BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14598-14599

UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956, SECTION15I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIE) RULES, 2005 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,1995

In respect of

Sl. No.	Name of the Noticee	PAN
1	**Jinesh Devendra Bhatt**	**AKDPB6133C**
2	**Tarunkumar Gurucharan Brahmbhatt**	**ADSPB2534M**

In the matter of Sampada Chemicals Ltd., and Urja Global Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) conducted an investigation in the scrips of Sampada Chemicals Ltd., (hereinafter referred to as "***Sampada"***/***"SCL"***) and Urja Global Ltd., *(hereinafter referred to as **"Urja")*** for the period October 1, 2010 to March 21, 2011 (hereinafter referred to as ***"Investigation Period"***) to ascertain any violation of the provisions of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {*hereinafter referred to as "SEBI (PFUTP") Regulations}.* The shares of Urja and SCL were listed on the Bombay Stock Exchange (BSE). The investigation revealed that Jinesh Devendra Bhatt *(hereafter referred to as "**Noticee 1**")* received 1,50,000 shares of SCL from its sole promoter viz., Shyam Alcohol and Chemicals Ltd., *(hereinafter referred to as **"SACL")*** and 1,00,000 shares of SCL from Ms. Prarthana Tarunkumar Brahmbhatt, in off-market without payment of consideration and thereby alleged to have violated the provisions of Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ***"SCRA"***) read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

2. The investigation also found that pursuant to change in shareholding in the scrip of SCL in respect of the Noticee 1 and Tarunkumar Gurucharan Brahmbhatt *(hereinafter referred to as "**Noticee 2**"),* the Noticees had failed to make the requisite disclosures under the provisions of SEBI (Substantial Acquisition of Shares & Takeovers), 1997 *(hereinafter referred to "SAST Regulations")* and SEBI (Prohibition of Insider Trading) Regulations, 1992 *(hereinafter referred to "PIT Regulations")* to the Company and to BSE. Therefore, it is alleged that the Noticees had violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

3. The investigation further revealed that the Noticees 1 and 2 manipulated the price of the scrip of SCL by contributing to negative LTP and NLP through repeated first trades and thereby violated the provisions of Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (a) & (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (*hereinafter referred to as "**PFUTP Regulations**").* Further, the investigation found that in the scrip of Urja, the Noticee 1 contributed to negative LTP during price fall and thereby violated Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (a) & (e) of SEBI (PFUTP) Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Based on the findings of investigation, SEBI initiated Adjudication proceedings against the Noticee and appointed the undersigned as Adjudicating Officer vide Order dated May 18, 2017 under Sub-section (1) of Section 23-I of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (*hereinafter referred to as "SCR Adjudication Rules")* and under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"),* to inquire into and adjudge the alleged

violations committed by the Noticee under Section 23H of SCRA, Sections 15A(b) and 15HA of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD/ADJ/PM/AA/OW/29472/2017 dated November 24, 2017 was issued to the Noticees under Rule 4 SCR Adjudication Rules and Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SCR Adjudication Rules and Rule 4 of SEBI Adjudication Rules and penalty be not imposed under Section 23H of SCRA, Sections 15A(b) and 15HA of the SEBI Act, 1992, for the violations alleged to have been committed by the Noticees. I note that the SCN sent by Speed Post to the Noticees was delivered at their respective addresses. The Noticees vide letter dated January 16, 2018 had made a request for carrying out inspection of documents, which was acceded to. I note that the Noticees through their Authorized Representative had carried out inspection of documents on December 31, 2020. Thereafter, in the interest of natural justice and in terms of the provisions of Rule 4(3) of SCR Adjudication Rules and Rule 4(3) of SEBI Adjudication Rules, the Noticees were given an opportunity of hearing on February 24, 2021, which was communicated through email at the Noticees’ Email IDs on February 11, 2021. The Authorized Representative (AR) of the Noticee vide email dated February 22, 2021 expressed her inability to attend the hearing owing to pre-occupation with other hearings before the Hon’ble SAT. Subsequently, vide email dated April 22, 2021, the Noticees were given one more opportunity of hearing on May 7, 2021, which was communicated to the Noticees and the AR by email. The AR of the Noticee vide email dated May 5, 2021 had once again requested for adjournment of hearing owing to Covid-19 pandemic, which was considered favourably and accordingly the hearing was adjourned to May 21, 2021, which was communicated to the Noticees and AR through email on May 6, 2021. The Noticees vide emails dated May 19, 2021 and May 21, 2021 submitted their replies to the charges alleged in the SCN.

6. In view of Covid-19 Pandemic, the hearing was scheduled through videoconference on WebEx platform on May 21, 2021, which was attended by the AR of the Noticees. The AR reiterated the submissions made by the Noticees on May 19, 2021 and May 21, 2021 and sought additional time of 2 days make fresh submissions, which was acceded to. The AR vide email dated May 26, 2021 had made additional submissions on behalf of the Noticees. The replies furnished by the Noticees on May 19, 2021, May 21, 2021 and May 26, 2021, are summarized hereunder:

(a) *There has been an inordinate and unconscionable delay in commencing the proceedings under this SCN. The allegation framed in the SCN relate to the investigation period October 2010 to March 21, 2011 and the SCN issued on November 24, 2017 i.e., after a delay of 7 years. This delay has caused severe prejudice to the Noticee as they have been handicapped in adducing sufficient evidence for the purpose of filing adequate reply. In these circumstances, the SCN ought to be discharged vis-à-vis the Noticees.*

(b) *In this regard, the Noticees would like place reliance on the judgment of the Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin Vs Farmabai Ibrahim and the Orders of the Hon'ble SAT viz., HB Stockholding Ltd., Vs SEBI, Rakesh Kathotia & Ors., Vs SEBI, Libord Finance Ltd., Vs Whole Time Member, SEBI.*

Reply to the alleged violation of the provisions of Section 2(i)(a) read with Sections 13, 16 and 18 of the SCRA in relation to shares of Sampada Chemicals Ltd., - Noticee 1

(c) *The shares received by the Noticee 1 from M/s Shyam Alcohol (1,50,000 shares of Sampada Chemicals Ltd on 29.03.2011) was as a collateral since Mr. Vipul Vidur Bhatt (who was a Director of M/ s. Shyam Alcohol and a good friend of the Noticee) was in need of some funds and the same was stated by the Noticee 1 in his letter to SEBI dated 8th December, 2014 and the Noticee 1 agreed to help Mr. Vipul Vidur Bhatt to generate funds against shares. However, since the Noticee 1 was not able to generate the funds against the shares which he received from M/s. Shyam Alcohol on 29.03.2011 and therefore the Noticee 1 returned the shares to Mr. Vipul Vidur Bhatt.*

