in respect of Prashant J. Patel in the matter of fictitious transactions in the scrip of Global Telesystems Limited

2. The aforesaid Enquiry Report was submitted pursuant to a proceeding initiated based on the findings of certain facts unearthed in the course of an investigation conducted by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) upon receipt of a complaint dated October 18, 2002 (hereinafter referred to as “**Complaint**”) from Tata Finance Ltd. (hereinafter referred to as “**TFL**”) *inter alia* alleging that certain fictitious and backdated transactions of sale and purchase of shares of Global Telesystems Ltd., (hereinafter referred to as “**GTL**”) and Global E-Commerce Services Ltd., (an unlisted company which was merged with GTL in 2001 and hereinafter referred to as “**GECS**”,) were executed between Niskalp Investment and Trading Ltd. (now known as Niskalp Infrastructure Services Ltd. and hereinafter referred to as “**Niskalp**”) and TFL, respectively with the help of three stock brokers viz. Bharat J Patel (hereinafter referred to as “**BJP**”), JHP Securities Pvt. Ltd. (hereinafter referred to as “**JHP**”) and the *Noticee* during the period September 2000 to December 2000 (hereinafter referred to as “**relevant period**”).
3. In view of the aforesaid finding of facts, a DA was appointed to inquire into and to submit a report pertaining to the aforesaid alleged acts of the *Noticee* and to ascertain if these acts were in violations of the provisions of regulations 6(a) and 6(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 (hereinafter referred to as “**PFUTP Regulations, 1995**”) r/w regulation 13(1) to 13 (3) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) and regulations 4(1) & 4(2)(p) of the PFUTP Regulations 2003 and Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct specified in Schedule II to regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”), allegedly committed by the *Noticee*.

4. The DA issued a show cause notice dated October 23, 2009 to the *Noticee* under regulation 25(1) and regulation 38(2) of the Intermediaries Regulations, 2008 [as it stood at the relevant point of time] advising the *Noticee* to submit his replies, if any, together with the supporting documents, if any that he may choose to rely upon to substantiate his contentions, failing which it shall be presumed that he has no reply to submit and the matter shall be proceeded on the basis of the material available on record. Accordingly, the *Noticee* vide letters dated November 18, 2009 and June 30, 2010 submitted his replies.
5. The background facts necessary for the present proceedings are narrated in brief, hereunder:
 - i. TFL had come out with a Rights Issue of 9% Cumulative Convertible Preference Shares (“CCPS”) aggregating to INR 90.93 Crore in March, 2001. The rights issue of the TFL opened on March 30, 2001 and closed on April 30, 2001. In terms of SEBI (DIP) Guidelines, 2000 (hereinafter referred to as “**DIP Guidelines**”), TFL was required to furnish the financial statements of its subsidiary companies in its ‘letter of offer/offer document’. *Niskalp* being one of the subsidiary companies of TFL, its financial statements were also required to be incorporated in the offer document.
 - ii. *Niskalp* during the relevant period had suffered huge losses on account of erosion in the value of its investments (to the tune of INR 190 Crore due to fall in the stock market) and also due to payment of an interim dividend (@45% for the year 2000-01 resulting into cash outflow of INR 10.81 Crore).
 - iii. It was noticed that in order to ensure that *Niskalp*’s accounts did not reflect the aforesaid losses and the fact that its (*Niskalp*) losses and provisioning for ‘non-performing assets’ (for short ‘NPA’) as on September 30, 2000 were better compared to the quarter ending December 31, 2000, the

financials of *Niskalp* were disclosed only for the period ending September 30, 2000 in the said offer document instead of disclosing the same upto the period ending December 31, 2000, whereas financials of other subsidiaries of TFL were disclosed till the quarter ending on December 31, 2000.

- iv. It was further noticed that to show a better picture of the financials of *Niskalp* and to make it look profitable backdated and fictitious transactions in the shares of GTL and GECS were engineered and effected in the month of March, 2001 in complicity with the aforesaid three brokers including the *Notinee* in this proceeding for sale/ purchase of 2,88,400 shares of GTL and 16,35,100 shares of GECS (an unlisted company during the relevant period) in complicity with two unregistered entities viz. Pat Financial Consultants Pvt. Ltd. (hereinafter referred to as “**PFCPL/PAT**”) and Superior Financial Consultancy Services Pvt. Ltd. (hereinafter referred to as “**SFCSPL/SUPERIOR**”), which were the entities connected to the above registered intermediaries.
- v. It was further noticed that 2,88,400 shares of GTL and 16,35,100 shares of GECS were shown to have been sold by *Niskalp* in the month of September, 2000 and the said transactions were further reversed in the month of November- December 2000. Moreover, the above transactions were executed on paper only and not followed by either actual delivery of securities or payment of consideration thereof between the parties, details of which would be discussed in the later part of the order.
- vi. Based on the above noted sale of GTL and GECS shares, *Niskalp* was shown to have booked a profit of INR 26.04 Crore (INR 16.50 Crore in GTL and INR 9.54 Crore in GECS shares) as on September 30, 2000, thereby converting the actual loss of INR 14.59 Crore into a fictitious book profit of INR 11.45 Crore as on September 30, 2000.

