BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NH/YK/2024-25/31098]

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

In respect of:

Noticee	PAN
Mr. Hanif Kasambhai Shekh	CBEPS9710A

In the matter of trading activities of certain entities in the scrip of Premier Synthetics Limited

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A. BACKGROUND

1. Premier Synthetics Limited (hereinafter referred to as "**PSL**") is a company listed at BSE Ltd. (hereinafter referred to as "**BSE**"). Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in respect of trading activities of certain entities in the scrip of PSL. The investigation was conducted based on complaints, *inter alia,* alleging circulation of *'Short Message Service'* (hereinafter referred to as "**SMSs**") recommending to 'buy' shares of PSL. The investigation undertaken in the matter was for the period from November 14, 2017 to October 31, 2018 (hereinafter referred to as "**Investigation period/IP**"). Pursuant to the investigation, it was alleged that one Mr. Hanif Kasambhai Shekh (hereinafter referred to as "**Noticee**") has purchased the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors. Therefore, it was alleged that the Noticee had violated the provisions of Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(k), and 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed the undersigned as the Adjudicating Officer (hereinafter referred to as ''**AO**'') in the matter vide communique dated January 08, 2024, under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), to inquire into and adjudge under the provisions of Section 15HA of the SEBI Act for the aforementioned violations of the provisions of law alleged to have been committed by the Noticee.

C. SHOW CAUSE NOTICE, REPLY, AND HEARING[1]

3. Show Cause Notice ref. no. SEBI/HO/EAD-2/NH/YK/2024/64951 dated February 16, 2024 (hereinafter referred to as **"SCN/Notice"**) was served upon the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, not be imposed on him in terms of the provisions of Section 15HA of the SEBI Act for the violations alleged to have been committed by the Noticee.

[1] *Credit Card Number, Bank Account Numbers, Mobile Numbers and e-mail IDs have been excised in this order for the sake of confidentiality.*

4. The SCN dated February 16, 2024, *inter alia*, alleged the following:

"The following observations/findings were made in SEBI Investigation Report:

4.1. SMS/ Recommendations through website www.dgfins.com

- *It was observed that website – www.dgfins.com was mentioned in various SMSs being received from SMS headers viz. BH-DGFINS, BZ-DGFINS, MD-DGFINS giving 'buy' recommendation in the scrip of PSL. It was further observed that the nomenclature of all three SMS headers (BZ-DGFINS, BH-DGFINS & MD-DGFINS) were also selected as similar to said website i.e. "DGFINS".*

4.2. Payment for the registration of website

- *It was observed that the website www.dgfins.com was created using GoDaddy Domain. It was further observed that the payment for the registration of website www.dgfins.com was made by the credit card issued by Citi Bank and Citi Bank vide email dated December 20, 2019 provided details of Mr. Rakesh Natavarlal Bhatt as said card holder on December 20, 2019.*

4.3. Statement of Mr. Rakesh Natavarlal Bhatt

- *It was observed that Mr. Rakesh Natavarlal Bhatt appeared before SEBI on January 08, 2020 and his statement was recorded. Relevant extracts from the statement of Mr. Rakesh Natavarlal Bhatt are produced as below:*
- *Rakesh Natavarlal Bhatt stated that he is running an advertisement agency in the name of Bizz Buddy Media Marketing since 2015 and he doesn't have any connection with PSL or its directors / KMPs / employee, etc.*
- *Rakesh Natavarlal Bhatt was asked whether the credit card number 55*************358 issued by CITI bank belongs to him? He was shown that payments were made from the Citi Bank credit card to Go-Daddy on July 28, 2018, September 08, 2018, October 22, 2018 and December 29, 2018 for $ 20.16, Rs. 1252.16, Rs. 952.16 and Rs. 449 respectively. Rakesh Natavarlal Bhatt confirmed that the credit*

*card number 55*************358 belongs to him and payments from this credit card were made to book domains for various clients and all the above-said payments were made as per the instructions of Mr. Hanif Shekh to book the domain named www.dgfins.com.*

- *Rakesh Natavarlal Bhatt was asked that why did he or on whose instructions he created websites www.dgfins.com by using GoDaddy domain. Rakesh Natavarlal Bhatt replied that he had booked one domain in the name www.dgfins.com as per the instructions of Mr. Hanif Shekh. Rakesh Natavarlal Bhatt stated that he is not aware of actual purpose of website and neither he creates, nor control the website.*
- *Rakesh Natavarlal Bhatt was asked details about Hanif Shekh i.e. PAN, Mobile Number, Email ID and Address. Rakesh Natavarlal Bhatt stated that Hanif Shekh is running a company named Midcap Marvel based in Bhavnagar, Gujarat and he resides in Bhavnagar. Rakesh Natavarlal Bhatt provided his mobile numbers viz. 90*******82, 95*******85, and 85*******52. Rakesh Natavarlal Bhatt stated that he does not have his email id, PAN details and address and all communications with Hanif Shekh taken place through phone calls and whatsapp only.*
- *Rakesh Natavarlal Bhatt was asked to state that how the payments were made by Hanif Shekh to him for purchase of domain named www.dgfins.com at Go-Daddy platform? Rakesh Natavarlal Bhatt replied that online transfers were made by Hanif Shekh to his firm Bizz Buddy Media Marketing, bank account number 50************50, maintained with HDFC Bank.*
- *Rakesh Natavarlal Bhatt was asked to state that does he know about advertisement made at Money Control regarding DGFINS? Rakesh Natavarlal Bhatt replied that his firm Bizz Buddy Media Marketing, Advertisement Agency, had made payment to money control as per the instructions Hanif Shekh. He stated that he was not aware of display contents of advertisement made at money control and Nitin from Money control was directly dealing with Hanif Shekh for display contents of advertisements and directly taken approval for advertisement form Hanif Shekh only. Rakesh*

Natavarlal Bhatt stated that his role was only to provide release order and payment to Money Control as Advertising Agency.

4.4. Statement of Partners of Biz Buddy

- *It was observed that Rakesh Natavarlal Bhatt has stated that he has purchased the domain of the said website from GoDaddy as per the instructions of Hanif Shekh. The said service was provided by him as a partner of Biz Buddy. Therefore, summons was issued to Biz Buddy on May 22, 2023. The partners of Biz Buddy, Rakesh Natavarlal Bhatt and Bhavin Pandya appeared on June 19, 2023 wherein inter-alia they made the following submission:*
- *We have only facilitated the payment on request of Mr. Hanif Shekh for purchasing the domain dgfins.com from GoDaddy. Since such payment required payment through credit card and our firm did not have credit card, therefore, the payment was made by Mr. Rakesh Bhatt through his personal credit card on behalf of the firm.*
- *We have neither hosted said website nor created any content for said website. Hence, we do not have any control and knowledge about content and related things for said website.*
- *Mr. Hanif has informed that the payment would be received from his different firms/ companies to you. The aforesaid payments were received on behalf of Mr. Hanif from different firms/ companies.*
- *It was further observed that Biz Buddy vide email dated July 06, 2023 submitted that email ID and Mobile numbers used by Noticee to communicate with them and Moneycontrol are mi********rj@gmail.com and 90*******82 and 85*******52 respectively. Biz Buddy vide email dated July 06, 2023 also submitted PAN of Mr. Hanif Shekh as CBEPS9710A which is observed as same as that of Noticee.*

4.5. Statement of Noticee

- *It was observed that statement of Noticee was recorded on July 20, 2023. Relevant extracts from the statement of Noticee as mentioned in IR are produced as below: -*
- *I used Mobile No's – 95*********95 and 90**********82 and Email id - hk*********kh@yahoo.co.in and he*************ia@yahoo.com. The email id ih***********kh@gmail.com was created few months back. Apart from these mobile numbers and email ids, I have not used any other mobile no. and email id.*
- *I know the firm namely Biz Buddy Media Marketing based in Surat, Gujarat and its partners namely Mr. Rakesh Natvarlal Bhatt and Mr. Bhavinkumar Pradhumanbhai Pandya. I contacted Mr. Rakesh, employee of Network18 that time for promotion of our then sub broker business around 2011. Mr. Rakesh also came to Bhavnagar to meet me. Thereafter, I met Mr. Rakesh during pre-covid. I have no dealing with Biz Buddy and its partners till date.*
- *I have not instructed them to purchase domain - www.dgfins.com. I don't know anything about said domain.*
- *I don't know anything about domain - www.dgfins.com. I have not made any payment to Biz Buddy and its partners. I have not done any business with Mr. Rakesh/ Biz Buddy.*
- *I don't know anything about email ids – mi************rj@gmail.com & dg***********ia@gmail.com.*
- *The mobile no. 90*******82 belongs to me. Mobile numbers 85*******52 and 95*******85 are not my numbers.*
- *I have not given any advertisements on www.moneycontrol.com. I don't know Mr. Nitin Agarwal.*
- *I don't know Smart Technology and its partners. I also don't know Rohit Solution and its proprietor Mr. Rohit Singh.*

- *I don't know Premier Synthetics Limited, its promoters/ directors/ KMPs.*

*4.6. Linkage of domain www.dgfins.com, email id – dg***********ia@gmail.com and mobile no. 85*******52*

- *It was observed that the email ID – dg***********ia@gmail.com was mentioned while purchasing the domain www.dgfins.com. Thereafter, an attempt was made to know which mobile number is linked to the email ID - dg***********ia@gmail.com through "Forgot Password" provision of Gmail. It was observed that the said email is linked with the mobile number – 85*******52.*
- *In view of the above, it is alleged that the purchaser of the domain – www.dgfins.com and user of email id - dg***********ia@gmail.com and mobile no. 85*******52 is the same person.*