(d) *The shares received by the Noticee 1 from Mrs. Prarthana Bramhbhatt (1,00,000 shares of Sampada Chemicals Ltd on 01.04.2011) was* *originally transferred to Mrs. Prarthana Bramhbhatt by M/s. Shyam Alcohol as a collateral with a view to secure loan against shares on the recommendation of the Noticee 1 (since Mrs. Prarthana Brambhatt is a family friend of Noticee 1). However, since the aforesaid arrangement of generating funds against shares kept as collateral did not go through, the Noticee 1 returned 2,50,000 shares (1,50,000 + 1,00 ,000) to M/s. Shyam Alcohol on 05 .04 .20 11.*

(e) *It is respectfully submitted that the right to hold property being a constitutional right, a person holding securities, whether in physical or demat form, has the right to use the securities to lend, lease, encumber, exclude, share, gift or transfer it, in the same way he has the right to use any other property for legitimate purposes.*

(f) *In view of the above, it is respectfully submitted that there was no real buying and selling of from Vipul Vidur Bhatt the Noticee and subsequently by the Noticee to Mr. Vipul Vidur Bhatt. Accordingly, Section 2(i)(a) read with Sections 13, 16, and 18 of SCRA is not triggered in the present case.*

(g) *Attention is drawn to the circulars of Central Depository Services (India) Limited ("CDSL") dated August 17, 2016, September 11, 2017 and July 15, 2019 by way of an email dated 21st May, 2021. It is essential to see how the law has evolved in relation to off-market transactions. By reading of August 17, 2016 circular of CDSL, it is abundantly clear that as on August 2016 off-market transactions without actual fund movement was permissible under the category of 'Others'. In fact, the requirement to insert 'Consideration Amount' as a mandatory field was only applicable when the transaction was 'For Off-Market Sale/ Purchase". In the present case, the shares of Sampada Chemicals Ltd. were transferred from Shyam Alcohol Ltd. only for the purpose of a raising funds against shares kept as collateral. Thus, such transactions fall under the category of 'Others'. Pertinently, the objectionable off-market transfers occurred in 2011. Thus, there was no violation of the SCRA at such time. The fact that the depository participant did not cancel the transaction further is demonstrative of the fact that the transactions were legitimate. It is only by way of July 15, 2019 circular of CDSL were the reason codes for transactions between the categories of 'Others' and 'Transfer Between Family Members' was discontinued.*

(h) *Thus, it is clear from CDSL circulars that every off-market transfer need not be for consideration. This is further confirmed from the DIS also being enclosed in these submissions. In view thereof, there was no* *trigger of Section 2(i)(a) read with Sections 13, 16, and 18 of SCRA in the present case. Accordingly, there was no violation of the SCRA as alleged by SEBI in the SCN.*

(i) *The Noticee 1 says that his transaction cannot further be equated with any undesirable speculation that is sought to be prohibited by Section 16 of SCRA as well as by the Notification dated 01st March, 2000. Further, there is no charge that the impugned transaction is a result of excessive or undesirable speculation or that it had any market wide adverse impact. The mitigating factors as enumerated in Section 23J of SCRA, 1956 need to be considered.*

Reply to the alleged violation of the provisions of Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations 1992, Regulation 12 of PIT Regulation 2015, Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 and Regulation 35 of SAST Regulations, 2011 in the scrip of Sampada Chemicals Ltd. – Noticees 1 & 2

(j) *The Noticee 1 reiterates that, as stated above that the aforesaid off-market transfer did not result into any acquisition of shares and the shares were eventually returned by the Noticee to M/s Shyam Alcohol on 05.04.2021. Therefore, the Noticee was not required to file any disclosure regarding the aforesaid change in her share-holding as the off-market transfer of shares was not in the nature of acquisition of shares. On the contrary, had the Noticee made disclosures under SAST Regulation and PIT Regulations, that would have sent wrong signals to the market.*

(k) *The Noticee 2 submits that the shares were received by him from his wife Mrs. Prarthana Bramhbhatt (2,50,000 shares of Sampada Chemicals Ltd., on 01.04.2011) was originally transferred to Mrs. Prarthana Brambhatt by M/s. Shyam Alcohol as a collateral with a view to secure loan against shares on the recommendation of the Noticee 1 (since Mrs., Prarthana Brambhatt is a family friend of Noticee1). However, since the aforesaid arrangement of generating funds against the shares kept as collateral did not go through, the Noticee 2 returned the said 2,50,000 shares (received from Mrs. Prarthana Brambhatt) to M/s Shyam Alcohol Pvt. Ltd. on 05.04.2011. Therefore, the Noticee did not make any disclosure regarding the aforesaid change in his share-holding as the off-market transfers of shares was not in the nature of real buying and selling. On the contrary, had the Noticee made disclosures under SAST Regulations or PIT Regulations, that would have sent wrong signals to the market.*

Reply to the alleged violation of the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the PFUTP Regulations by manipulating the price of the scrip of Sampada Chemicals Ltd., by contributing to negative LTP – Noticees 1 & 2

(l) *The Noticees states that during the investigation period, the price of the scrip of Sampada was continuously decreasing and the scrip price was hitting lower circuit. The Noticees wanted to exit from the scrip however, due to the scrip hitting lower circuit, he was not getting the exit.*

(m) *The Noticees states that they wanted to sell their entire holding in order to mitigate/ reduce his losses as the price was continuously decreasing and liquidity was drying up. In order to get the exit, the Noticees had no choice but to sell at lower price because the scrip was hitting lower circuit and there were no buyers available at the market rate. Therefore, right from the time when the market opened, the Noticees used to put their sell order at Negative LTP for huge quantity of shares. However, since the liquidity had dried up, the trades were getting executed for only single shares at the lowest price permitted on that day.*

(n) *The Noticees states that the SCN levels a serious charge of fraud on the basis of mere suspicion, in complete ignorance of the time-tested judicial precedents including rulings of the Hon'ble SAT which cautions against suspicion, conjecture and surmise being passed off as proof especially where fraud is alleged. The SCN purports to treat suspicion and evidence as one and the same, and ignores foundational principles of the law of evidence that that the standard of proof for a charge of fraud to be established must be sufficient to overcome the ordinary presumption of honesty and good faith in dealings.*

(o) *It is respectfully submitted that allegations of fraud cannot be based on wild allegations without any convincing evidence. Charges of fraud are of serious in nature and should not be made casually by regulators. The judicial precedents indisputably hold that fraud is a serious offence and, therefore, the standard of proof must be of a higher degree and mere conjectures and surmises will not be sufficient to hold a person liable for fraud. The Hon'ble SAT has held in the matter of KSL & Industries Ltd. v. SEBI that "A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidences are not sustained. Fraud cannot survive on mere conjecture and surmises…".*

(p) *The Hon'ble Supreme Court has also held that, "charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises.". Further, in Union of*

India v. Chaturbhai M. Patel & Co. the Hon'ble Supreme Court had referred to A.L.N, Narayanan Chettyar v. Official Assignee, wherein it was held that "...However suspicious may be the circumstances, however, strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof…".