- vii. The aforesaid dealings in shares between *Niskalp* and TFL were not genuine and were carried out with a view to project a better picture of *Niskalp*'s financial condition in the offer document of the Rights Issue of TFL. Thus, the above fictitiously generated profit in the hands of *Niskalp* was deliberately disclosed in the offer document of TFL for the Rights Issue.
6. On the basis of the aforesaid factual details, the DA, after considering the replies filed by the *Noticee*, has *inter alia* observed the followings in his report:

"17. In view of the above observations and the facts and circumstances of the case, I hold that Noticee, as a stock broker, had not exercised due skill, care, and diligence and also failed to abide with the statutory requirements of various provisions of law. Therefore, the Noticee has violated the provisions of Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct specified for Stock Brokers contained in Schedule II referred to in Regulation 7 of the Stock Broker Regulations. Further, as brought out in the Report, the relevant transactions in GTL did not take place on the floor of BSE on September 20, 25, 27 & 28, 2000 under the client codes of TFL & Niskalp. Therefore, it has been concluded in the Report that the transactions in GTL were fictitious and the Noticee had also issued the contract notes in respect of these transactions which were not undertaken on the floor of BSE. In view of the same, I hold that Noticee has violated the provisions of Regulations 6 (a) and 6 (d) of the PFUTP Regulations, 1995. Further, in my view, as the relevant transactions took place during the period 2000-2001, the alleged violations of the provisions of Regulations 4 (1) and 4 (2) (p) of the PFUTP Regulations, 2003, as mentioned in the SCN issued to the Noticee, is not sustainable as the impugned transactions in GTL had taken place prior to the notification of the PFUTP Regulations 2003.

18. Although the above observations/ findings point out to misconduct on the part of the Noticee and Noticee has violated the provisions of law, as aforesaid, I note that the relevant transactions in GTL claimed to have been executed by the Noticee occurred in the year 2000/2001 i.e almost 20 years back. I am of the view that with the passage of time in the present matter, no meaningful purpose will be served if major enforcement actions are recommended/initiated on the Noticee at this stage. Therefore, in view of the overall facts

and circumstances of the case and also considering the fact that the matter is more than 20 years old, I, in terms of the provisions of Regulation 26 of the Intermediaries Regulations recommend that a regulatory censure may be issued to the Noticee viz. Prashant J. Patel, Stock Broker, (SEBI Regn no: INZ000266511) to be more careful in future with respect to the dealings and conduct in the securities market and to adopt due diligent measures such as proper checks and balances in his operations as a stock broker in order to avoid any regulatory lapse.”

7. After considering the Enquiry Report, a Show Cause Notice dated September 02, 2021 (hereinafter referred to as “**SCN**”) enclosing therewith the Enquiry Report of the DA, was issued to the *Noticee* under regulation 27(1) of the Intermediaries Regulations, 2008 calling upon to show cause as to why action as recommended by the DA or any other action including passing of appropriate other directions, as deemed appropriate by the Competent Authority, should not be taken against them. The SCN further advised the *Noticee* to submit his reply, if any within 21 days of receipt of the said SCN.
8. I note that the SCN was delivered to the *Noticee* and the proof of delivery is on record. However, it is noted that the *Noticee* has not filed any reply to the SCN. Nevertheless, in conformity with the principles of natural justice, an opportunity of personal hearing was provided to the *Noticee* on May 19, 2022, and the same was to the *Noticee* vide letter dated April 04, 2022. On the scheduled day, the hearing was held through video conferencing wherein the *Noticee* appeared through his Authorised Representative and made oral submissions. The *Noticee* was given one weeks’ time to file his written submissions, if any. Thereafter, the *Noticee* has filed a post hearing written submissions vide letter dated June 03, 2022 in which it has been prayed that his replies dated November 18, 2009 and June 30, 2010 already filed before the DA should be read with and treated as part and parcel of the aforesaid post hearing written submissions.