*4.7. Hanif Kasambhai Shekh - User of the mobile number - 85*******52*

- *From, the aforesaid paras, it was observed that the mobile number 85*******52 was used for taking services of telemarketing agencies for sending misleading SMSs. In order to ascertain whether the two phone numbers, i.e. 90*******82 (Noticee in his statement submitted that he is using this Mobile No.) and 85*******52 had any connection, Call Data Records (CDR) were analyzed for the period December 12, 2018 to January 31, 2019 wherein it was observed that:*
- *Both the mobile numbers belong to Gujarat Circle. Whenever there was change in Network-Circle for 90*******82, at the same time, change in Network-Circle for 85*******52 was also observed. The details are explained below:*

  a) *During the period from December 12, 2018 to January 31, 2019, mobile number– 90*******82 was observed to be in Mumbai Circle on following dates – January 17, 2019, January 18, 2019 and January 19, 2019. It was observed that during the said period, the mobile number – 85*******52 was also in Mumbai Circle only on January 17, 2019, January 18, 2019 and January 19, 2019. Details of the same are given below:*

(i). January 17, 2019:

Table – 1

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
18:45:52	*Received an SMS (MD-BANFIN) in Gujarat Circle*	*19:49:20*	*Received an SMS (MD-BANFIN) in Gujarat Circle*
18:45:52 to 21:07:59	*No calls/SMSes were received/made/sent*	*19:49:20 to 21:15:03.*	*No calls/SMSes were received/made/sent*
21:07:59	*Received an SMS (VG-VDFONE) in Mumbai Circle.*	*21:15:03*	*Made a call in Mumbai Circle*

From the above, it can be observed that circles of both phone numbers changed from Gujarat to Mumbai more or less at the same time.

(ii). January 18, 2019: Both the mobile numbers were in Mumbai Circle.

(iii). January 19, 2019:

Table – 2

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
16:39:47	*Received a call in Mumbai Circle*	*17:23:42*	*Made a call in Mumbai Circle.*

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
16:39:47 to 19:47:05	*No calls/SMSes were received/made/sent*	*17:23:42 to 20:05:19*	*No calls/SMSes were received/made/sent*
19:47:05	*Made a call in Gujarat Circle.*	*20:05:19*	*Made a call in Gujarat Circle.*

From the above, it can be observed that circle of both phone numbers changed from Mumbai to Gujarat at approximately the same time.

b) *Similarly, the period from December 12, 2018 to January 31, 2019, mobile number – 90*******82 was observed to be in Rajasthan Circle only on following dates – January 26, 2019 and January 27, 2019. It was observed that during December 12, 2018 to January 31, 2019, mobile number – 85*******52 was also in Rajasthan Circle only on January 26, 2019 and January 27, 2019. Details of the same are given below:*

(i). January 26, 2019:

Table – 3

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
12:54:19	*Received SMS in Gujarat Circle*	*12:54:57*	*Received a call in Gujarat Circle.*

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
12:54:19 to 13:55:48.	*No calls/SMSes were received/made/sent*	*12:54:57 to 14:20:09*	*No calls/SMSes were received/made/sent*
13:55:48	*Received SMS in Rajasthan Circle*	*14:20:09*	*Received a call in Rajasthan Circle*

From the above, it can be observed that circle of both phone numbers changed from Gujarat to Rajasthan more or less at the same time.

(ii). January 27, 2019:

Table – 4

*90*******82*		*85*******52*	
Time	*Details*	*Time*	*Details*
16:52:14	*Received SMS in Rajasthan Circle*	*18:00:40*	*Received SMS in Rajasthan Circle.*
16:52:14 to 19:47:05.	*No calls/SMSes were received/made/sent*	*18:00:40 to 18:26:38.*	*No calls/SMSes were received/made/sent*
20:03:11	*Received SMS in Gujarat Circle*	*18:26:38*	*Received a call in Gujarat Circle*

From the above, it can be observed that circle of both phone numbers changed from Rajasthan to Gujarat at a similar time.

- *It was further observed that during the period from December 12, 2018 to January 31, 2019, no call was made between the two numbers i.e. 90*******82 and 85*******52. Further, no overlapping calls were observed form December 12, 2018 to January 31, 2019 i.e. when 90*******82 was on call, 85*******52 was not on call and vice versa.*

- *Following was further observed:*

  *(i). 85*******52 made 2 calls (Time duration: 49 seconds) to <u>Rakesh Natavarlal Bhatt (98*******94)</u> and has received 1 call (Time duration: 37 seconds) from Rakesh Natavarlal Bhatt.*

  *(ii). 85*******52 has made 26 calls (Time duration: 740 seconds) to 95*******95 and has received 12 calls (Time duration: 259 seconds) from 95*******95. The said mobile no. 95*******95, was mentioned as the number of Kasambhai Umarbhai Shekh (Father of Noticee) and Mrs. Shekh Hasina Kasambhai (Mother of Noticee) in the letter of offer while acquiring stake in Econo Trade (India) Ltd. Further, from the Customer Application Form (CAF) provided by the TSP (Vodafone), the mobile number (95*******95) belongs to Kasambhai Umarbhai Shekh (Father of Noticee).*

- *In view of the aforesaid, it is alleged that both the mobile numbers i.e. 90*******82 and 85*******52 were being used by Noticee.*

*<u>4.8. Connection between the phone numbers - 90*******82 and 85*******52 and email id – dg***********ia@gmail.com</u>*

- *It was observed that InterGlobe Aviation Limited ("Indigo Airlines") vide letter dated November 29, 2022 submitted that, traveller with name Hanif Shekh made bookings with Email id – hk*********kh@yahoo.co.in, dg***********ia@gmail.com,* sm*******o@gmail.com, *and mobile numbers – 90*******82, 95*******68 & 85*******52.*

- *It was further observed that Mr. Rakesh Natavarlal Bhatt in his statement dated January 08, 2020 and Biz Buddy vide email dated July 06, 2023 have submitted that mobile numbers – 85*******52 and 90*******82 were one of the mobile numbers through which Mr. Hanif Shekh used to communicate with them. Moreover, Biz Buddy vide email dated July 06, 2023 also submitted PAN of Mr. Hanif Shekh as CBEPS9710A which is observed as same as that of Noticee. In view of the same, it was observed that Mr. Hanif Shekh which was referred by Mr. Rakesh Natavarlal Bhatt and Biz Buddy and the Noticee were one and the same person.*
- *From the aforesaid paras, it is alleged that Noticee used mobile number - 85*******52, email ID - dg***********ia@gmail.com and the websites – www.dgfins.com for sending unsolicited bulk SMSs by sending buy recommendation in the scrip of PSL to lure gullible retail investors. Hence, it is alleged that Hanif Kasambhai Shekh has violated Section 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), 3(b), 3(c) and 3(d) and 4(1), 4(2)(k) and 4(2)(r) of the PFUTP Regulations."*

5. The SCN dated February 16, 2024, along with the annexures, was issued to the postal addresses and e-mail IDs of the Noticee available on record. The SCN, along with the annexures, was served in the following manner, as mentioned below:

Table 5

Sr. No.	**Mode of Delivery**	**Addresses/ E-mail IDs[2]**	**Remarks**
1.	Through E-mail	ha..................@yahoo.in, hk............@yahoo.co.in, ih...................@gmail.com, he................@yahoo.com	Duly delivered on February 16, 2024.
2.	Through Speed Post with	Plot…………………Bhavnagar, Gujarat – 364 001	Delivered on February 20, 2024,

[2] *E-mail ID and address excised for the sake of confidentiality.*

Sr. No.	Mode of Delivery	Addresses/ E-mail IDs[2]	Remarks
	Acknowledgment Due	Flat……………………Bhavnagar, Gujarat – 364 002	as per the consignment tracking on India Post.
		Plot…………………Bhavnagar, Gujarat - 364 002	
		Block………………..Bhavnagar, Gujarat – 364 002	Returned undelivered with the remark, "Addressee cannot be located".
		3rd Floor……………Bhavnagar, Gujarat – 364 001	Returned undelivered with the remark, "Addressee left without instructions".

6. The Noticee, through e-mail ID - ih..........@gmail.com dated March 13, 2024, acknowledged the receipt of the SCN. Thereafter, vide e-mail dated April 01, 2024, the Authorised Representative (AR) of the Noticee requested the inspection of the documents mentioned in the letter attached with the e-mail, and cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya. In the interest of natural justice, vide e-mail dated April 04, 2024, an opportunity of inspection of documents relevant and relied upon in the SCN was provided to the Noticee on April 10, 2024. Vide e-mail dated April 08, 2024, the AR of the Noticee requested to reschedule the inspection of documents to April 15, 2024, which was acceded to and the inspection was rescheduled to April 15, 2024. Thereafter, vide e-mail dated April 14, 2024, the AR of the Noticee again requested to reschedule the inspection of documents by 10 days, which was acceded to, and the inspection was rescheduled to April 26, 2024. The inspection of the documents was concluded on April 26, 2024. Vide e-mail dated April

26, 2024, the Noticee was advised to submit his reply to the SCN, if any, at the latest by May 10, 2024. However, the Noticee had not submitted any reply on merits until May 13, 2024. Therefore, in the interest of natural justice, an opportunity of hearing was provided to the Noticee on June 04, 2024, vide hearing notice dated May 13, 2024. The Noticee was also advised to submit his reply on merits to the SCN, if any, latest by June 03, 2024.