(q) *In light of the above cases, it is submitted that it is an established jurisprudence that for proving charges of fraud under PFUTP Regulations, the evidence adduced must be compelling which can be inferred by logical process of reasoning from the totality of facts and circumstances surrounding the allegations. The Noticees would like to rely on the judgment of Hon'ble Supreme Court in the case of Hanumat v. State of Madhya Pradesh.*

(r) *The Noticees states that, men rea or guilty mind is an important factor to be looked upon while dealing with the charge of PFUTP violation. However, in the present case, no such manipulative intention can be attributed to the Noticees as they simply wanted to exit from the scrip in order to avoid loss and the same can be verified from the fact that the Noticees were placing trades for his entire holding.*

Reply to the alleged violation of the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the PFUTP Regulations by manipulating the price of the scrip of Urja Global Ltd., by contributing to negative LTP – Noticees 1

(s) *The Noticee states that in the screen-based trading, the counter party is not revealed as orders get matched on price and time priority criterion. Such matching per se did not amount to any wrongdoing. The Noticee's volume was real and genuine and he honoured his respective settlement obligations. Further, the Noticee as a buyer was placing his orders within the permissible price limit of the day.*

(t) *The Noticee states that no connection of any nature is established between the Noticee and Chetan Dogra HUF. Hence, the Noticee's buy orders matching with the sell order of Chetan Dogra in 71 instances was a mere coincidence and was not an outcome of any manipulative scheme or device.*

(u) *The Noticees have not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default.*

(v) The Noticees craves leave to refer to and rely upon the ratio laid down in the judgement of the Hon'ble SAT in the matter of P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017, as regards imposition of monetary penalty.

CONSIDERATION OF ISSUES

7. I have taken into consideration the facts and material available on record. After perusal of the material available on record, I have the following issues for consideration, viz.,

(I) *Whether the Noticee 1 has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?*

(II) *Whether the Noticees 1 & 2 have violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?*

(III) *Whether the Noticees 1 & 2 have violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the SEBI (PFUTP) Regulations?*

(IV) *Does the violation, if any, attract monetary penalty under Section 23H of SCRA, Sections 15A(b) and 15HA of SEBI Act?*

(V) *If so, what would be the monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act?*

ISSUE-I: Whether the Noticee 1 has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March

02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?

8. Before moving forward, it is pertinent to refer to the relevant provisions of SCRA and SEBI Notification dated March 2, 2000, which reads as under:

Section 2 (i) of SCRA
In this Act, unless the context otherwise requires,—
spot delivery contract" means a contract which provides for,-
(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository

Section 13 of SCRA
If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.

Section 16 of SCRA
If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

Section 18 of SCRA
Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

SEBI Notification G.S.R 219(E) dated March 2, 2000
"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as "the

Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

9. I note that during the Investigation Period, it was noticed that there were off-market transfers in the scrip of SCL, wherein the sole promoter of SCL viz., SACL had inter-alia transferred 1,50,000 shares in off-market to the Noticee 1 on March 29, 2011 and on April 1, 2021 the Noticee 1 received 1,00,000 shares from Ms., Prarthana Tarunkumar Brahmbhatt (Wife of Noticee 2), which is not disputed by the Noticee 1. The Noticee 1 confirms that he received shares from Shyam Alcohol as collateral since Mr. Vipul Vidur Bhatt (Director of Shyam Alcohol and friend of Noticee no.1) was in need of some funds and he was supposed to generate funds from loan against shares. He further stated that there was no agreement between the entities as the communication was verbal and since the deal was not completed, he did not transfer any funds to Shyam Alcohol. Accordingly, the Noticee submitted that he had transferred back 2,50,000 shares to SACL on April 5, 2021.

10. It is pertinent to note that as per the extant statutory provisions governing dealing in securities which happens outside the market platform of a recognized stock exchange, the settlement relating to such transfer of securities and the payment of consideration required to be made against such transfer, shall have to be either on the same day or at the most next day. It is pertinent to note that the in respect of the off-market transactions, it is seen from the facts of the case and from the submissions made by the entities who had received shares in off-market that there was no consideration paid by the Noticee 1 for the 2,50,000 shares received from SACL and Ms. Prarthana Tarunkumar Brahmbhatt.

11. I note that off-market transfer of shares leads to change in beneficial ownership. If the shares were received by the Noticee as a collateral, then the procedure as mentioned in Depositories Act, 1996 and SEBI (Depositories and Depository Participants) Regulations, 1996 along with the relevant Bye-laws prescribed by the Depositories should have been followed. However, in the instant case, I note that no such procedure was followed by the Noticee 1. I am of the view that for off-market transaction to be executed successfully, the buyer and seller should know each other and subsequently negotiate the price and quantity of the shares to be transacted. It is pertinent to note that the volume of the off-market transactions done by the Noticee 1 is substantial, yet the Noticee 1 failed to enter into any agreement with the promoter of SCL.

12. Another significant factor to be noted is that the shares were transferred to the demat accounts of the Noticee 1, which implies transfer of beneficial ownership of the shares. The transfer of beneficial ownership comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties, which is important in any transaction, establishes that there was a transfer of the shares. The conduct of the parties and nature of the transactions establishes that the Noticee had entered into a transaction in off-market, without payment of consideration, which is in contravention of the provisions relating to spot delivery contracts. The contention of the Noticee that the 2,50,000 shares of SCL were received as a collateral and since the loan agreement did not fructify, the said shares were returned to the promoter

entity of SCL from whom the shares were received, is devoid of any merit, since Section 10 of the Depositories Act, 1996 envisages a person in whose name the shares are recorded with the depository is deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

13. The Securities Contracts (Regulation) Act, 1956 or the SCRA is the earliest piece of legislation on capital markets. The Securities Contracts (Regulation) Act, 1956 came into force on February 20, 1957 aims to prevent undesirable transactions in securities by regulating the business of dealing therein. The SCRA defines critical terms including derivatives, securities, specific and spot delivery contracts. In this regard, I would like to draw reference to Section 16 of SCRA, which provides that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified therein. Sub section of section 16 declares that all contracts in contravention of the provisions of sub section (1) entered into after the date of the notification issued thereunder shall be illegal. The central Government had issued a notification in the year 1969, and thereafter SEBI issued a similar Notification on March 2, 2000 in exercise of its delegated authority under section 16 of SCRA prohibiting any person in the territory of India to enter into any contract for sale or purchase of securities other than spot delivery or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under SCRA or the Act and the Rules and Regulations made there under and Rules, Regulations and Bye laws of a recognized stock exchange. In other words, the prohibition contained in the Notification means that no security could be traded in an off-market transaction except by way of spot delivery contract as defined in section 2(i) of SCRA. Further this was made applicable to the whole of India vide notification dated SO 3644 dated November 29, 1962.