9. The submissions made by the *Noticee* through its oral as well as written submissions are summarized as under:
- i. The *Noticee* is a registered stock broker of the NSE for last 28 years and had a turnover of INR 1500 Crore in FY 2020-21. The *Noticee* has 75 connected/unconnected employees. The *Noticee* has very large operations having over 7800 registered clients where most of the clients are high net worth individuals/large traders who carry on trading activities on the Stock Exchange independently.
 - ii. No action has been taken by SEBI against *Niskalp*/TFL. The *Noticee* has no role in preparing accounts that were disclosed in the offer documents of the Rights Issue of the TFL.
 - iii. The show cause notice during enquiry proceedings was issued after a delay of over 9 years from the date of alleged transactions and no justification has been provided to explain the said delay. Further, the Enquiry Report is submitted after 21 years of the alleged transactions and after 12 years from the issuance of the aforesaid show cause notice. The prejudice caused to the *Noticee* by the aforesaid delay is that now it is impossible for the *Noticee* to provide any satisfactory reasons or rational for the alleged transactions.
 - iv. In the absence any prescribed period of limitation under the SEBI Act, 1992, SEBI is required to exercise its powers within a reasonable period as held by the Hon'ble Supreme Court in *Government of India vs. Citadel Fine Pharmaceuticals, Madras and Others*, AIR(1989) SC 1771 and *Adjudicating Officer, SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294.
 - v. In cases of unexplained inordinate delay, the show cause notice and the proceedings must be dropped even without getting into the merits of the matter as held by the Hon'ble SAT in its various orders such as *Appeal No. 417 of 2018-Ashok Shimpal Rupani vs. SEBI*(decided on August 22, 2019), *Appeal*

No. 154 of 2020-Bharat J Patel vs. SEBI(decoded on September 08, 2020) and Appeal No. 583 of 2019-ICICI Bank vs. SEBI(decoded on July 08, 2020).

- vi. The entire issue as alleged in the SCN has already been dealt by the Hon'ble SAT while disposing of Appeal No. 222 of 2016 filed by certain entities against SEBI order dated June 21, 2016 wherein the directions issued by SEBI were quashed against the said entities and the said entities were warned to be careful in future while dealing in securities.

CONSIDERATION OF ISSUES

10. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, its oral as well as written submissions filed by the *Noticees* as summarized above and the materials/details available on the record. After considering the allegations levelled against the *Noticee* in the instant matter as spelt out in the SCN, the issues which arise for my consideration and adjudication in the present proceeding are as under: -

- I. *Whether the Noticee indulged in backdated and fictitious transactions in the scrip of GTL on behalf of his clients viz. Niskalp and TFL and issued fictitious contract notes to his clients viz. Niskalp and TFL pertaining to the said backdated and fictitious transactions.*
- II. *If the answer to Issue no. 1 is in affirmative, then whether the Noticee has violated the provisions of regulations 6(a) and 6(d) of the PFUTP Regulations, 1995 read with regulations 13(1) to 13 (3) of the PFUTP Regulations 2003 and Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct specified in Schedule II to regulation 7 of the Stock Brokers Regulations.*

11. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the law, which are alleged to have been violated by the *Noticee*. The same are reproduced below for ease of reference:

THE (PFUTP) REGULATIONS, 1995

Prohibition on unfair trade practice relating to securities.

6. No person shall -

(a) in the course of his business, knowingly engaged in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

(d) indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form);

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THE (PFUTP) REGULATIONS, 2003

Repeal and savings

13. (1) *The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.*

(2) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of Regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.

THE STOCK BROKERS REGULATIONS, 1992

Stock brokers to abide by Code of Conduct.

7. *The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.*

SCHEDULE –II

Code of Conduct for Stock Brokers

A. General.

- (1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*
- (2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*
- (3) Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*
- (4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*
- (5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

I. Whether the Noticee indulged in backdated and fictitious transactions in the scrip of GTL on behalf of his clients viz. Niskalp and TFL and issued fictitious contract notes to his clients viz. Niskalp and TFL pertaining to the said backdated and fictitious transactions.

12. The background in which the charges have been levelled against the Noticee in the SCN pertained to deliberate dissemination of untrue, false and misleading information pertaining to financial statements of Niskalp (one of the subsidiaries of TFL) in the letter of offer made by TFL for its Rights Issue. The said misrepresentation was allegedly caused by falsification of the books of accounts of Niskalp, by backdating the transactions of sale of shares of GTL and GECS in September 2000 and then making reversal of these trades in December 2000. In this regard, the SCN records that to achieve the

above objective, transactions in the shares of GTL and GECS were fictitiously entered and in the process, it was shown that in the month of September 2000, 2,88,400 shares of GTL were sold by *Niskalp* to the TFL through the aforesaid three brokers including the *Noticee*. Out of 2,88,400 shares of GTL, the *Noticee* is alleged to have purchased and sold a total of 40,000 shares of GTL on September 27 and 28, 2000 (hereinafter referred to as “**relevant dates**”), on behalf of TFL and *Niskalp* (hereinafter collectively referred to as “**trading clients**”), details of which as contained in the SCN, are as under:

Name of the Broker	Date of Transaction	Quantity sold	Name of Seller	Quantity Purchased	Name of Purchaser
Prashant J Patel	27.09.2000	20000	Niskalp	20000	TFL
	28.09.2000	20000	Niskalp	20000	TFL
Total		40000		40000	

13. In respect of the aforesaid transactions executed by the *Noticee* on the behest of TFL and *Niskalp*, it is noted that the *Noticee* has claimed to have carried out these transactions on the floor of the NSE on the relevant dates and accordingly has issued the contract notes to his clients. However, the documents ascertained during the investigation revealed that the aforesaid contention of the *Noticee* is belied for the following facts/reasons as evident from the details available on record and submissions made by the *Noticee* himself:

- i. Having claimed that these transactions were done on the floor of the NSE on the relevant dates, the delivery and payment pertaining to the above transactions ought to have taken place only through the clearing and settlement mechanism of the NSE and not outside the scope of the stock exchange, as admitted by the *Noticee*. It is further admitted by the *Noticee* during the course of recording of his statement that in the

process of sale and purchase of shares in the scrip of GTL, neither the shares were transferred from the demat account of *Niskalp* to the account of TFL nor any funds were received in the bank account of *Niskalp* from the account of TFL so far as the aforesaid transactions in the scrip of GTL were merely book entries.

- ii. Had these transactions been genuinely executed on the exchange platform, the NSE would have raised an alert upon non-receipt of funds and securities from the concerned buyer and seller, respectively and would have followed due procedure in such case of default by the trading clients. However, the fact that no such action was taken by the NSE for these transactions, only goes to prove that the relevant transactions in GTL shares did not take place through the exchange platform of the NSE on the relevant dates.
- iii. The *Noticee* has further claimed that the orders in the scrip of GTL were placed orally by one Shri Shilotri on behalf of the trading clients on the relevant dates and no formal buy/sell orders were placed with the *Noticee* by the above mentioned clients in the scrip of GTL and the *Noticee* had accepted the oral orders because the trading clients are holding and subsidiary companies. In this context, it is pertinent to note that Shri Shilotri was not authorized to place orders on behalf of TFL as he was not holding any position in/associated with TFL in any capacity during the relevant period when the orders were placed by the *Noticee* on behalf of TFL supposedly on the oral instruction of Shri Shilotri. Therefore, in terms of governing rules and settled norms the *Noticee* ought not to have accepted the orders on behalf of TFL from Shri Shilotri that too orally, without any records. Besides, it is observed that the aforesaid brokers including the *Noticee* had never done any business on behalf of TFL before the aforesaid transactions in the shares of GTL in September / December 2000 which indicates that the

- said trading for TFL by them were executed outside their normal conduct or course of business.
- iv. Another contention of the *Noticee* is that *Niskalp* being the subsidiary company of TFL, the relevant purchase and sale transactions in GTL shares by the above mentioned clients were netted /settled between the trading clients and only the adjustment entries were passed in their respective books. This contention is again equally misplaced because it is not permissible for any stock broker to settle the trades between his clients internally by not following the procedure/ mechanism laid down by the stock exchanges in the matter of clearing/settlement of trades as noted above.
- v. Further, the client codes mentioned in the contract notes, issued by the *Noticee*, for TFL was T001 and for *Niskalp* it was N14. The trade logs record of the stock exchange (the NSE) for the relevant dates did not reflect the above client codes, indicating that the said trades were not executed on behalf of the trading clients by the *Noticee* on the NSE on the relevant dates. Under the circumstances, the contention of the *Noticee* that the same may have happened erroneously and that some other client codes have been punched for the trades of the trading clients is just an afterthought alibi and cannot be accepted for the following reasons: First of all, even if wrong client codes were entered for the transactions executed for the trading clients, the correction should have been done in the client codes at the end of the trading day by the *Noticee* and correct client codes should have been entered into system, before issuing contract notes to the trading clients; The fact that the client codes in the trade logs were not matching with the client codes mentioned in the contract notes, itself casts a doubt on the genuineness/veracity of the contract notes and also on the genuineness of the transactions in GTL shares as claimed to have been executed by

the *Noticee* on the NSE platform on the relevant dates. I find that there is nothing on record to show that necessary client code modification was carried out by the *Noticee* on the relevant dates in respect of the transactions in GTL shares. The *Noticee* has also failed to produce records/documents in support of his statement regarding erroneously entering the client codes for the trades done by the trading clients on the relevant dates in the scrip of GTL. The very fact that *Noticee* could not produce any evidence to show that these transactions were actually executed by it for the trading clients on the platform of the stock exchange, (the NSE) reaffirms the fact that these transactions were not executed on the NSE platform on the relevant dates. In any case, the trade and order logs for the relevant period were provided to the *Noticee*, however, I find that the *Noticee* has not made any attempt to show from the records of trade and order logs that it had actually executed any trades in the scrip of GTL on behalf of *Niskalp* and TFL, on the relevant dates.