7. Thereafter, the Noticee, vide letter dated May 15, 2024, had requested the inspection of the following additional documents:

   "i. Any evidence that the content on the website www.dgfins.com was controlled by the Noticee

   ii. Any evidence that the alleged SMS headers approval mandatory for obtaining bulk SMS messages under the Telecom Regulations was obtained by the present Noticee

   iii. Any evidence that the alleged SMS content approval mandatory for obtaining bulk SMS messages under the Telecom Regulations was obtained by the present Noticee

   iv. Any evidence that the Expenses for obtaining bulk SMS messages was directly/indirectly borne by the present Noticee

   v. Details of the Online transfer of money mentioned in paragraph 3.5.5 of the SCN

   vi. CAF – In whose name the mobile number used to register domain was registered

   vii. Any evidence that payments were made by the Noticee/his entities for procuring bulk SMS services

   viii. Any evidence to show that the Noticee made any unlawful or illegal gains and whether any loss was caused to any investors"

8. The Noticee also reiterated the request for cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya. In this regard, vide e-mail dated May 17, 2024, the Noticee was, *inter alia*, advised as under:

   "In this regard, you may note that all the documents relevant and relied upon in the Show Cause Notice (SCN) dated February 16, 2024 have been provided along with the SCN and during the course of inspection of documents which concluded on April

26, 2024. There are no documents available with the AO which are relied upon and not provided to you.

In respect of cross-examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya as requested by you, it is noted that till date you have not submitted your reply on merits to SCN dated February 16, 2024. Your request for cross-examination will be examined by Adjudicating Officer only after reply on merits to SCN is submitted.

In view of the above, you are advised to submit your reply on merits latest by June 03, 2024, as mentioned in hearing notice dated May 13, 2024."

9. Thereafter, the Noticee, vide letter dated June 02, 2024, again reiterated his request for cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya prior to submission of his reply to the SCN. In this regard, vide e-mail dated June 04, 2024, the Noticee was again advised that his request for cross-examination will be examined by the undersigned only after a reply on merits to the SCN is submitted. The Noticee in his letter dated June 02, 2024 had also, *inter alia*, submitted as under:

   *"14. It would also be necessary to draw your Honours attention to the Call Data Records given to the Noticee in inspection. With respect to the file of 90*******82, there is a column "First Cell Global Id", taking the example of Row No. 14, the data reflected is 4.046E+14, however when we try to view the entire No. for all entries it shows and estimate of "4.046E00000000000000" and therefore the accurate number is not reflected to pin point the location. In view of the same your Honour is requested to kindly grant the Noticee the accurate and complete data to enable him to prepare his defence.*

   *15. It would also be necessary to further state that from the limited data of CDRs provided it is clear that the two phone numbers, namely 90*******82 and were in the different locations most of the times, for example, from 22.12.2018 to 27.12.2018, the number 85*******52 seems to be in the Delhi Circle ('6090_41719) and 90*******82*

(4.0405E+14) seems to be in the Gujarat Circle. Noticee will be able to provide further data in this regard once complete CDR is received in inspection, as requested"

10. In this regard, vide e-mail dated June 04, 2024, the Noticee was advised that Call Data Records that were relied upon in the SCN were provided along with the SCN and also during the course of inspection of documents, which concluded on April 26, 2024. The Noticee was further advised that the data reflecting in the column "First Cell Global Id" of CDR, as pointed out by the Noticee, are clear. In the interest of natural justice, the Noticee was provided with one more opportunity of hearing on June 12, 2024. The Noticee was also advised to submit his reply to the SCN at the latest by June 11, 2024.

11. Thereafter, the Noticee, vide letter dated June 11, 2024, requested to adjourn the hearing scheduled for June 12, 2024, and again reiterated his request for cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya prior to submission of his reply to the SCN. In this regard, vide e-mail dated June 12, 2024, the Noticee was again advised that his request for cross-examination will be examined by the undersigned only after a reply on merits to the SCN is submitted. The Noticee was also advised to take note of the decision of Hon'ble SAT in the matter of **Rana Kapoor vs. SEBI**[3] wherein it was, *inter alia*, held as under:

    "*The second prayer of the appellant is with regard to the cross-examination of the witnesses whose statements are alleged to be relied upon by the respondent. We find that till date the appellant has not filed any reply to the show cause notice. We are of the opinion, that* ***the question of cross-examination of witnesses will only arise after a reply is filed by the appellant.****"* (Emphasis supplied)

12. The Noticee in his letter dated June 11, 2024 had also, *inter alia*, submitted as under:

[3] Appeal No. 525 of 2021 decided on August 06, 2021

*"f) with respect to the file of CDR of 90*******82 given to the Noticee in inspection, there is a column called "First Cell Global Id", taking the example of Row No. 14, the data reflected is "4.046E+14" which means that as a default setting of Microsoft Excel since the number is more than 12 digits, the number is displayed in the "General Form" which displays the value with scientific (exponential) notation, however when we try to view the entire number with all 15 digits by attempting to convert the "General Form" to "Number Form" the number being reflected is "4.046E00000000000000" for all entries and therefore the accurate number is not reflected to enable the Noticee to pin point the location of the mobile number, which will help him demonstrate other occasions where both the numbers, namely 90*******82 and 85*******52 are in different locations."*

13. In this regard, the Noticee was advised that the number can be converted to "Number Form" from "General Form" by changing the format of the cell, which is a basic function available in Microsoft Excel. However, in the interest of natural justice, since the Noticee informed that he was facing issues in converting the format of the cell, CDR was again provided to the Noticee after converting the columns in "Number Form". Moreover, in the interest of natural justice, as requested by the Noticee, the hearing scheduled on June 12, 2024, was postponed to June 26, 2024. The Noticee was advised to submit his reply to the SCN at the latest by June 24, 2024.

14. The Noticee submitted his reply to the SCN vide letter dated June 25, 2024, received by SEBI through e-mail on June 26, 2024, at 03:30 P.M., i.e., after the commencement of hearing. The submissions of the Noticee dated June 25, 2024, are discussed in the subsequent paragraphs under different headings for ease of discussion.

15. On the scheduled date of the personal hearing, i.e., June 26, 2024, the Noticee appeared along with his AR, who reiterated the submissions made by the Noticee vide letter dated June 25, 2024. The AR also requested an additional time of 10 days to make additional submissions, which was acceded to, and the Noticee was granted

additional time until July 08, 2024, to file his additional submissions. The Noticee, vide e-mail dated July 08, 2024, requested for time until July 10, 2024, to file his additional submissions, which was acceded to, and vide e-mail dated July 08, 2024, the Noticee was advised to submit his additional submissions, if any, at the latest by July 10, 2024. The Noticee submitted his additional submissions vide letter dated July 10, 2024 which are discussed in the subsequent paragraphs under different headings for ease of discussion.

16. In the letter dated July 10, 2024, the Noticee reiterated his request for the cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya. The Noticee also requested a cross examination of InterGlobe Aviation Ltd., and the Investigating Authority (**IA**) in the matter of Darshan Orna.

17. The Noticee further submitted his additional submissions vide letter dated August 19, 2024 which are discussed in the subsequent paragraphs under different headings for ease of discussion.

18. In the interest of natural justice, vide e-mail dated August 21, 2024, the Noticee was informed that an opportunity of cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya has been provided to the Noticee on September 18, 2024. However, a public holiday was declared on September 18, 2024 (Wednesday) for the district of Mumbai City and Mumbai Suburbs by the Government of Maharashtra. Accordingly, the SEBI Office in Mumbai was closed on September 18, 2024. Hence, the cross examination scheduled for September 18, 2024, was rescheduled to September 24, 2024, and the same was informed to the Noticee and cross examinees (Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya) vide e-mail dated September 16, 2024. Thereafter, the Noticee, vide e-mail dated September 23, 2024, requested to reschedule the cross examination scheduled on September 24, 2024. In the interest of natural justice, the request of the Noticee was considered, and the cross examination was rescheduled to September 27, 2024. The Cross Examination of Mr.

Rakesh Bhatt and Mr. Bhavin Pandya was duly conducted on September 27, 2024. Post culmination of cross examination, the Noticee submitted his additional submissions vide letter dated October 11, 2024 received by SEBI through e-mail dated October 12, 2024. The additional submissions of the Noticee vide letter dated October 11, 2024 are discussed in the subsequent paragraphs under different headings for ease of discussion.

19. In view of the aforesaid discussions, it is noted that sufficient opportunities were given to the Noticee to make submissions in reply to the SCN, for inspection of documents, for cross examination and for personal hearing. It is further noted that the SCN, along with the documents relevant to and relied upon in the SCN, and the hearing notice, were duly served on the Noticee as per due procedure.

D. CONSIDERATION OF ISSUES AND FINDINGS[4]

20. I have carefully perused the charges levelled against the Noticee in the SCN, his replies, and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination:

I. **Whether the Noticee had purchased the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors and therefore, violated the provisions of Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(k), and 4(2)(r) of the PFUTP Regulations?**

II. **Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15HA of the SEBI Act?**

[4] *Credit Card Number, Bank Account Numbers, Mobile Numbers and e-mail IDs have been excised in this order for the sake of confidentiality.*

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act?

21. Before proceeding further, it is pertinent to refer to the relevant provisions of law allegedly violated by the Noticee. The same are reproduced hereunder:

"SEBI Act

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;

PFUTP Regulations

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: —

………………

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

………………

(r) planting false or misleading news which may induce sale or purchase of securities."

Issue I. Whether the Noticee had purchased the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors and therefore, violated the provisions of Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(k), and 4(2)(r) of the PFUTP Regulations?