14. Further, it may be noted that the “Spot Delivery Contract” is defined under section 2(i)(a) of SCRA as “a contract which provides for, actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore, through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.” Thus, in terms of the aforesaid Section 2(i)(a) of the SCRA, a contract in securities market will be completed on actual delivery of shares and payment of consideration either on the same day or the next day of the contract. In other words, a spot contract in securities market is said to be completed only if delivery/transfer of securities and payment therefore has been made within the time limit prescribed under Section 2(i)(a) of SCRA.

15. As per SEBI Notification G.S.R 219(E) dated 2nd March, 2000 no person in the territory to which SCRA extends, shall, save with the permission of SEBI, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said SCRA or the SEBI Act and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.

16. Every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. Since, the transaction entered into by the Noticee is an off-market transaction, it is not in conformity with Section 13 of SCRA. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e., actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day.

17. The Noticee 1 contended that that in view of August 17, 2016 circular of CDSL, as on that date off-market transactions without actual fund movement were permissible under the category of ‘Others’ and that the requirement to insert ‘Consideration Amount’ as a mandatory field was only applicable when the transaction was ‘For Off-Market Sale/ Purchase”. Accordingly, the Noticee 1

sought to contend that the shares of Sampada Chemicals Ltd. were transferred from Shyam Alcohol Ltd. only for the purpose of a raising funds against shares kept as collateral. Thus, such transactions fall under the category of ‘Others’ and therefore is not covered within the ambit of SCRA.

18. It is pertinent to note that in order to prevent undesirable transactions in securities that such provisions were inserted in the Act and subsequent notification was issued to prevent dealings outside the stock exchange mechanism. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e., actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. As evident from the discussion above, in this case, the payment has not taken place as per spot delivery contract as defined in SCRA. Therefore, the contention raised by the Noticee 1 by citing the Bye-laws of CDSL is devoid of any merit, since the same are misconceived.

19. The Hon’ble Securities Appellate Tribunal in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, upheld that:

“………..it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of ₹ 22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off-market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA.”

20. The above-mentioned rules of interpretation have been followed by various judicial forums and in the light of the foregoing, it would be pertinent to refer to the observations and decision of the Hon’ble Securities Appellate Tribunal in its decision in the case of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271 decided on March 5, 2010) in which the above-mentioned issue has been elaborately dealt with and the Hon’ble SAT has stated as follows:

“A spot delivery contract has been defined in section 2(i) of the Act the provisions of which, before and after the amendment, have been reproduced hereinabove. Since all the securities prior to the coming into force of the Depositories Act were held in the physical form, spot delivery contract was defined to mean a contract which provided for the actual delivery of the securities and the payment of price therefor either on the same day as the date of the contract or on the next day. In other words, a spot delivery contract is a contract between two persons buying and selling securities off-market where the delivery and payment is effected either on the same day or on the next day. As already observed, such contracts are permissible being exempt from the provisions of section 13 of the Act. When the securities are held in the physical form, it is possible for the seller to physically deliver the same to the purchaser at the time of effecting the sale but this was not possible with effect from September 20, 1995 in respect of the securities that are held with the depositories in dematerialised form. The Parliament then inserted clause (b) in Section 2(i) of the Act. This clause did not bring about any change in the definition of spot delivery contract. Clause (a) of the amended definition remains the same as the definition prior to the amendment. Clause (b) was inserted only to explain what “actual delivery” would mean in respect of the securities held in dematerialised form. According to clause (b), when securities are transferred from one beneficial account to another, it would be treated as “actual delivery” of securities within the meaning of clause (a). It is, thus, clear that clause (b) is not an independent clause but only an explanation to the words “actual delivery” as used in clause (a). We cannot, therefore, accept the argument of the appellant that clause (b) is an independent clause and that the spot delivery contract is complete with the mere transfer of securities from the account of one beneficial owner to that of another without reference to the payment of consideration. This could never be. If that were so, the contract itself would become void being without consideration. Clause (b) cannot be picked up and interpreted in a manner which defeats the very purpose for which it was enacted. While interpreting the provisions of Section 2(i) of the Act, we have to keep in mind the consequences which are likely to flow from the intended interpretation. We cannot but hold that clause (b) in Section 2(i) was not meant to stand on its own and it has to be read in conjunction with clause (a).”

21. If the facts of the present case are tested in the light of the observations/decisions of the SAT in the above matter and on the need for harmonious construction or interpretation of the provisions of the statute, as mentioned above, it would follow that the transactions were in violation of the provisions of section 16 of Securities Contracts (Regulation) Act, 1956 read

with SEBI Notification G.S.R 219 (E) dated March 2, 2000, sections 13 and 18 read with Section 2(i) of SCR Act, 1956.

22. Accordingly, I hold that the allegation of violation of the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956 by the Noticee 1 stands established.

ISSUE-II: Whether the Noticees have violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?

23. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations, which reads as under:

> ***Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997*** *provides that any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed, within two days of the receipt of intimation of allotment of shares or acquisition of shares or voting rights.*
>
> **Regulation 35 of SEBI (SAST) Regulations, 2011**
>
> *The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.*
> *(2) Notwithstanding such repeal, —*
> *(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;
(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.
(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Regulation 13(1) of PIT Regulations, 1992 *provides that any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 *requires that any person who holds more than 5% shares or voting rights in any listed company, shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company, within two working days of the receipt of allotment of shares or acquisition of shares or voting rights as the case may be.*

Regulation 13 (5) of SEBI (PIT) Regulations, 1992 - *The disclosures mentioned in sub-regulations (3), and (4) shall be made within two working days of*

(a) the receipt of intimation of allotment of shares or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Regulation 12 of SEBI (PIT) Regulations, 2015
(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, —
(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and
(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

24. The day wise holdings of Noticee 1 as calculated on the basis of trade log and his demat statement are as under:

Table – A

Sl. No.	**No. of Shares**
a) Opening Balance as on 01.10.2010	0
b) Net quantity purchased/(sold) during 01.10.2010 to 22.11.2010	233806
c) Closing Balance as on 22.11.2010 **(c=a+b)**	233806
d) % of ' c ' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	4.69%
d) Net quantity purchased / (sold) on 23.11.2010	20656
e) Closing Balance as on 23.11.2010 **(e=c+d)**	254462
f) % of ' e ' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**5.11%**