vi. It is also observed that the shareholding in GTL by *Niskalp* during the relevant period was pledged with HDFC Bank by *Niskalp* and therefore, the shares could not have been transferred or sold by *Niskalp* without the approval of HDFC Bank. There is no material/details available on record or produced by the *Noticee* either during Investigation or before me to show that it had ever sought approval from the HDFC Bank in this regard.

14. In view of the aforesaid deliberations and in the absence of any material to controvert the allegations, I find that the *Noticee* has grossly failed to demonstrate that the aforementioned transactions in GTL shares ever took place at all between the trading clients on the relevant dates, by way of market transactions on the NSE platform, during the relevant period. Hence, I am constrained to conclude that these transactions in the scrip of GTL claimed

to have been executed by the *Noticee* through the NSE platform on September 27 and 28, 2000 are fictitious book entries as these trades did not take place on the NSE platform against the client codes of TFL (T001) and *Niskalp* (N14) mentioned in the contract notes and the claim made by the *Noticee* that these transactions were executed by it on the floor of the NSE on the relevant dates is nothing but a specious statement having no support of fact or evidence.

15. Further, the journal entries in the books of account of the *Noticee* cannot be regarded as sufficient proof of the contemporaneous character of the said dealings, especially when the *Noticee* has admitted to have not received any written communication from TFL confirming the above transactions. There is no doubt that, if these transactions had actually been carried on the date as mentioned on the contract notes, these transactions would have been recorded in TFL's books and would have been surely reflected in its published financial results for the quarters ended September and December 2000, which is evidently not the case here. This indicates that the contract notes issued by the broker were indeed backdated and no physical/demat delivery of shares was ever made through the *Noticee* and the fictitious consideration for the said sale and re-purchase dealings in GTL shares was adjusted between the trading clients mutually by way of journal entries in the books of *Niskalp*. The aforesaid findings are further invigorated from the undisputed fact that the said transactions relating to sale and repurchase of shares of GTL do not even feature in the Internal Audit Reports pertaining to investment transactions of *Niskalp* during the above period. This again establishes the fact that the transactions actually took place somewhere in March 2001 but were backdated to September 2000 in the books of *Niskalp* just to window dress the account of *Niskalp*. Additionally, the Reserve Bank of India vide its report dated November 20, 2000 has confirmed that the said

transactions executed through the *Noticee* for the trading clients, were backdated.

16. Having established in the preceding paragraphs that the trades for 40,000 shares of GTL done through/ facilitated by the *Noticee* were fictitious and backdated, I now move on to examine the genuineness of the contract notes issued by the *Noticee* pertaining to the aforesaid fictitious and backdated transactions. I note that the *Noticee* had issued the contract notes to his trading clients in Form A even though the relevant transactions in GTL did not take place on the NSE platform on the relevant dates as established above. Therefore, in the first place, there was no requirement on the part of the *Noticee* to have issued the contract notes to the trading clients in respect of such non-existent transactions in GTL shares. As already mentioned above, contrary to the contentions of the *Noticee* that it had executed the trades in the scrip of GTL on the floor of the NSE on the relevant dates, in respect of the client codes of the trading clients(as mentioned on the contract notes), it is already established that the corresponding trade logs of the NSE for the related period did not reflect the client codes of the trading clients on these dates vindicating the allegation that the relevant trades in GTL shares for and on behalf of the trading clients were never executed by the *Noticee* on the relevant dates. It is also observed upon the perusal of the contract notes issued to the trading clients that the *Noticee* had also mentioned therein the trade no., order details, client code details, settlement no, settlement date, brokerage charged details etc. in order to put up an appearance of genuineness for the said transactions in GTL shares, which however never were executed on the floor of the NSE.
17. Admittedly, *Niskalp* had sold a total number of 60,000 GTL shares and TFL had purchased 40,000 GTL shares during the relevant period wherein, out of the 40,000 shares sold by *Niskalp* on September 28, 2000, only 20,000 shares were purchased by TFL on the same date., However, it is to be noted that