22. From the material available on record, I note that SEBI had received various complaints pertaining to SMSs being received from SMS headers, viz., BH-DGFINS, BZ-DGFINS, and MD-DGFINS giving 'buy' recommendations in the scrip of PSL

during the period from August 06, 2018 to September 03, 2018. It was observed that the website – www.dgfins.com was mentioned in various SMSs being received from SMS headers, viz., BH-DGFINS, BZ-DGFINS, and MD-DGFINS. It was further observed that the nomenclature of all three SMS headers (BZ-DGFINS, BH-DGFINS, and MD-DGFINS) was also similar to said website, i.e., "DGFINS". Investigation tried to looked into the modus operandi behind the circulation of the SMSs. It was observed that these SMSs were circulated through the website www.dgfins.com which was created using GoDaddy Domain. I note that the payment for the registration of the website www.dgfins.com was made through a credit card issued by Citi Bank. As per details provided by Citi Bank, Mr. Rakesh Natavarlal Bhatt was the cardholder of the Citi Bank credit card through which payment for the registration of the website www.dgfins.com was made.

23. Thereafter, a summon was issued to Mr. Rakesh Natavarlal Bhatt, and his statement was recorded by the IA, wherein Mr. Rakesh Bhatt, *inter alia*, stated that he has been running an advertisement agency in the name of Bizz Buddy Media Marketing since 2015. He further stated that he had made the payment from his credit card to book the domain www.dgfins.com as per the instructions of Mr. Hanif Shekh. Thereafter, a summon was issued to Bizz Buddy Media Marketing, and the statement of the partners of Bizz Buddy Media Marketing (Mr. Rakesh Natavarlal Bhatt and Mr. Bhavin Pandya) was recorded, wherein they, *inter alia*, stated that they have only facilitated the payment on request of Mr. Hanif Shekh for purchasing the domain dgfins.com from GoDaddy. They further submitted that such payments are required to be done through credit card, and their firm did not have a credit card; therefore, the payment was made by Mr. Rakesh Bhatt through his personal credit card on behalf of the firm. The details of Mr. Hanif Shekh, as provided by them are as follows:

Table 6

PAN	CBEPS9710A
Email ID	Mi**********rj@gmail.com
Contact No	90*******82 and 85*******52

24. Partners of Biz Buddy Media Marketing further submitted that they have received the amount for the payments made on behalf of the Noticee from different firms. However, on analysis of the bank statement of Biz Buddy Media Marketing provided to the IA by the firm, no transaction having narration of the Noticee's name was observed. It is noted from the IR that in the absence of specific information, the purpose of payments by the different firms to Biz Buddy Media Marketing could not be ascertained.

25. Thereafter, further analysis was conducted to find out who was the sender of the SMSs. As per information provided by GoDaddy, email ID – *dg***********ia@gmail.com* has been mentioned, as per the requirement, while purchasing the domain www.dgfins.com. Therefore, an attempt was made to know which mobile number is linked to the email ID - *dg***********ia@gmail.com* through the "Forgot Password" provision available in Gmail. It was observed that the said email *dg***********ia@gmail.com* was linked with the mobile number – 85*******52.

26. Meanwhile, statement of the Noticee was also recorded by the IA. The Noticee had, *inter alia*, denied having any connection with the mobile number – 85*******52 and e-mail ID - dg***********ia@gmail.com. However, the Noticee had admitted that the mobile number - 90*******82 was used by him.

27. I further note that during the investigation, in order to ascertain whether the users of two phone numbers, i.e., 90*******82 and 85*******52 had any connection, Call Data Records (CDR) of both the mobile numbers were analyzed for the period December 12, 2018 to January 31, 2019, wherein it was observed that:

28.1. Both the mobile numbers belonged to Gujarat Circle. Whenever there was a change in Network-Circle for 90*******82, a change in Network-Circle for 85*******52 was also observed. The details are explained below:

28.1.1. During the period from December 12, 2018 to January 31, 2019, mobile number– 90*******82 was observed to be operational in Mumbai Circle on following dates: January 17, 2019, January 18, 2019, and January 19, 2019. It was observed that during the said period, the mobile number – 85*******52 was also operational in Mumbai Circle on January 17, 2019, January 18, 2019, and January 19, 2019.

28.1.2. Similarly, the period from December 12, 2018 to January 31, 2019, mobile number – 90*******82 was observed to be operational in Rajasthan Circle on the following dates – January 26, 2019, and January 27, 2019. It was observed that during December 12, 2018, to January 31, 2019, mobile number – 85*******52 was also operational in Rajasthan Circle on January 26, 2019, and January 27, 2019.

28.2. No overlapping calls were observed from December 12, 2018 to January 31, 2019, i.e., when 90*******82 was on call, 85*******52 was not on call, and vice versa.

28.3. 26 calls (Time duration: 740 seconds) have been made from the mobile number 85*******52 to the mobile number 95*******95 and 12 calls (Time duration: 259 seconds) were received from the mobile number 95*******95 to the mobile number 85*******52. The said mobile no. 95*******95, was mentioned as the number of Kasambhai Umarbhai Shekh (Father of Noticee) and Mrs. Shekh Hasina Kasambhai (Mother of Noticee) in the letter of offer while acquiring a stake in Econo Trade (India) Ltd. Further, from the Customer Application Form (CAF) provided by the TSP (Vodafone), it is noted that the mobile number (95*******95) belongs to Kasambhai Umarbhai Shekh (Father of Noticee).

28. It is further noted from the IR that Indigo Airlines, vide letter dated November 29, 2022, mentioned that, bookings for a traveller with the name Hanif Shekh were made with the Email ids – hk*********kh@yahoo.co.in, ***dg***********ia@gmail.com***,

sm*******o@gmail.com, and mobile numbers – 90*******82, 95*******68, and **85*******52**. (Emphasis supplied)

29. In view of the discussions in the paras above, it was alleged that Noticee had used mobile number – 85*******52 and email ID - dg***********ia@gmail.com to purchase the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors.

30. I note that the Noticee has, *inter alia*, submitted various grounds as his defense, through various letters submitted on different dates. All the submissions have been considered together which are discussed in the following paragraphs under different headings for ease of discussion:

31. **Statement of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy Media Marketing)**

31.1. I note that the Noticee in his submissions has, *inter alia*, denied the statements made by Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy) that they have facilitated payment for purchasing the domain dgfins.com from GoDaddy on the request of the Noticee. The Noticee submitted that the SCN merely relies upon bald statements made by other persons without any corroborative/secondary evidence. The Noticee further submitted that there are no records of communication—such as emails, messages, or any form of documented instructions—between Mr. Rakesh Natavarlal Bhatt and the Noticee that validate the claim that the Noticee directed him to book/ create the website or make any payments for the same.

31.2. In this regard, from the material available on record, I note that the Partners of Biz Buddy Media Marketing (Mr. Rakesh Bhatt and Mr. Bhavin Pandya) submitted that they have received the payments from different firms on behalf of the Noticee. However, on analysis of the bank statements, no transaction having narration of the Noticee's name was observed by the IA. Further, it was also observed from the IR that the purpose of the payments to Biz Buddy could not be ascertained from the bank statements.

31.3. In the absence of specific information relating to payment, further efforts were made by the investigation team to find the sender of the SMSs. As per information provided by GoDaddy, email ID – dg***********ia@gmail.com was mentioned as per requirement while purchasing the domain www.dgfins.com. Therefore, an attempt was made to know which mobile number is linked to the email ID - dg***********ia@gmail.com through the "Forgot Password" provision available in Gmail. It was observed that the said email was linked with the mobile number – 85*******52. Therefore, an analysis of CDR of 90*******82 (Noticee in his statement submitted that he is using this Mobile No.) and 85*******52 was made to ascertain whether the Noticee had any connection with the Mobile Number 85*******52 or not. Flight booking details from Indigo Airlines were also obtained by the IA, wherein it was observed that the e-mail ID- dg***********ia@gmail.com and mobile number – 85*******52 were used for the flight booking of the Noticee. In view of the same, I find that the present case does not merely rely on the statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy Media Marketing) alone. There are additional evidences brought on record like the analysis of call data records and the booking details provided by Indigo Airlines. From these evidences, it is noted that the e-mail ID - dg***********ia@gmail.com and mobile number – 85*******52 were related to the Noticee. Hence, the submission of the Noticee that the SCN relies merely on the statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya without any corroborative evidence is misplaced.