Table – B

Sl. No.	**No. of Shares**
a) Opening Balance as on 24.11.2010	254462
b) Net quantity purchased/ (sold)during 24.11.2010 to 30.12.2010	(15965)
c) Net off market receipts/(transfers) during 24.11.2010 to 30.12.2010	(3000)
d) Closing Balance as on 30.12.2010 **(c=a+b)**	235497

e) Net quantity purchased/ (sold) on 31.12.2010	(129654)
f) Closing Balance as on 31.12.2010 **(e=c+d)**	105843
g) % of ' f ' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**2.13**

Table – C

Sl. No.	**No. of Shares**
a) Opening Balance as on 01.01.2011	105843
b) Net quantity purchased/ (sold)during 01.01.2011 to 31.03.2011	(27085)
c)Net off-market receipts/(transfers) during 01.01.2011 to 31.03.2011	158050
d) Closing Balance as on 31.03.2011 **(c=a+b)**	236808
e) Net off-market receipts/(transfers) on 01.04.2011	100000
f) Closing Balance as on 01.04.2011 **(f=d+e)**	336808
g) % of ' f ' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**6.76%**
h) Net off-market receipt/(transfers) during 02.04.2011 to 04.04.2011	**0**
i) Closing balance as on 04.04.2011**(i=f+h)**	**336808**
j) Net off-market receipt/(transfers) on 05.04.2011	**(2,32,000)**
k) Closing balance as on 05.04.2011**(k=i+j)**	**1,04,808**
l) % of 'k' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**2.10**

25. From the analysis of Table-A above, I note that the shareholding of Noticee 1 in Sampada reached 2,54,462 shares on November 23, 2010, which was 5.11% of the total share capital of Sampada. As the shareholding of the Noticee 1 in Sampada crossed the threshold limit of 5% on November 23, 2010, he was required to make the disclosure within 2 days of transaction i.e. by November 25, 2010 to the company and to the stock exchange/s where the shares of the company are listed regarding such acquisition as stipulated by regulation 7(1) read with regulation 7(2) of SEBI (SAST) Regulations, 1997 and to the company in Form A as stipulated by Regulation 13(1) read with Regulation 13(5) of PIT Regulations, 1992.

26. From the analysis of Table B, I note that the shareholding of Noticee 1 in Sampada which was 2,54,462 (5.11%) shares on November 24, 2010 reduced to 1,05,843 (2.13%) shares on December 31, 2010. As the shareholding of the Noticee in Sampada decreased by more than 2% on December 31, 2010,

he was required to make the disclosure within 2 days of transaction i.e., by January 04, 2011 to the company in Form C as stipulated by Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992.

27. From the analysis of Table C, I note that the shareholding of Noticee 1 in Sampada reached 3,36,808 shares on April 01, 2011, which was 6.76% of the total share capital of Sampada. As the shareholding of the Noticee 1 in Sampada crossed the threshold limit of 5% on April 01, 2011, he was required to make the disclosure within 2 days of transaction i.e., by April 05, 2011 to the company and to the stock exchange/s where the shares of the company are listed regarding such acquisition as stipulated by Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 and to the company in Form A as stipulated by Regulation 13(1) read with 13(5) of PIT Regulations, 1992.

28. It was further observed from the analysis of Table C, that the shareholding of Noticee 1 in Sampada which was 3,36,808 (6.76%) shares on April 01, 2011 reduced to 1,04,808 (2.10%) shares on April 05, 2011. As the shareholding of the Noticee in Sampada decreased by more than 2% on April 05, 2011, he was required to make the disclosure within 2 days of transaction i.e., by April 07, 2011 to the company in Form C as stipulated by Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992.However, no disclosure as stipulated under the afore-mentioned Regulations were made by the Noticee 1.

29. Further, I note that Ms., Prarthana Tarunkumar Brahmbhatt transferred 2,50,000 shares to Noticee 2 on April 01, 2011. It is noted that the Noticee 2 was holding 520 shares of the Sampada as on March 31, 2011 and the holdings of the Noticee 2 became 2,51,520 shares as on April 01, 2011 which is 5.05 % of the total outstanding shares of the Sampada. As the shareholding of the Noticee 2 in Sampada crossed the threshold limit of 5% on April 01, 2011, he was required to make disclosures within 2 days of transaction i.e., April 05, 2011 to the company and to the stock exchange/s where the shares of the company are listed regarding such acquisition as stipulated by Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 and to

the company in Form A as stipulated by Regulation 13(1) read with 13(5) of SEBI (PIT) Regulations, 1992.

30. I also note that the Noticee 2 transferred 2,50,000 shares of Sampada to Shyam Alcohol & Chemicals Ltd., on April 05, 2011 which resulted into his holding in the scrip of Sampada reducing from 2,51,520 (5.05%) shares to 1,520 shares (0.03% of the total outstanding shares of the company). As the shareholding of the Noticee 2 in Sampada decreased by more than 2% on April 05, 2011, he was required to make the disclosure within 2 days of transaction i.e., by April 07, 2011 to the company in Form C as stipulated by Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. However, no disclosure as stipulated under the afore-mentioned Regulations were made by the Noticee 2.

31. I note from the records that no disclosures as stipulated under the afore-mentioned Regulations were made by the Noticees 1 and 2, which is corroborated from the reply of the Noticees. The Noticees contended that they were not required to make any disclosure under SEBI (SAST) Regulations, 1997 and /or SEBI (PIT) Regulations, 1992 since there was no actual transfer of ownership and no consideration was paid by them towards the said transfer. However, I note that on account of transfer of shares through off-market, there is change in beneficial ownership in respect of the aforementioned transactions, which obligated the Noticees to make the requisite disclosures as stated above. Further, in view of the findings as mentioned in pre-paragraphs the contention of the Noticees that there was no actual transfer of ownership, since no consideration was paid by them, is devoid of any merit. Further, it is pertinent to note that as stated in Table-A above, even for the shares purchased on the stock exchange platform also, the Noticee 1 did not make any disclosure under SEBI (SAST) and SEBI (PIT) Regulations.

32. In the matter of Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI–the Hon'ble SAT, vide its order dated April 15, 2005 also held that, *"the purpose of these disclosures is to bring about transparency in the*

transactions and assist the Regulator to effectively monitor the transactions in the market."

33. Further, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had held that:

> "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*"

34. In view of the above, I am inclined to hold that the Noticees had violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

ISSUE-III: Whether the Noticees 1 & 2 have violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a) & (e) of the SEBI (PFUTP) Regulations?

Regulation 3 of SEBI (PFUTP) Regulations: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any

dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Regulation 4 of SEBI (PFUTP) Regulations: - Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -
(a) indulging in an act which creates false or misleading appearance of trading in the securities market;
(e) any act or omission amounting to manipulation of the price of a security;

35. It has been alleged that the Noticees had manipulated the price of Sampada scrip by contributing to negative Last Trade Price (LTP) and New Low Price (NLP) through repeated first trades. The method and the manner in which the trades were executed are the most important factors to be considered in these circumstances and the motive, thereafter, automatically falls in line.