the trade time, trade rate and trade no. for 20,000 shares are not matching in the contract notes issued to the two trading clients by the *Noticee*. Therefore, even if it is assumed that the securities and funds were settled/netted between the trading clients internally as recorded above, there is no explanation furnished by the *Noticee* as to why the excess 20,000 shares sold by *Niskalp* was not shown/reflected as transferred from his demat account during the relevant period. Further, from the above it is clear that in case as per the claim of the *Noticee* that these contract notes were genuine, the *Noticee* ought to have furnished details of the counterparty to the sale and purchase of the remaining 20,000 shares of GTL which he failed miserably to support with any evidence. Hence, the *Noticee* was well aware of the fact that he could not have modified the trade logs to show backdated market transactions and therefore, he had to issue fictitious contract notes for the trades which did not take place on the NSE platform at all. In view of the above observations, I hold and conclude that the contract notes issued by the *Noticee* were also fictitious documents as the same were issued in respect of non-existent transactions that have been misleadingly claimed to have been executed on the platform of the NSE on the relevant dates.

18. To put the aforesaid deliberation in perspective, I find it appropriate to capture the legislative and regulatory scheme and mandate of the PFUTP Regulations, 1995 and the Stock Brokers Regulations, 1992. Regulation 6 of the PFUTP Regulations, 1995 clearly mandates that no person shall in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities and indulge in falsification of the books of accounts and records (whether maintained manually or in computer or in any other form. Also, regulation 7 of the Stock Brokers Regulations, 1992 casts an obligation on a stock broker that it shall at all-time abide by the Code of Conduct as specified in Schedule II. Similarly, Clauses A (1) and (2)

of the said Code of Conduct mandate that a stock broker shall maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of all his business. Further, Clause A (3) casts an obligation on a broker that he shall not indulge in manipulative, fraudulent or deceptive transactions in securities. Additionally, Clause A (5) puts accountability on a broker that he shall abide by all the provisions of the SEBI Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to it.

19. In view of the above stated regulatory and legal position, after considering factual matrix of the matter, I am convinced that the *Noticee* was instrumental in backdating the transactions in GTL shares, who intentionally has also issued the contract notes to its trading clients on September 27 and 28, 2000 in which the *Noticee* has also mentioned certain fictitious details such as the trade no., client code, brokerage details etc. in order to give a color of genuineness to the said transactions, which actually did not take place on the floor of the NSE, on the relevant dates, against the client codes as assigned to the trading clients which is clearly evident from the examination of trade and order logs. Further, I have no hesitation in holding that the contract notes issued by the *Noticee* were also fictitious as the same were issued in respect of non-existent transactions in the scrip of GTL. Therefore, I note that the Issue No. 1 i.e., whether the *Noticee* indulged in backdated and fictitious transactions in the scrip of GTL on behalf of his clients viz. *Niskalp* and TFL and issued fictitious contract notes to his clients viz. *Niskalp* and TFL pertaining to the said backdated and fictitious transactions, has to be answered in affirmative.

II. Whether the Noticee has violated the provisions of regulations 6(a) and 6(d) of the PFUTP Regulations, 1995 read with regulations 13(1) to 13 (3) of the PFUTP Regulations 2003 and

Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct specified in Schedule II to regulation 7 of the Stock Brokers Regulations.

20. Having already concluded beyond any doubt that the *Noticee* has actively indulged in aiding and abetting in backdating the aforesaid fictitious transactions in the scrip of GTL on behalf of its trading clients viz. *Niskalp* and TFL and has issued false and fabricated contract notes to them in respect of the said backdated and fictitious transactions, I have no hesitation in holding that the aforesaid conduct of the *Notices* has clearly resulted in the contravention of the provisions of regulation 6(a) and 6(d) of the PFUTP Regulations, 1995 read with regulations 13(1) to 13 (3) of the PFUTP Regulations 2003 by the *Noticee*.
21. Looking holistically at the alleged conduct of the *Noticee* which is a registered market intermediary, I find that the *Noticee*, as a stock broker, has not exercised due skill, care, and diligence and by no standard, the aforesaid conduct of the *Noticee* can be said to be fair and honest and the said misconduct on its part overwhelmingly proves that the *Noticee* has not maintained high standards of integrity, promptitude and fairness in its conduct. The *Noticee* has also failed to abide by the statutory requirements of various provisions of securities laws. Further, the endeavor of the *Noticee* to justify its misconduct by submitting that it was merely acting on behalf of its clients i.e., TFL and *Niskalp* on oral instructions of Shri Shilotri (as TFL and *Niskalp* are holding and subsidiary companies), is just an afterthought lame excuse taken by it to evade the possible outcome of the proceedings. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the *Noticee*. In view of the aforesaid discussion, I have no hesitation to hold that the

Noticee has miserably failed to adhere to the Code of Conduct as mandated under Clauses A (1), (2), (3), (4) and (5) of Code of Conduct for brokers specified in Schedule II of regulation 7 of the Stock Brokers Regulations, 1992.