31.4. I note that the Noticee in his submissions has, *inter alia*, further submitted as under: *"……….it is submitted that in an almost identical matter of V B Industries Ltd., Order dated January 31, 2023 has been passed by the Hon'ble AO, wherein SEBI* *had received complaints with respect to a website "www.accurateinv.com" and bulk SMSs were sent through Headers with recommendations of buying shares of V B Industries Ltd. From the Order, it can be seen that payment with respect to the website " www.accurateinv.com" was made by Mr. Rakesh Natwarlal Bhatt through his Citi Bank Credit Card, and the same was purchased from GoDaddy. In this matter also, the Partners of Biz Buddy namely, Mr. Bhavin Pandya and Mr. Rakesh Natwarlal Bhatt alleged that the same was done on the instructions of Mr. Hanif Shekh. It would be extremely relevant to note that the Hon'ble AO whilst passing Order levying penalty of Rs. 5,00,000/- against Biz Buddy held that "I note that apart from a mere assertion, Noticee 32 has 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 Noticee 32 has not provided any documents to show that it was engaged by any client to purchase the aforesaid website. Thus, the contention that the website domain was purchased on behalf of the clients of Noticee 32 is devoid of merits. Therefore, I am not inclined to accept the aforesaid contentions of Noticee 32. in this regard, I also note that Noticee 32 has not disputed the fact that the website had been purchased by it. Thus, I conclude that the website www.accurateinv.com belonged to the Noticee 32.*

It maybe further noted that vide the Noticees submissions dated July 10, 2024, wherein the Noticee drew your Honour's attention to an identical matter of V B Industries Ltd., Order dated January 31, 2023 passed by the Hon'ble AO. In furtherance to that submission the Noticee would like to inform your Honour that M/S. Biz Buddy Media Marketing on whom Rs. 5,00,000/- was levied by way of penalty by the Hon'ble AO appealed the said Order dated January 31, 2023 before the Hon'ble Securities Appellate Tribunal (Appeal No. 530 of 2023). By an order dated August 5, 2024, the Hon'ble Securities Appellate Tribunal was pleased to dismiss the appeal whilst upholding the penalty amount of Rs. 5,00,000/- against Biz Buddy, who claimed that they had purchased a website called *www.accurateinv.com from website registrar called GoDaddy having its office in USA and sold this website to one Shri Hanif Shaikh.*

In respect of the above it is submitted that the above order cited is binding and must be followed. In this regard, the Noticee would like to submit that judicial precedents are binding on all judicial bodies and all judicial bodies should follow such precedents in similar matter without any reservations.

In numerous cases, the Hon'ble Securities Appellate Tribunal has held that in adjudicating proceedings, if a party relies on any adjudication order passed in another case, then judicial discipline demands that the Adjudicating Officer considers that order and thereafter passes an order either to follow or distinguish the earlier order or disagree with the order by recording reasons as to how that ought not to be followed. One such order of Hon'ble SAT was passed on August 7, 2014 in the matter of R.M. Shares Trading Private Limited vs. SEBI (Appeal No. 204 of 2014). Your Honour's attention is also drawn to order dated April 20, 2016 of Hon'ble SAT in the matter of M/s Krishna Enterprises v SEBI (Appeal No. 131 of 2015), wherein it was held that passing conflicting orders would not promote the development of securities market and would not be in the interest of the securities market. In the present matter, SEBI must apply the principle of Judicial discipline, in light of above decisions relied upon."

31.5. In this regard, I note that, in the present case, apart from the statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy Media Marketing), there are additional evidences like analysis of call data records of the mobile numbers 90*******82 (Noticee in his statement submitted that he is using this Mobile No.) and 85*******52 (Mobile No. linked with e-mail ID dg***********ia@gmail.com which was used to purchase the domain www.dgfins.com). The present matter also relies on the e-mail IDs and mobile numbers used for flight booking of the Noticee as provided by Indigo Airlines. From the perusal of the Adjudication Order dated January 31, 2023, as submitted by the Noticee, it is noted that the statement of the Biz Buddy Media Marketing was considered but not accepted by the AO in that order due to lack of evidence. However, in the present case, there are other evidences as mentioned above. Hence, I find that the facts of the present case are different from the facts in the above case referred to by the Noticee. Therefore, the submission of the Noticee that the aforesaid orders of the Hon'ble SAT and learned Adjudicating Officer are binding before the AO in this case cannot be accepted.

31.6. In view of the aforesaid discussions, I note that the submissions of the Noticee in respect of the statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya cannot be accepted.

32. **Cross Examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy Media Marketing)**

32.1. The Noticee, in his replies, had requested for the cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya. Although the SCN has not solely relied upon the statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya, in the interest of natural justice, an opportunity of cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya was granted to the Noticee. Cross examination was held and concluded on September 27, 2024, wherein Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya were cross examined by the Noticee and AR of the Noticee. The cross examination was held for nearly eight hours. Further, 96 questions were posed to Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya during the cross examination.

32.2. After posing 96 questions during the eight hour long cross examination, the AR of the Noticee had requested to continue cross examination on another day in respect of the answers that she had received during the cross examination from Mr.

Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya. In this regard, it is noted that the answers given by cross examinees were further cross examined by the AR of the Noticee during the course of the cross examination itself, conducted on September 27, 2024. Moreover, the Noticee and AR of the Noticee were given sufficient opportunities to ask questions to the cross examinees, if any. Therefore, considering that enough opportunities were given to the Noticee for cross examination, the request for further cross examination was not acceded to.

32.3. Post conclusion of cross examination on September 27, 2024, Noticee vide letter dated October 11, 2024, *inter alia*, submitted as under:

"*Mr. Rakesh Natwarlal Bhatt in A-6 of his statement dated January 8, 2020 has clearly admitted to booking the domain www.dgfins.com on the alleged instructions of the Noticee.*

However, in A54 and A63 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing claim Rakesh Natwarlal Bhatt did not book the domain www.dgfins.com, it was booked by the Noticee and only a payment link was shared with Mr. Rakesh Natwarlal Bhatt through which he made payment from his personal credit card.

The above statements are highly contradictory in nature and completely inconsistent with the statements on which SEBI has relied upon to issue the SCN to the Noticee.

This itself calls into question the veracity and the credibility of the witnesses, namely, Mr. Rakesh Natwarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy Media Marketing)."

32.4. In this regard, I would like to refer to the statement of Mr. Rakesh Natvarlal Bhatt recorded during the course of investigation on January 08, 2020, which, *inter alia*, states as under:

"

Q.5	*Is credit card number/master card bearing number 55****************58 issued by CITI bank belongs to you? Various payments were observed from this card to Go daddy on 28.07.2018, 08.09.2018, 22.10.2018, and 29.12.2018 for $20.16, Rs. 1252.16, Rs. 952.16 and Rs.449 respectively.*
A.5	*Yes the credit card number 55****************58 belong to me. Payments from this credit card were made to book domains for various clients and all above payments were made on instruction of Mr. Hanif Shaikh to book the domain named www.dgfins.com*
Q.6	*Please state why did you or on whose instructions created websites www.dgfins.com using GO daddy domain*
A.6	*I have booked one domain in the name www.dgfins.com on instructions of Mr. Hanif Shaikh. We are not aware of actual purpose of website. Neither we create it nor control the website.*

"

32.5. I would also like to refer to the answers A54 and A63 of the cross examination dated September 29, 2024, which, *inter alia*, states as under:

"

Q54 to RB: Did you personally authorize and make the payments referred to in Q5 of your statement dated January 08, 2020 to GoDaddy on the dates referred to therein to book the domain www.dgfins.com?
A54 by RB: Mr. Hanif Shekh had called me and told me that I have to book one domain so I will share you the payment link and make the payment from your card for booking domain www.dgfins.com. This particular domain was not purchased in any of our GoDaddy accounts. We do not have any control over the domain after making the payment.
Q63 to RB and BP: Can you please tell who created the login id and password for the domain www.dgfins.com?
A63 by BP: We have not created any login id or password for the domain www.dgfins.com. Rakesh has just received a payment link to make the payment at GoDaddy.com.

"

32.6. In view of the above, it is very clear from the statements made by Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya that the payment was made by Mr. Rakesh

Bhatt through which the booking of domain www.dgfins.com was done. Hence, I find it difficult to accept the submissions of the Noticee that the statements made by Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya were contradictory in nature.

32.7. The Noticee in his replies further submitted that during the cross examination Mr. Rakesh Bhatt could not recall the exact screen-sharing application used to make payment and banks do not allow anyone to access bank accounts to make any payments while screen sharing is on with a third party. In this regard, I note that the exact screen sharing application used to make the payment is not on record. However, from the material available on record, it is noted that the payments in question were made by Mr. Rakesh Bhatt. Hence, this submission of the Noticee does not require further consideration.

32.8. The Noticee, vide letter dated October 11, 2024, *inter alia*, further submitted as under:

"Further in A-8 of the statement dated July 19, 2023, the Partners of Biz Buddy Media Marketing stated that 22 transactions totaling to Rs. 1,10,05,000/- in their HDFC Bank Account were amounts received on behalf of the Noticee from different firms/entities.

However, in A71 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing it is stated that These payments have no links with this particular case.

In A13, A38 and A68 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing have stated that they accepted payments from multiple unrelated entities without performing KYC (Know Your Customer) or independently verifying the source of these payments.

It is submitted that non performance of KYC is highly irregular and violates standard financial practices.

In Q72 despite being asked why the Partners of Biz Buddy Media Marketing did not request written confirmation or contracts before accepting large sums of money from different entities they have stated that prior to March 31, 2018 (See A-13) they were a small company and had two years of business experience and making agreements and contracts were not viable for the ticket size they were dealing.
With respect to the above, it is submitted that the payments allegedly received by them on behalf of the Noticee between merely 3 months' time i.e. September 2017 to December 2017 totals to Rs. 1,10,05,000/- allegedly from ONLY one client, namely the Noticee. Therefore, it is a blatantly false statement that that prior to March 31, 2018 they were a small company and that making agreements and contracts were not viable for the ticket size they were dealing with.
In A13, A67 and A68 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing have stated that they did not perform KYCs for neither the Noticee nor the entities from whom they've received payments which is clearly a red flag.

It is extremely strange as to how the Partners of Biz Buddy Media Marketing have accepted payments from the alleged entities of the Noticee without verifying their legitimacy. Further, it is even more strange and unbelievable how they do not have service contracts with neither the Noticee nor his alleged entities. This clearly raises questions about their standard business practices and the lack of agreements/contracts clearly shows negligence and/or intent to hide unethical transactions.