36. I note that during the patch 2 of the investigation period of 26 trading days from November 25, 2010 to December 31, 2010 of the investigation period, there was a huge decrease in the price of the scrip of Sampada. During this patch, the traded volume of the scrip was 6,26,469 shares, which was 13.65 % of the total traded volume of 45,89,967 shares of the investigation period. The price of Sampada scrip during this patch decreased from ₹ 489.90 to ₹ 134.75 i.e., decrease of ₹ 355.15. Pursuant to analysis of negative LTP for the sell side as there was a decrease in price during this patch, I note that the Noticee 1 was the top NLP contributor, who contributed to NLP for ₹ 85.15 (23.97 % of total market NLP during the patch) through 7 trades. Further, I note that all the 7 trades of the Noticee 1 which resulted in NLP during the patch were first trades and there was no buy or sell order available at the time of placing the order. These 7 trades contributed to negative LTP of ₹ (-) 85.15.

37. Further, I note that the Noticee contributed to NLP for ₹ 39.30 (11.06% of total market NLP during the patch) through 4 trades and his net LTP contribution through these trades was ₹ (-) 39.30. It is also noted that all the 4 trades of the Noticee 2 which resulted in NLP were first trades and there was no buy or sell order available at the time of placing the order. These 4 trades contributed to negative LTP of ₹ 39.30. The contribution of Noticee No. 1 & 2 to the NLP trades is tabulated below:

	Total NLP Contribution			**NLP Contribution through first trades**		
	No. of Trades	In ₹	% of total Market NLP (₹ 355.15)	No. of Trades	In ₹	% of total Market NLP through first trades (₹ 301.90)
Jinesh Bhatt and Tarunkumar Brahmbhatt	**11**	**-124.45**	**35.04**	**11**	**-124.45**	**41.22**
Other entities	61	-230.70	64.96	12	-177.45	58.78
Total	**72**	**-355.15**	**100.00**	**23**	**-301.90**	**100.00**

38. Order book analysis for 11 trades by the Noticees 1 & 2 are as under:

Order Book table for Jinesh Devendra Bhatt (Noticee 1)

Date	Sell Order No.	CP	Buy Order Time	Sell order time	Trade Price (Quantity)	Buy Order Qty	Sell Order Qty	Buy Order Price	Sell Order Price	NLP Contribution in ₹	Top 5 Bid Price Available (Range)	Top 5 Ask Price Available (Range)	Top 5 Bid Vol. Available (Total)
08/12/2010	21000069005959	SHAREKHAN LIMITED	09:16:44	09:15:00	305.50 (1)	1	14959	305.50	305.50	-16.05	NA	NA	NA
09/12/2010	13000064000274	SHAREKHAN LIMITED	09:18:27	09:15:00	290.25 (1)	1	20000	290.25	290.25	-15.25	NA	NA	NA
14/12/2010	11000093000048	NAVEEN GUPTA	09:19:03	09:15:00	248.95 (1)	1	9105	248.95	248.95	-13.05	NA	NA	NA
15/12/2010	19000068002660	NAVEEN GUPTA	09:20:45	09:15:00	236.55 (1)	1	40000	236.55	236.55	-12.40	NA	NA	NA
16/12/2010	14000066004879	KUSUM CHIMANLAL DESAI	09:20:56	09:15:00	224.75 (100)	100	5204	224.75	224.75	-11.80	NA	NA	NA
24/12/2010	16000059003425	SHAREKHAN LIMITED	09:18:45	09:15:00	174.05 (1)	1	77900	174.05	174.05	-9.15	NA	NA	NA
30/12/2010	15000063005339	SHAREKHAN LIMITED	09:23:18	09:15:00	141.80 (1)	1	95133	141.80	141.80	-7.45	NA	NA	NA

Order Book table for Tarunkumar Gurucharan Brahmbhatt (Noticee 2)

Date	Sell Order No.	CP	Buy Order Time	Sell order time	Trade Price (Quantity)	Buy Order Qty	Sell Order Qty	Buy Order Price	Sell Order Price	NLP Contribution in ₹	Top 5 Bid Price Available (Range)	Top 5 Ask Price Available (Range)	Top 5 Bid Vol. Available (Total)
10/12/2010	14000075000052	SHAREKHAN LIMITED	09:16:51	09:15:00	275.75 (1)	1	15000	275.75	275.75	-14.50	NA	NA	NA
27/12/2010	21000071000086	SHAREKHAN LIMITED	09:19:12	09:15:00	165.35 (1)	1	81580	165.35	165.35	-8.70	NA	NA	NA
28/12/2010	14000070004259	SHAREKHAN LIMITED	09:32:34	09:15:00	157.10 (1)	1	85860	157.10	157.10	-8.25	NA	NA	NA
29/12/2010	15000063004237	SHAREKHAN LIMITED	09:18:13	09:15:00	149.25 (1)	1	44326	149.25	149.25	-7.85	NA	NA	NA

39. I note that out of the 23 first trades which resulted in NLP, the Noticees 1 & 2 appeared as sellers in 11 trades as mentioned above and that out of total the NLP during the period i.e., ₹ 355.15, 85% of NLP (i.e., ₹ 301.90) was contributed through first trades, of which ₹ 124.45 (41.22% of NLP contributed through first trades) was contributed by the Noticees 1 & 2. It is pertinent to note that the Noticees 1 and 2 know each other and that the Noticees took turns and performed not more than 1 transaction on each day to execute only a single transaction in minuscule quantity. It can be seen that the Noticees had pre-meditated plan, whereby when one Noticee traded on a particular day, the other Noticee did not trade on that day. Thus, it can be seen that the first trades entered into by Jinesh Devendra Bhatt and Tarunkumar Brahmbhatt contribute significantly to the NLP during the patch of the investigation period.

40. I note from the trade log that the Noticees apparently deliberately continued to place sell orders in smaller quantities. Interestingly, it is observed that the Noticees were placing sell order at price lower than the buy order on continuous basis, which is contrary to the normal business prudence wherein buyer intends to buy at lower price and seller always strives for higher price. I am of the view that placing orders and executing trades on a frequent basis and contributing majorly to the price fall in the scrip even at the cost of sustaining personal loss would not be viewed as trades executed prudently in the normal course of trading in securities market. Resorting to such trades by the Noticees were bound to create misleading appearances and false

perceptions in the mind of innocent investors about the trades in the said scrip leading to generation of artificial volume in the scrip as well as distorting the informed decision making by genuine investors. The trades executed by the Noticees by no standard can be held as genuine trades executed in the normal course of trading in securities and the same was with a motive to create artificial volume and to hammer down the price of the scrip

41. I note that the Noticees executed trades in the scrip of Sampada and contributed to negative LTP, new low price through first trades during the investigation period resulting in price fall. By executing these trades, the Noticees influenced the price of the scrip of Sampada during Patch 2 of the investigation period and also helped in creating artificial volume and thereby led to false appearance of trading in scrip of Sampada. Therefore, I conclude that the Noticees have violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(e) of the SEBI (PFUTP) Regulations, 2003.