22. I also note that the *Noticee* has raised certain objections assailing the issuance and maintainability of the SCN in the instant matter. One of the contention of the *Noticee* is that the SCN ought to be quashed and allegations be dropped on account of the gross and inordinate delay in the issuance of the SCN. To such a protest, it is noted that there is no provision in the SEBI Act, 1992 that provides for limitation in initiating action for violation of the provisions of the SEBI Act, 1992 and Rules and Regulations made thereunder. At the same time, the issue pertaining to delay in initiating action has also been a subject matter of scrutiny of the Hon'ble SAT as well as the Hon'ble Supreme Court of India from time to time. It is a trite law that in the absence of any provision providing for a statutory limitation, such power needs to be exercised within a reasonable time and what constitutes a reasonable time, would depend upon the facts and circumstances specific to a case including the nature of the default/statute, prejudice caused, and whether any third-party right has been created etc.
23. In the instant matter, I note that the above noted fraudulent transactions pertain to the period of September-December 2000, into which the investigation was initiated after the receipt of a complaint in October 2002. After examining the allegations made in those complaints filed with SEBI, information was collected thereon from various sources and in the process, statements of various persons were also recorded. Based on the examination of materials collected, actions were initiated against the *Noticee* vide show cause notice dated October 23, 2009. It is observed that since the issuance of the aforesaid show cause notice, there has been multiple appointments of different DAs in the matter on account of administrative requirements as

noticed from perusal of the records. Further, the SCN has also recorded that the DA who has submitted the Enquiry Report dated June 30, 2021 was appointed vide communique dated November 03, 2020 and who, after taking into consideration the detailed reply of the *Noticee* and after appreciation of materials/details available on record, has submitted the aforesaid Enquiry Report within a period of 8 months. Further, the *Noticee* has already adopted his detailed replies dated November 18, 2009 and June 30, 2010 filed before the DA as part and parcel of its post hearing written submissions dated June 03, 2022. Therefore, it is noted that no prejudice has been caused to the *Noticee* due to the said delay as claimed by the *Noticee*. Therefore, in the facts peculiar to the matter, I see no reason to drop the proceedings only on the ground of delay when the *Noticee* has not even made out a case that it was not provided with the required details/documents nor has brought before me any other reason which can be said to have hampered his capacity to file an effective reply. Further, the *Noticee* has been provided with sufficient opportunity to defend the allegations, which he has already availed and has further filed his detailed post hearing written submissions for my considerations as well. I am of the view that the delay in issuance of the SCN in the present proceedings is not fatal so as to render the *Noticee* incapable of explaining/defending itself against the charges as alleged in the SCN. Hence, I do not agree with the contention of the *Noticee* that it is impossible for the *Noticee* to provide any satisfactory reasons or rational of the alleged transactions due to the aforesaid delay while in reality the *Noticee* has made use of all the opportunities granted to it to justify its above misconduct and its involvement in facilitating the aforesaid fictitious trades in the GTL shares for which it has actually no valid explanation to offer. Hence, from the foregoing narration of sequence of events that ensued pursuant to receipt of the complaint against the *Noticee*, and given the specific facts & circumstances of this case, I am of the view that such delay cannot justify exoneration on

this ground alone. Therefore, I find no merit in the objection of the *Noticee* to the so called undue delay in issuance of SCN from SEBI and the said contention is liable to be rejected. Consequently, the case laws cited above by the *Noticee* in support of his contention are also rejected for the reasons recorded above in this regard.

24. Before summarizing my observations and discussions in the foregoing paragraphs, I must note here that an entity which is granted registration to operate as a stock broker is required to act in a manner and to comply with all applicable regulatory requirements so as to uphold the integrity of the securities market. As the arena of securities market is fundamentally vast and complex, the Stock Brokers Regulations have prescribed broad checks & balances and acceptable behavior so as to maintain the integrity of the securities market. The Code of Conduct spells out the general duties of the stock broker to maintain high standards of integrity, promptitude and fairness and to exercise due skill, care and diligence in the conduct of all his business so as to act in fair and transparent manner to keep intact the integrity of securities market.
25. I note that adherence to the Code of Conduct is an ongoing requirement but the conduct displayed by the *Noticee* in executing the afore-discussed fictitious and backdated transactions on behalf of TFL and *Niskalp* supposedly on the basis of oral instruction passed on by an unauthorized person and thereafter in issuing fictitious contract notes to his clients, is certainly cannot be said to be in the best interest of the securities market. Hence, such misconduct has certainly amounted to serious violation of regulation 6(a) and (d) of the PFUTP Regulations, 1995 read with regulation 13(1) to 13(3) of the PFUTP Regulations, 2003 and Clauses A (1), (2), (3), (4) and (5) of Code of Conduct for brokers specified in Schedule II of regulation 7 of the Stock Brokers Regulations, 1992. Under the circumstances, I find that the *Noticee* has neither acted in a manner which is conducive to the integrity of the securities market

nor has it acted with due skill, care and diligence to exhibit high standards of integrity, promptitude and fairness in its conduct as stock broker. Under the circumstances, I hold the *Noticee* guilty of violating the aforesaid provisions of securities law. Therefore, such activities of the *Noticee* as registered stock broker cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the securities market.

26. However, having made the aforesaid observations and having held the *Noticee* guilty of all the allegations labelled against it in the SCN at the same time I am aware of the fact that the aforesaid fictitious transactions in relation to the Rights Issue of TFL that took place/were executed during the period 2000-01. Admittedly, the *Noticee* has participated and fully cooperated in the Investigation proceedings which is evident from the fact that the *Noticee* has recorded his statement before the Investigating Officer as and when asked by SEBI in this regard. In addition to the above, I note that all the subscribers to the said Rights Issue were provided opportunities by TFL to withdraw their subscriptions, on two separate occasions i.e., on April 30 and November 30, 2001. I am also mindful of the fact that a separate proceeding was initiated against PAT and SUPERIOR (two unregistered entities which were admittedly the entities that were connected to the aforesaid three registered intermediaries/ brokers including the *Noticee*) for their dubious role in carrying out fictitious and backdated transactions in 16,35,100 shares of GECS (an unlisted company during the relevant period) in complicity with the same trading clients pertaining to the same Rights Issue of TFL. After hearing them out and considering their responses, the allegations made against them were found to be established and therefore, vide a separate order, they have already been restrained and prohibited from accessing and otherwise dealing in the securities market for a specific period of time by SEBI. Aggrieved by the aforesaid order, PAT and SUPERIOR have

preferred Appeal No. 222 of 2016 before the Hon'ble Tribunal, which came to be disposed of by the Hon'ble SAT vide its order dated May 30, 2018. While disposing of the appeal, the Hon'ble Tribunal have *inter alia* held as under;

"28. In the result, we pass the following order: -

- a)*
- b) For the reasons stated above, both appeals are allowed by quashing the directions issued by SEBI against the respective appellants, however, appellants in Appeal No. 222 of 2016 **are warned to be careful in future while dealing in securities.**" (emphasis supplied)*

27. Thus, I note that that the proceedings against PAT and SUPERIOR were disposed of by the Hon'ble Tribunal with a warning to be careful in their future dealings in securities market. I find that the above findings of the Hon'ble Tribunal have not been challenged by any person before any court of law and have not been reversed or modified. Consequently, the aforesaid findings by the Hon'ble SAT have attained finality.

28. Keeping the aforesaid developments in mind, as well as considering the aforesaid mitigating factors and also the fact that the subscribers of the Rights Issue of TFL were given options twice to exit from the said Rights Issue by TFL if they wished to do so, and the fact that the proceedings with respect to PAT and SUPERIOR (who were involved in the fictitious and backdated transactions in the share of GECS in relation to the same Rights Issue of TFL) have been disposed of with a warning to them by the Hon'ble SAT. In my view, the end of justice would be met if the *Noticee* is also warned to be careful in its future dealings in the securities market.

ORDER

29. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the Securities and

Exchange Board of India Act, 1992 read with regulation 27(5) of the SEBI (Intermediaries) Regulations, 2008, and keeping in mind the overall facts and circumstances of the case and also considering the fact that the matter is more than 20 years old, I hereby warn the *Noticee* viz. Shri Prashant J Patel, Stock Broker, (SEBI Regn no: INZ000266511) to be more careful in future with respect to the dealings and conduct in the securities market and to adopt due diligent measures such as proper checks and balances in his operations as a stock broker in order to avoid any regulatory lapse.

30. The Order shall come into force with the immediate effect.
31. A copy of this order shall be served upon the Noticee, all recognized Stock Exchanges, Registrar and Transfer Agent and Depositories for ensuring compliance with the above order.

Sd/-

DATE: SEPTEMBER 05, 2022

PLACE: MUMBAI

**S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**