They admitted to allegedly submitting WhatsApp chats to SEBI and have outright refused to share the same with the Noticee. It is submitted by them that Whatsapp chats have been submitted to SEBI, however the same has not been shared with the Noticee or relied upon whilst issuing the SCN and therefore cannot be used or relied upon at this stage.

Despite claiming that the Noticee directed the transactions, they have submitted no proof of emails or calls verifying the alleged involvement of the Noticee.

In A-9 of the Statement of Mr. Rakesh Natwarlal Bhatt dated January 8, 2020, he has stated that Mr. Nitin from Money Control dealt directly with the Noticee, however, in the Investigation Report Nitin Agarwal from Moneycontrol has expressly denied this.

In fact in A59, A60, A61 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing, it can be seen that Mr. Rakesh Natwarlal Bhatt and Mr. Bhavin Pandya have stated that the Noticee used to communicate with Nitin Agarwal under the name of Mr. Vishal. However as per the Investigation Report, this is not true and Mr. Nitin Agarwal expressly stated that he communicated with Mr. Rakesh Natwarlal Bhatt.

When asked for documents and proof in the form of ledger accounts maintained by them, GST documents, ITRs, details of total turnover of the Partnership, invoices, whatsapp chats etc., the witnesses have blatantly refused to provide any of this material to the Noticee."

32.9. In this regard, I note that all the materials and documents relevant and relied upon in the present matter have been provided to the Noticee along with the SCN and also during the inspection of documents which concluded on April 26, 2024. It is further noted that the above contention of the Noticee relating to whatsapp chats, dealings with Moneycontrol, GST documents, ITRs, details of turnover of the Biz Buddy, Invoices, payments made by different entities to Biz Buddy on behalf of the Noticee, KYC procedures adopted by Biz Buddy have not been relied upon in the present proceedings. Hence, this contention of the Noticee does not merit any consideration.

32.10. The Noticee vide letter dated October 11, 2024, also requested for the cross examination of the concerned persons of GoDaddy. In this regard, it is noted that the domain details that were submitted by GoDaddy to SEBI were provided to the

Noticee. The Noticee has not disputed the details provided by GoDaddy in his replies. It is further noted that no statement of any GoDaddy official was recorded under oath during the investigation process and as such no such statement has been relied upon in the present proceedings. Therefore, request of the Noticee for cross examination of any official of GoDaddy was not acceded to.

32.11. The Noticee vide letter dated October 11, 2024, *inter alia*, further submitted as under:

"Despite of allegedly making payments on behalf of the Noticee as well as receiving amounts of money from other entities allegedly connected to the Noticee, from A55, A57 and A84 of the cross examination dated September 29, 2024 of the Partners of Biz Buddy Media Marketing admit to have acted on alleged "oral instructions" and do not have one document to show any instruction on part of the Noticee to make these payments or receive the payments.

Without any documented instruction like emails, messages, letters or formal agreements, their claims about acting on behalf of the Noticee lack any sort of credibility."

32.12. In this regard, I note that the Noticee had already raised the aforesaid contention in his replies submitted prior to cross examination and the same has been dealt with in the preceding paragraphs of this order.

32.13. In view of the aforesaid discussions, I note that the above submissions of the Noticee in respect of the cross examination of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya cannot be accepted.

33. **Analysis of CDR of Mobile No. 85*******52 and 90*******82**

33.1. I note that the Noticee in his replies submitted as under:

Both the numbers (85*******52 and 90*******82) were in different locations most of the time. For example, during the period from 22.12.2018 to 27.12.2018, the number 85*******52 is in Delhi Circle, while the number 90*******82 continues to be in the Gujarat Circle.

33.2. In this regard, I note that the network Circle of the number 85*******52 during the period from December 22, 2018 to December 27, 2018 were as under:

Table 7

Date	Time	Details
December 22, 2018	'21:40:00'	SMS/Call was received/sent in Gujarat Circle
No SMS/Call was received/sent between December 22, 2018 (21:40:00) to December 22, 2018 (23:40:10)		
December 22, 2018	'23:40:10'	SMS/Call was received/sent in Delhi Circle
December 23, 2018	'12:49:46'	SMS/Call was received/sent in Delhi Circle
No SMS/Call was received/sent between December 23, 2018 (12:49:46) to December 27, 2018 (11:21:56)		
December 27, 2018	‘11:21:56’	SMS/Call was received/sent in Delhi Circle
December 27, 2018	'15:45:35'	SMS/Call was received/sent in Delhi Circle
No SMS/Call was received/sent between December 27, 2018 (15:45:35) to December 27, 2018 (17:29:58)		
December 27, 2018	'17:29:58'	SMS/Call was received/sent in Gujarat Circle

33.3. I further note that the network Circle of the number 90*******82 during the period from December 22, 2018 to December 27, 2018 were as under:

Table 8

Date	Time	Details
December 22, 2018	18:17:34	SMS/Call was received/sent in Gujarat Circle
No SMS/Call was received/sent between December 22, 2018 (18:17:00) to December 23, 2018 (10:03:17)		
December 23, 2018	10:03:17	SMS/Call was received/sent in Gujarat Circle
December 23, 2018	14:42:58	SMS/Call was received/sent in Gujarat Circle
No SMS/Call was received/sent on December 25, 2018, December 26, 2018 and December 27, 2018.		

33.4. Any discerning person can infer from the above mentioned tables, that both the numbers are in different circles only on December 23, 2018 and not for the entire period from December 22, 2018 to December 27, 2018 as claimed by the Noticee. Moreover, there were several instances when the network circle of both the numbers (i.e., 90*******82 and 85*******52) were changed at the same time. These instances were as follows:

33.4.1. During the period from December 12, 2018 to January 31, 2019, mobile number– 90*******82 was observed to be operational in Mumbai Circle on the following dates – January 17, 2019, January 18, 2019, and January 19, 2019. It was observed that during the said period, the mobile number – 85*******52 was also operational in Mumbai Circle on January 17, 2019, January 18, 2019, and January 19, 2019.

33.4.2. During the period from December 12, 2018 to January 31, 2019, mobile number – 90*******82 was observed to be operational in Rajasthan Circle on the following dates – January 26, 2019 and January 27, 2019. It was observed that during December 12, 2018 to January 31, 2019, mobile number – 85*******52 was also operational in Rajasthan Circle on January 26, 2019 and January 27, 2019.

33.5. The aforesaid instances were mentioned in the SCN, and the Noticee has also not disputed any of these instances. Hence, the submission of the Noticee that both the numbers were in different locations for most of the time, for example, during the period from 22.12.2018 to 27.12.2018, cannot be accepted.

33.6. The Noticee, in his replies, further submitted as under:

The number 90*******82 remains more or less stationary in the Gujarat circle. However, the number 85*******52, in contrast, frequently changes tower locations within the Gujarat Circle. For example, on the date December 14, 2018, the Mobile Number 85*******52 from the CDRs provided during inspection reflected connections to 19 distinct cell IDs in the entire day. However, in contrast, the CDRs for Mobile Number 90*******82 reflect connections to only 2 distinct cell IDs in the entire day. Similarly, on the date December 15, 2018, the Mobile Number 85*******52 from the CDRs provided during inspection reflected connections to 21 distinct cell IDs in the entire day. However, in contrast, the CDRs for Mobile Number 90*******82 reflect connections to only 3 distinct cell IDs in the entire day.

33.7. In this regard, it is noted that the exact locations of the mobile numbers 90*******82 and 85*******52 within the Gujarat Circle is not available on record. However, from the material on record, it is noted that for most of the times both the numbers remained active in Gujarat Circle.

33.8. The Noticee in his replies further submitted as under:
The investigation report clearly states that CDRs in the present matter could not be obtained as the period pertains to a time prior to one year, and therefore the investigation report relies upon CDRs obtained in another matter of Darshan Orna. The CDRs obtained in the matter of Darshan Orna pertain to the period from December 2018 to January 2019, and the same is not even overlapping with the IP in the present matter, which is namely November 14, 2017 to October 31, 2018. Therefore, even if the CDRs obtained in the matter of Darshan Orna are considered, there is absolutely no evidence to show that the mobile number "85*******52" was used by the Noticee during the IP of the present matter.

33.9. In this regard, it is noted that the purpose of the CDRs in this proceedings was primarily to ascertain whether there was any nexus between the users of the mobile numbers 90*******82 and 85*******52. Accordingly, difference in the period of CDR and IP is irrelevant, as far as present proceeding is concerned. Hence, this contention of the Noticee does not merit any consideration.

33.10. The Noticee in his replies further submitted that since SEBI is relying on the CDR of the other matter, namely Darshan Orna, an opportunity of cross examination of the Investigating Authority in the matter of Darshan Orna has to be provided to him. The Noticee has also requested for the cross examination of the TSPs from whom the CDRs were obtained. In this regard, it is noted that the CDRs of mobile numbers 90*******82 and 85*******52, as submitted by the TSPs to SEBI, were provided to the Noticee. It is noted that the Noticee has not disputed the contents of the CDR data in his replies. It is further noted that no statement of any official of

TSPs or the Investigating Authority in the matter of Darshan Orna was recorded under oath during the investigation process and as such no such statement has been relied upon in the present proceedings. In view of the same, the request of the Noticee for cross examination of the Investigating Authority in the matter of Darshan Orna or the TSPs from whom CDRs were obtained was not acceded to.

33.11. The Noticee in his replies further submitted that the number "85*******52" might belong to the person with whom he works and might have travelled with him. In this regard, I note that, apart from mere assertion, the Noticee had not provided any material to substantiate his claim. Hence, the submission of the Noticee in this regard cannot be accepted. Moreover, it cannot be mere coincidence that the network circle of both the numbers changed at the same time on many occasions.

33.12. From the material on record, I further note that 26 calls (Time duration: 740 seconds) have been made from the mobile number 85*******52 to the mobile number 95*******95 and 12 calls (Time duration: 259 seconds) were received from the mobile number 95*******95 to the mobile number 85*******52. The said mobile no. 95*******95, was mentioned as the number of Kasambhai Umarbhai Shekh (Father of Noticee) and Mrs. Shekh Hasina Kasambhai (Mother of Noticee) in the letter of offer while acquiring a stake in Econo Trade (India) Ltd. Further, from the CAF provided by the TSP (Vodafone), the mobile number (95*******95) belongs to Kasambhai Umarbhai Shekh (Father of Noticee). This observation is stated in the SCN. Moreover, the copy of the letter of offer while acquiring a stake in Econo Trade (India) Ltd. and the CAF as provided by the TSP (Vodafone) for the mobile number – 95*******95 were provided to the AR of the Noticee at the time of inspection of documents. The Noticee has not disputed this finding in his replies. Despite the fact that multiple calls have been made by the mobile number 85*******52 to the number registered under the name of his father, the Noticee made no effort to identify the number and has only made vague statements. This shows that his submissions do not hold any merit.

33.13. In view of the aforesaid discussions, I note that the submissions of the Noticee in respect of the analysis of CDR of Mobile No. 85*******52 and 90*******82 cannot be accepted.

34. **<u>Flight booking details of the Noticee provided by Indigo Airlines</u>**

34.1. I note that the SCN alleged that Indigo Airlines, vide letter dated November 29, 2022, mentioned that a traveller with the name Hanif Shekh made bookings with the Email ids – hk*********kh@yahoo.co.in, **dg***********ia@gmail.com**, sm*********no@gmail.com, and mobile numbers – 90*******82, 95*******68, and **85*******52**. (Emphasis Supplied)

34.2. In response to the aforesaid allegations, the Noticee, in his replies, submitted as under:

In his professional life, he often travels with colleagues, business partners, and associates who book tickets for the travel of the Noticee using their own contact information. The Noticee further submitted that he also engages third-party travel agencies to manage his travel bookings. These third parties often use their own contact information and email addresses. Hence, it is likely that the mobile number 85*******52 appears in the bookings associated with the Noticee might be used by the person who had booked the tickets for the Noticee.

34.3. In this regard, I note that the Noticee has not disputed the contents of flight booking details of the Noticee as provided by Indigo Airlines. Moreover, the Noticee has merely made a vague submission that the mobile number 85*******52 might be used by the person who had made bookings for the Noticee. The Noticee had not submitted any material to substantiate his claims. Hence, the submission of the Noticee in this regard cannot be accepted.

34.4. The Noticee, in his replies, further submitted that since SEBI is relying on the statements made by Indigo Airlines, an opportunity of cross examination of Indigo airlines has to be provided to him. In this regard, it is noted that the flight booking details of the Noticee were submitted by a competent official of the Indigo Airlines to SEBI from his official e-mail ID. The same was provided to the Noticee. It is noted that the Noticee has not disputed the contents of the flight booking details provided to him. It is further noted that no statement of any Indigo Airlines official was recorded under oath during the investigation process and as such no such statement has been relied upon in the present proceedings. In view of the same, cross examination of Indigo Airlines as requested by the Noticee was not acceded to.

34.5. The Noticee in his replies also submitted as under:

The information used in the present matter was obtained from Indigo Airlines in another investigation, and the proceedings in that other matter are presently pending. Therefore, until this evidence (information from Indigo Airlines) has been decided upon in the primary matter, the undersigned is requested to refrain from passing any orders in the present matter based on that evidence.

34.6. In this regard, it is noted that only the contact details of the Noticee used for flight bookings as provided by Indigo Airlines was considered in the present proceedings. Further, the Noticee has also failed to demonstrate how the outcome of the other proceedings can have a bearing on the evidence relied upon in the present matter. Accordingly, I do not find any merit in this submission of the Noticee.

34.7. In view of the aforesaid discussions, I note that the submissions of the Noticee in respect of the flight booking details of the Noticee as provided by Indigo Airlines cannot be accepted.

35. **<u>Alleged delay in the initiation of the present proceedings</u>**

35.1. The Noticee, in his replies has, *inter alia*, stated:

"It is extremely necessary to note that, the SCN in the present matter has been issued for the investigation period of November 14, 2017 to October 31, 2018, and the present SCN has been issued only on February 16, 2024. There has been an unexplainable and fatal delay of 6-7 years in issuing the present SCN. Therefore, it is clear that the said matter suffers from delay and laches and on this ground alone, the present SCN is liable to be disposed."

35.2. In this regard, I note that the Noticee in his replies had also placed reliance on the order of the Hon'ble SAT in the matter of *Yatin Pandya HUF vs SEBI*[5]*, Ashlesh Gunvantbhai Shah vs SEBI*[6]*, Mr. Rakesh Kathotia & Ors. Vs SEBI*[7]*, Ashok Shivlal Rupani vs SEBI*[8]*, Sanjay Jethalal Soni & Ors. vs SEBI*[9]*, Parag Sarda vs SEBI*[10]*, ICICI Bank Ltd. vs SEBI*[11]

35.3. All the submissions of the Noticee in this regard, including case laws, have been considered.

35.4. In this regard, it is pertinent to refer to the observations of the Hon'ble Supreme Court in the matter of ***Adjudicating Officer, SEBI Vs. Bhavesh Pabari***[12], wherein the Hon'ble SAT, *inter alia*, held that:

[5] Appeal No. 719 of 2021 decided on March 24, 2022
[6] Appeal No. 169 of 2019 decided on January 31, 2020
[7] Appeal No. 07 of 2016 decided on May 27, 2019
[8] Appeal No. 417 of 2018 decided on August 22, 2019
[9] Appeal No. 102 of 2019 decided on November 05, 2019
[10] Appeal No. 279 of 2020 decided on November 12, 2020
[11] Appeal No. 583 of 2019 decided on July 08, 2020
[12] Civil Appeal No. 11311 of 2013 decided on February 28, 2019

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the thirdparty rights had been created etc."

35.5. I would also like to refer to the observations of the Hon'ble SAT in the matter of ***Metex Marketing Pvt. Ltd. Vs SEBI***[13], wherein the Hon'ble SAT, *inter alia*, held that:

"23. It is no doubt true that no period of limitation is prescribed in the SEBI's Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695.

24. This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."

[13] Appeal No. 95 of 2016 decided on June 04, 2019

35.6. I further find that the investigation in the instant case pertains to the period from November 14, 2017 to October 31, 2018. The investigation was conducted based on various complaints received in the month of September 2018, *inter alia,* alleging circulation of 'Short Message Service' (SMSs) recommending to 'buy' shares of PSL. During the course of the investigation, summons was issued to the Noticee by the SEBI, and the statements of the Noticee were also recorded. The investigation was completed in September 2023. Thereafter, SEBI approved adjudication proceedings in the matter. The undersigned was appointed in the matter vide communique dated January 08, 2024, and the SCN was issued on February 16, 2024. Hence, there is no delay in the issuance of the SCN. Further in this regard, I also note that the Noticee has not demonstrated as to how prejudice, if any, was caused to the Noticee by the aforesaid alleged delay in the instant matter. Therefore, in light of the above chronology, the submission of the Noticee in this regard cannot be accepted. Further, as discussed in preceding paragraphs, it is noted that post issuance of SCN on February 16, 2024, the Noticee has submitted his final reply in the present proceedings only on October 12, 2024. The present proceedings got stretched for around eight months with multiple opportunities being sought by the Noticee to submit his reply on merits, for inspection of documents, for personal hearing, and also for cross examination. The Noticee had even put his request for cross examination of Mr. Rakesh Bhatt and Mr. Bhavin Pandya as a pre-condition to file his reply on merits.

36. **<u>Indian Evidence Act</u>**

36.1. The Noticee in his replies has, *inter alia*, stated:

"*It would be extremely necessary to draw your Honours attention to the fact that besides the mere bald statements of Mr. Rakesh Natvarlal Bhatt and Mr. Bhavin Pandya (Partners of Biz Buddy), SEBI has relied upon electronic CDRs, copies of screenshots of the SMS Headers, copies of screen shots of the "Forgot Password" function of Gmail, emails of InterGlobe Aviation Ltd., and emails of Mr. Rakesh*

Natvarlal Bhatt and Mr. Bhavin Pandya ………*it is submitted that the email received from GoDaddy is merely a print out and constitutes electronic evidence*

It may be noted that for none of these has any secondary evidence been adduced. Since electronic records and mere screenshots are extremely susceptible to tampering, alteration, transportation, etc, and therefore cross examination as well as a certificate under S. 65B of the Evidence Act is extremely necessary. There are certain laws have been formulated to secure and preserve the authenticity and sanctity of such records. An image in the appearance of screenshots can be created by anybody and can have no evidentiary value.

In this regard, it is submitted that a copy of the alleged email/screenshot/CDRs has been provided, and no evidence for the same as required under Section 7 of the Information Technology Act, 2000 and / or other applicable laws to establish the originators, destination, date and time of dispatch and receipt and the format in which it was originally generated, sent and received, has been adduced.

It may be extremely necessary to state here, that the Hon'ble Supreme Court on July 14, 2020 in the matter of Arjun Panditrao Khotkar v. Kailash Kishanrao Goratyal has clearly clarified and differentiated between primary and secondary electronic record. The Apex Court stated that a CD on which electronic record was copied would constitute a secondary copy and therefore a certificate under S.65B of the Evidence Act would be required for the same to be admitted as evidence."

36.2. In this regard, I note that Section 1 of the Indian Evidence Act, 1872 mentions that the Indian Evidence Act, 1872 applies to *"all judicial proceedings in or before any Court"*. I note that the present Adjudication Proceedings are quasi-judicial in nature.

36.3. In this context, I would like to refer to the order of the Hon'ble Supreme Court in the matter of *Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd*[14]*.* dated March 26, 2021, wherein it was, *inter alia*, held as under:

"It is true that the rigors of Code of Civil Procedure and the Evidence Act are not applicable to Tribunals/Quasi-Judicial Authorities. These rigours do not even apply to Courts dealing with constitutional matters (refer the Explanation Under Section 141 Code of Civil Procedure)."

36.4. In view of the above, I do not find any merit in the aforesaid contention of the Noticee and reject the same.

<u>Findings on Issue I</u>

37. In view of the discussions in the preceding paragraphs, I note that no justifiable reason has been brought on record by the Noticee with regard to the violations alleged in the SCN. The sequence of events and the abovementioned observations and findings that can lead to an inference are as under:

37.1. SEBI received complaints about SMSs promoting a "buy" recommendation for the scrip of PSL between August and September 2018, sent from SMS headers like BH-DGFINS, BZ-DGFINS, and MD-DGFINS. It was observed that the website – www.dgfins.com was mentioned in various SMSs being received from SMS headers, viz., BH-DGFINS, BZ-DGFINS, and MD-DGFINS. It was further observed that the nomenclature of all three SMS headers (BZ-DGFINS, BH-DGFINS, and MD-DGFINS) was similar to said website, i.e., "DGFINS". Investigation tried to looked into the modus operandi behind the circulation of the SMSs. It was observed that the website www.dgfins.com was created using GoDaddy Domain. The payment for the registration of the website was made via a Citi Bank credit card held by Mr. Rakesh Natavarlal Bhatt.

[14] 2021 INSC 217 dated March 26, 2021

37.2. Upon investigation, Mr. Bhatt revealed that he ran an advertisement agency called Bizz Buddy Media Marketing. Mr. Bhatt further submitted that he had made the payment from his credit card to book the domain www.dgfins.com under the instructions from the Noticee.

37.3. Details of the Noticee were provided by Bizz Buddy Media Marketing, including his PAN, email, and contact numbers. However, analysis of Bizz Buddy Media Marketing's bank statements did not show any direct payments from the Noticee, leaving the purpose of the payments unclear. SEBI continued investigation to identify the sender of the SMSs.

37.4. As per information provided by GoDaddy, email ID - dg***********ia@gmail.com was mentioned while purchasing the domain www.dgfins.com. Therefore, an attempt was made to know which mobile number is linked to the email ID - dg***********ia@gmail.com through the "Forgot Password" provision available in Gmail. It was observed that the said email was linked with the mobile number - 85*******52.

37.5. During the course of recording the statement of Noticee by the IA, the Noticee denied any association with the email or phone number 85*******52 but admitted using another number, 90*******82. SEBI investigated the connection between these two phone numbers (90*******82 and 85*******52). In his statement, the Noticee has also not denied his acquaintance with the partners of Biz Buddy Media Marketing which clearly shows that the Noticee and the partners of Biz Buddy Media Marketing namely Mr. Rakesh Bhatt and Mr. Bhavin Pandya were known to one another.

37.6. SEBI found that both mobile numbers (90*******82 and 85*******52) belonged to the Gujarat Circle. The numbers changed network locations simultaneously, suggesting a connection. Additionally, there were calls between 85*******52 and a phone number belonging to the Noticee's parents, further linking the Noticee to the phone number.

37.7. Information from Indigo Airlines showed that the Noticee used the email dg***********ia@gmail.com and the phone numbers 90*******82 and 85*******52 for flight bookings, confirming further links between the Noticee and the phone number/email.

38. In this context, I would like to refer to the order of the Hon'ble Supreme Court in the matter of **SEBI v. Kishore R Ajmera[15],** wherein the Hon'ble Supreme Court, *inter alia*, states as under:

"22. 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.

…..

*26……… **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**. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt…."*

(Emphasis supplied)

[15] Civil Appeal No. 2818 of 2008 dated February 23, 2016

39. In view of the above, preponderance of probability is a guiding principle in adjudication proceedings under the SEBI Act. From the aforesaid findings and the facts and circumstances of the case, it can be logically concluded that the Noticee had used mobile number – 85*******52 and email ID - dg***********ia@gmail.com to purchase the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors.

40. In this regard, I would like to refer to the definition of "Fraud" as given in Regulation 2(1)(c) of PFUTP Regulations:

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

41. In this regard, I would further like to refer to the order of the Hon'ble Supreme Court in the matter of **SEBI v. Shri Kanaiyalal Baldevbhai Patel[16],** wherein the Hon'ble Supreme Court, *inter alia*, states as under:

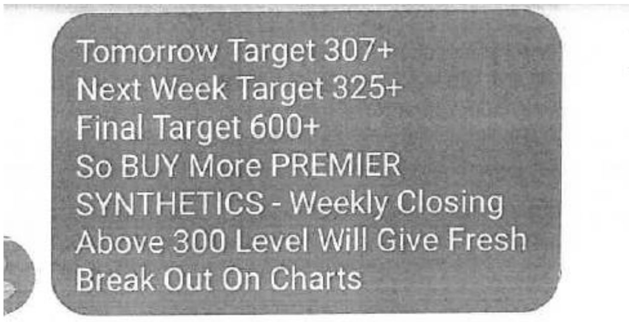
"………………

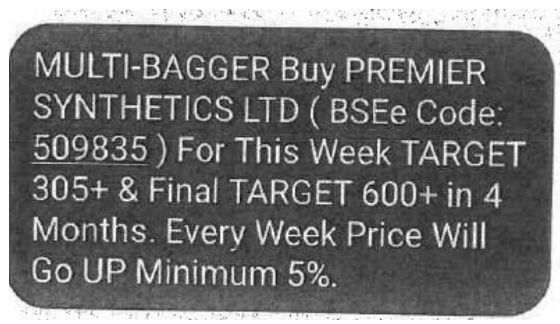
The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".

…………..."

[16] Civil Appeal No. 2595 of 2013 dated September 20, 2017

42. From the perusal of the SMSs that were circulated giving 'buy' recommendations in the scrip of PSL on a sample basis, I note that the SMSs, *inter alia*, state as under:





43. It is pertinent to note that stock market recommendations like "buy/sell" provided by an entity who does not have requisite registration from SEBI for providing such recommendations is illegal. Further, unsolicited SMSs providing such "buy/sell" recommendations can induce gullible investors to get lured with such recommendations, thereby, tending to influence their investment decisions. Such illegal practices tend to breach the trust of investors in the securities market.

44. Therefore, in light of the above, it is established that the Noticee had violated the provisions of Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(k), and 4(2)(r) of the PFUTP Regulations.

Issue II. Does the violation, if any, on the part of the Noticee attract a monetary penalty under Section 15HA of the SEBI Act?

45. As it has been established that the Noticee has violated the provisions of law as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15HA of the SEBI Act.

46. The text of the above said Section 15HA of the SEBI Act is reproduced below:

"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 III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

47. While determining the quantum of penalty under Section 15HA, it is important to consider the factors stipulated in 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."

Factors Considered While Imposing Penalty

48. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. However, it is pertinent to note that SEBI had received multiple complaints pertaining to SMSs being received from SMS headers, viz., BH-DGFINS, BZ-DGFINS, MD-DGFINS giving 'buy' recommendations in the scrip of PSL. As regards the repetitive nature of the default, I take note of the fact that SEBI had previously imposed penalties on the

Noticee/issued directions against the Noticee for violations of the provisions of PFUTP Regulations and the SEBI Act.

49. I note that it has been established that the Noticee had used mobile number – 85*******52 and email ID - dg***********ia@gmail.com to purchase the domain www.dgfins.com through which unsolicited bulk SMSs were circulated giving 'buy' recommendations in the scrip of PSL which can mislead investors.

50. In this context, I would like to refer to the order of the Hon'ble Supreme Court in the matter of ***N. Narayanan vs. SEBI***[17], the Hon'ble Supreme Court has, *inter alia*, stated that:

"Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers."

51. It is important to note that such manipulative acts as established in the present proceedings can tend to mislead and influence the investment decision of investors. Therefore, such acts violate the fundamental tenets of market integrity. Such illegal acts, if dealt with lightly, could seriously undermine investors' confidence in the

[17] Civil appeal nos.4112-4113 of 2013 dated April 26, 2013.

securities market. Therefore, the violation committed by the Noticee has to be viewed seriously. This case deserves the imposition of a monetary penalty.

52. The aforementioned factors have been taken into consideration while adjudging the penalty.

ORDER

53. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in the preceding paragraphs, and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty on the Noticee as given in the table below**:**

Table 9

Penal Provision	Penalty Amount
Section 15HA of the SEBI Act	Rs. 11,00,000/- (Rupees Eleven Lakhs Only)

54. I am of the view that the said penalty is commensurate with the lapses/omissions on part of the Noticee.

55. The Noticee shall remit/pay the said amount of penalty within 45 days of receipt of this order through the 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.

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

Date: December 31, 2024 **N HARIHARAN**

Place: Mumbai **CHIEF GENERAL MANAGER**

AND ADJUDICATING OFFICER