42. During the entire period of investigation in the scrip of Urja Global Ltd., (Urja), I note that during the patch 2 of 39 trading days from November 18, 2010 to January 12, 2011, there was a huge decrease in price/volume in the scrip of Urja. During this patch, the traded volume of the scrip was 23,37,376 shares, which was 24.45 % of the traded volume of 1,04,08,589 shares during the investigation period. During this patch price of the scrip decreased from ₹ 178.95 to ₹ 29.80. Pursuant to analysis of negative LTP contribution for the sell side as there was a decrease in price during this patch, I note that Chetan Dogra HUF sold 2,90,798 shares during this patch through 354 trades. Out of these trades, 154 trades of Chetan Dogra HUF for a total volume of 13,198 shares contributed ₹ (-) 63.55 and resulted in negative LTP compared to the previous traded price. The contribution of Chetan Dogra HUF to negative LTP was further analysed and the observations are as follows: -

Name of the counter-party	No of trades	Trade quantity	Sum of LTP Difference	% to total Negative LTP contributed by the entity ₹ (-)63.55
Connected entities				
1. Chetan Dogra HUF	46	220	-6.55	10.31
2. Jinesh Devendra Bhatt	71	4332	-32.45	51.06

Name of the counter-party	No of trades	Trade quantity	Sum of LTP Difference	% to total Negative LTP contributed by the entity ₹ (-)63.55
3. Prarthana Tarunkumar Brahmbhatt	1	1009	-0.25	0.39
4. Tarunkumar Gurucharan Brahmbhatt	4	42	-1.5	2.36
Total of connected entities	**122**	**5603**	**-40.75**	**64.12**
Other unconnected entities	**32**	**7595**	**-22.8**	**35.88**
Grand Total	**154**	**13198**	**-63.55**	**100.00**

43. I note from the above table that Noticee 1 entered into trades in 71 instances with Chetan Dogra HUF, who is a connected entity based on off-market transfer of shares and contributed to negative LTP of ₹ 32.45. In view of the same, it can be seen that Noticee 1 manipulated the price of the scrip of Urja by acting as a buy-side counterparty to the trades of Chetan Dogra HUF and contributed to negative LTP during price fall. Therefore, I conclude that the Noticee 1 by knowingly acting as a buyer counterparty to the trades of Chetan Dogra HUF contributed to negative LTP during price fall and thereby manipulated the price of Urja. Accordingly, I hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (a) & (e) of PFUTP Regulations.

44. It is evident from the trading pattern of the Noticees that they had a common objective to manipulate the scrips of Sampada and Urja *(as applicable)* so as to create a misleading appearance of trading in the scrips. The trades executed by the Noticees were not done in normal course of dealing in securities and are devoid of any bonafide intentions. In this regard, I note that the Hon'ble Supreme Court in Kanaiyalal Baldev Bhai Patel v. SEBI [supra] have explained that: *"...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".

45. The Noticees contended that they have traded on the anonymous screen-based system of the stock exchanges and as such their trades cannot be regarded as having manipulative/fraudulent intent. They have further contended that they have not provided exit to the preferential allottees. In this context, I note that in the screen-based trading, the manipulative or fraudulent intent can be inferred from various factors such as conduct of the party, pattern of transactions, etc. Vide its order dated July 14, 2006, in Ketan Parekh vs. SEBI (Appeal no. 2/2004), the Hon'ble SAT has observed that: *"The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, ..., the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."*

46. In cases of market manipulation, admittedly, no direct evidence would be forthcoming / available. Manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures. What is needed, is to prove that in a factual matrix, preponderance of probabilities indicates a fraud. In this regard, the observations of Hon'ble Supreme Court of India in SEBI Vs. Kishore R Ajmera et.al. decided on February 23, 2016 wherein the Hon'ble Court while deciding the matter under SEBI Act and PFUTP Regulations where there was no direct evidence forthcoming, observed as follows:

> *"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…"

47. Taking support of the observations of Hon'ble Apex Court in Kishore R Ajmera matter, I note that in order to determine whether a trade is manipulative in nature or not, the same has to be inferred from the attending circumstances because direct evidence in such cases may not be available. The list of factors to be taken note of, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of attending circumstances an inference will have to be drawn. In the instant matter, in the scrip of Sampada the Noticees repeatedly sold shares in 1 quantity below the LTP at frequent intervals, without any economic rationale.

48. In this context I would like to refer to the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Shri Lakhi Prasad Kheradi Vs. SEBI decided on June 21, 2018 wherein the Hon'ble SAT while addressing the issue as to whether the entity had contributed to 9.17% of the market NHP within a span of two weeks has observed as follows:
"…Very fact that the appellant had indulged in self-trades/ LTP/ NHP without giving any justifiable reason, clearly justifies the inference drawn by the AO that the trades executed by the appellant were manipulative trades…"

49. In this connection, I would like to refer to the observations made by the Hon'ble SAT in its order dated March 21, 2014 in Saumil Bhavnagari Vs. SEBI which are as under: *"… but by purchasing shares at the higher price in LTP in most of the trades, the Noticee had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the Noticee's trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible*

investors. By purchasing at a higher price in most of his trades, the Noticee had given the wrong impression about the price of the scrip in the market. It is an accepted state of affairs that in cases of manipulation of the volume and / or price of particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant."

50. In this connection, I would like to rely on the observations of the Hon'ble SAT in the matter of *Giriraj Kumar Gupta HUF v. SEBI* (DoD: February 25, 2020), wherein the Hon'ble SAT had inter-alia, observed that *"Having heard the learned counsel for the parties, we are of the considered view that the impugned transactions, in the facts and circumstances of the matter, would fall in the realm of violations of PFUTP Regulations. Individual argument that each entity's trade is miniscule and only on a few days alone etc., is not sufficient to rebut the findings in the impugned order".*

51. The Noticees placed reliance on the Orders of Hon'ble Apex Court and Hon'ble SAT in their defence and having perused the same, I note that the instant case is distinguishable in view of the above findings and does not help the Noticees in any manner.

52. The Noticees further submitted that there has been extraordinary inordinate delay in the issuance of SCN, which has prejudiced them and, on this ground, the SCN out to be dropped. I note that investigation in the instant matter was initiated based on an alert generated by BSE in the scrip of Urja Global Ltd., Sampada Chemicals Ltd., and IFL Promoters Ltd., wherein it was observed that certain Chetan Dogra Group entities had transacted in the scrips to support price/volume during the period from October 01, 2010 to March 21, 2011. Therefore, the investigation was done in three scrips as mentioned above, which involved voluminous collection of data, summoning various entities, analysis of trading pattern, examination of demat statements, bank statements, analysing trade and order logs, ascertaining connection based on KYC documents etc., Pursuant to conclusion of investigation, the undersigned has been appointed as Adjudication Officer in May 2017, the

SCN in was issued in November 2017. Thus, it can be seen that there is no delay in initiation of the instant proceedings given the voluminous processes involved in the matter, wherein 3 scrips were taken together for investigation. Therefore, I find no merit in the contentions raised by the Noticee that there is delay in issuing the SCN and find no reason to squash the SCN on this ground.

53. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt., Ltd., vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: "*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."*

54. Further, I deem it appropriate to refer to the observations made by Hon'ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI vide Order dated March 04, 2016, which reads as follows:

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

55. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Hon'ble 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 Hon’ble 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. The Hon’ble Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

“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 third-party rights had been created etc.”

56. In Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 27, 2013, the Hon’ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon’ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

“....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”

57. In the light of the aforesaid observations of the Hon'ble Supreme Court and Hon'ble SAT and from the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticees. Therefore, in the absence of any prejudice, the proceedings cannot be quashed simply on the ground of delay in launching the same, which is not found in this case.

ISSUE – IV: Does the violations, if any, attract monetary penalty under Section 23H of SCRA, Sections 15A(b) and 15HA of SEBI Act?

58. It is established from the foregoing paragraphs that the Noticee 1 had received shares through off-market without payment of consideration and thereby violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Since the aforesaid violations stands established against the Noticee, the Noticee 1 is liable for monetary penalty under Section 23H of SCRA, the provisions of which are reproduced hereunder:

Section 23H of SCRA - Penalty for contravention where no separate penalty has been provided

> *"Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees".*

59. It is a well-known fact and practice that as per the requirements of SEBI (SAST) & (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold limits. It is obligatory on the part of the person to make timely disclosures to Stock Exchange and to the Company. By not making the requisite disclosures under SEBI (SAST) & (PIT) Regulations, the Noticees 1 and 2 have failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no

dispute that compliance with the provisions of the Regulations is mandatory and it is the duly of SEBI to enforce compliance of these Regulations.

60. In this connection, I would like to rely upon the Hon'ble SAT's judgment dated September 04, 2013 in the matter of Vitro Commodities Private Limited v/s SEBI (Appeal No. 118 of 2013), wherein inter alia it was held that *"it may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone regulations and one is corollary to each other".*

61. As per the ratio decidendi in the aforesaid judgment, I am of the view that in the facts of this case, the violation of the provisions of Regulation 7(1) read with Regulation 7(2), SEBI (SAST) Regulations, 1997 and Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 are not substantially different and can be considered as a single violation by the Noticees for the purpose of adjudication in the matter. Since the violation of the statutory obligation under the provisions of SEBI (SAST) and SEBI (PIT) Regulations has been established against the Noticees, the Noticees are liable for monetary penalty under Section 15A(b) of SEBI Act, the provisions of which are reproduced hereunder:

Section 15A of SEBI Act– Penalty for failure to furnish information, return, etc., -

If any person, who is required under this Act or any rules or regulations made thereunder:-,

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day

during which such failure continues subject to a maximum of one crore rupees

62. Pursuant to detailed analysis as brought out above, it is established that the Noticees manipulated the price of the scrips (Sampada and Urja) *(as applicable),* and created a misleading appearance of trading in the scrip to induce innocent investors in the securities market thereby contravening the provisions of Regulations 3 (a), (b), (c), (d), 4 (1), 4 (2) (a), and 4 (2) (e) of SEBI (PFUTP) Regulations, 2003. Therefore, the Noticees are liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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 – V: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act?

63. While determining the quantum of monetary penalty under Section 23H of SCRA and Section 15A(b) of SEBI Act, I have considered the factors stipulated in Section 23J of SCRA and Section15J of SEBI Act, respectively, which reads as under:

Section 23J of SCRA & Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 23-I (SCRA) and Section 15I (SEBI Act), 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.

64. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

65. The Noticees submitted that pursuant to receipt of shares in off-market without consideration which resulted in disclosure requirements had not caused loss to any investor. In this regard, I would like to draw reference to the Order of the Hon'ble SAT in the matter of Komal Nahata Vs. SEBI (Order dated January 27, 2014), wherein Hon'ble SAT held as under:

> *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15-J of the SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure".*

66. In view of the above, I find no merit in the contention of the Noticees that non-disclosure had not caused any loss to investors. I find that the Noticees had executed shares in the off-market and considering the large number of shares involved in such dubious deals and that the shares were sold outside the mechanism of stock exchange in contravention of the provisions of the Law, I am of the view that the Noticees should be penalised suitably for the said acts of omissions and commissions.

67. It is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision. I note that, in the facts and

circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticees would create information asymmetry, at relevant times and the failure to make disclosure as found in this case would also defeat the purpose of the provisions of SEBI (SAST) and SEBI (PIT) Regulations.

68. As regards the charge of price manipulation in the scrips of Sampada and Urja by the Noticees, I am of the view that people who indulge in manipulative, fraudulent and deceptive transactions, or abet in carrying out such transactions, which are fraudulent and deceptive in nature, should be suitably penalized for such acts of omissions and commissions.

ORDER

69. In view of the foregoing, after taking into consideration all the facts and circumstances and in exercise of power conferred upon me under Section 23I of SCRA read with Rule 5 of SCR Adjudication Rules and Section 15I of SEBI Act read with Rule 5 of SEBI Adjudication Rules, I hereby impose a penalty on the Noticees as under:

Sl. No.	Name of the Noticee	Penalty amount in ₹ and words	Penal provisions
1	Jinesh Devendra Bhatt	5,00,000 (Rupees Five Lakhs only)	Section 23H of SCRA
		4,00,000 (Rupees Four Lakhs only)	Section 15A(b) of SEBI Act
		5,00,000 (Rupees Five Lakhs only)	Section 15HA of SEBI Act
2	Tarunkumar Gurucharan Brahmbhatt	2,00,000 (Rupees Two Lakhs only)	Section 15A(b) of SEBI Act

Sl. No.	Name of the Noticee	Penalty amount in ₹ and words	Penal provisions
		5,00,000 (Rupees Five Lakhs only)	Section 15HA of SEBI Act

70. The said penalty imposed on the Noticees, as mentioned above is commensurate with the violation committed by the Noticees and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

71. The Noticees shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link. ENFORCEMENT → Orders → Orders of AO → PAY NOW

72. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

73. In terms of Rule 6 of the SCR Adjudication Rules and SEBI Adjudication Rule, copies of this order are sent to the Noticees and to SEBI.

Date: December 28, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER