BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/AA/2021-22/12405]

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

In respect of

Nirmal Kotecha (PAN: AEZPK2016H)

In the matter of Pyramid Saimira Theatre Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation to ascertain the violations, if any, of the provisions of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the '**SEBI Act**') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the '**PFUTP Regulations, 2003**') by certain entities while trading in the scrip of Pyramid Saimira Theatre Limited (hereinafter referred to as "**PSTL / the company**") during the period from June, 2008 to December, 2008 (hereinafter referred to as '**investigation period**').

2. It was observed that, there were several media reports on December 21 and 22, 2008 that SEBI had directed Mr. P. S. Saminathan, one of the promoters of PSTL, to make an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter

referred to as "**SAST Regulations**") for an additional 20% stake at a price not less than Rs. 250/- within 14 days, for allegedly violating creeping acquisition norms. With the reports in the media appearing about the impending offer at Rs. 250/-, the price of the shares of PSTL increased on December 22, 2008, when the stock markets opened for the day. On December 22, 2008, PSTL first informed BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") that the company had not received any communication from SEBI regarding the media reports on Open Offer. BSE disseminated the said disclosure made by PSTL at 10:28:04 AM on December 22, 2008 on its website, while NSE disseminated the same at 10:30:00 AM on the same day.

3. Subsequently, on the same day, i.e., on December 22, 2008, at around 10:30 AM, PSTL received the alleged SEBI order directing Mr. P. S. Saminathan to make an open offer. Mr. P.S. Saminathan informed BSE and NSE on December 23, 2008 about receipt of the aforesaid letter from SEBI. In this regard, on December 23, 2008, SEBI issued a Press Release clarifying that SEBI had neither issued a letter nor an order to Shri P.S. Saminathan for the said open offer and that the said letter was apparently circulated with ulterior motives. SEBI lodged an FIR with regard to forgery of the SEBI letter at Bandra Kurla Police Station, Mumbai and also initiated an investigation into the matter.

4. The investigation by SEBI, *prima facie*, revealed that the forgery was done to manipulate the stock price of PSTL and that Mr. Nirmal Kotecha (hereinafter referred to as '**the Noticee'**), one of the promoters and the then largest shareholder of PSTL, was one of the major beneficiaries of the said manipulation and appeared to have masterminded the forgery. It was further observed that several persons/ entities directly and indirectly related to Mr. Nirmal Kotecha had purchased shares of PSTL on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008, i.e., after the price rise in the PSTL

shares on December 22, 2008 consequent to the publication of news about the forged SEBI letter. It was also found that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price rise which occurred due to publication of the forged SEBI letter as well as the price fall which occurred due to a clarification on media reports on Open Offer provided by Mr. P.S. Saminathan to the stock exchanges (BSE and NSE) that the company had not received any communication directing Mr. P. S. Saminathan to make open offer.

5. Pending investigation, SEBI vide an *ad interim ex parte* order dated April 23, 2009 (hereinafter referred to as "**the interim order**") issued under Sections 11, 11B and 11(4) of the SEBI Act *inter alia* directed 257 entities and their proprietors/ partners/ directors who *prima facie* appeared to have played a role in the forgery of the SEBI letter, dissemination of the information contained in the forged letter to the media, misleading the media to believe in the authenticity of the information that was circulated to them, carrying out suspicious banking transactions, carrying out and disguising his manipulative intent and gaining advantage from the forgery and to have channelled funds either directly or indirectly in the stock markets for manipulating the scrip of PSTL, to not to buy, sell or deal in the securities market including in Initial Public Offerings, in any manner, either directly or indirectly, till further directions.

6. Pursuant to Investigation, Adjudication Proceedings were initiated against the Noticee in respect of aforesaid manipulative activities of the Noticee in the scrip of PSTL and it was alleged that the Noticee had violated the provisions of Section 12 A of SEBI Act, 1992, and Regulations 3 (a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), (b), (d), (e), (f), (g), (k) and (r) of PFUTP Regulations, 2003. It was also alleged that the Noticee did not comply with the disclosure requirements stipulated under SAST Regulations and SEBI (Prohibition of Insider Trading) Regulations 1992 (hereinafter referred to as the '**PIT Regulation'**) and had violated the provisions

of Regulation 7(1A) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

7. Ms. Barnali Mukherjee was appointed as the Adjudicating Officer under Section 15I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under Section 15HA of the SEBI Act for the alleged violation of the provisions of SEBI Act, PFUTP Regulations, 2003, SAST Regulations, 1997 and PIT Regulations, 1992 by the Noticee. Pursuant to the transfer of the case to different Adjudicating Officers, the undersigned has been appointed as the Adjudicating Officer in the present matter vide order dated August 09, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. A Show Cause Notice (hereinafter referred to as "**SCN**") dated May 11, 2012 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA and Section 15A(b) of the SEBI Act for the alleged violations specified in the SCN.

9. It was alleged in the SCN that:

    (i) During the six-month period immediately prior to the forged SEBI letter that was sent to P.S. Saminathan, the Noticee used his fronts/ associated persons/ entities to carry out circular, synchronized and reversal transactions in an attempt to artificially push up the volumes in the scrip of PSTL;

(ii) The Noticee connived with his associated persons to form a group using low income background persons as fronts in his bigger plan of manipulation of PSTL scrip so that he could offload his huge stake in the PSTL scrip;

(iii) the Noticee had planned and executed the scheme of forgery involving the forged SEBI letter that was sent to P.S. Saminathan, the then CMD of PSTL with the involvement of the persons working with him;

(iv) the Noticee connived with Rakesh Sharma, an executive from Adfcators PR Pvt. Ltd., a PR agency, Rajesh Unnikrishnan, a reporter with the Economic Times and Dharmesh Shah, his childhood friend from Cochin to offload his large stake in PSTL on December 22, 2008 when the market opened at artificially inflated price as against the last traded price and earned a sizeable profit, by forgery and by dissemination of the false information contained in the forged letter to the media in an attempt to mislead the media to believe in the authenticity of the information that was circulated to them;

(v) Persons/ entities related/ associated with the Noticee had accumulated PSTL shares between December 16 to 19, 2008 and off-loaded most of their holdings on December 22, 2008 and were amongst the net sellers in PSTL scrip;

(vi) The Noticee along with persons/ entities associated with him off-loaded substantial holdings in PSTL shares from the consequent trading interest which got generated by the publication of forged SEBI letter.

(vii) The Noticee made wrong / delayed disclosures in respect of change in his shareholding in PSTL during October 24, 2008 to December 31, 2008 and, thereby, violated Regulation 7 (1A) of SAST Regulations, 1997 and Regulation 13 (3) read with 13 (5) of PIT Regulations, 1992.

10. I note, that during the course of the present proceedings, the Noticee had requested for requested for copies of documents and cross examination of various entities in the matter. In this regard, the Noticee was informed that the inspection of relied upon documents and cross examination of the entities whose statements were relied upon was done by him in the parallel proceedings before the Hon'ble Whole Time Member of SEBI. Since the subject matter of the instant Adjudication Proceedings and the parallel proceedings before the Hon'ble Whole Time Member is based on the same facts and circumstances, it is observed that the Noticee already taken inspection of relied upon documents and done cross examination of entities whose statements are relied upon.

11. Thereafter, I note that the Noticee has submitted written submissions with respect to the allegations in the SCN vide letters dated January 12, 2021 and January 25, 2021. I also note that the Noticee has availed of the hearing opportunity before the undersigned on January 12, 2021, wherein the Authorised Representatives of the Noticee reiterated the submissions made by the Noticee. The Noticee has *inter alia* made the following submissions in the said letters:

(i) *All the trades carried out by the Noticee were in normal and due course without any mala fide intent. The Noticee further denies any financial relations/connections with any of the entities or persons named in the SCN. The arbitrary and/or erroneously approach adopted by SEBI by naming those entities/ persons as a group/related entities/associates of the Noticee, is completely devoid of merit and ought to be withdrawn immediately.*

(ii) *The allegation of using Mr. Amol Kokane ('AK') as front entity is a completely baseless allegation. Individuals have been linked with the Noticee without any cogent evidence and to depict the attempt of the investigations to prove the pre-determined beneficial theory.*

(iii) *The Noticee had met AK for the first time when employee of the Noticee, late Mr. Sandeep Gavhane had met with an accident and was hospitalized in the month of October, 2008. Before that he never had any interaction with AK leave apart any possibility of the Our Client using him as his front entity. The same is evidenced by the statement of AK and the cross examination of AK wherein he has stated that the trading account of AK with Indian Capital Market Private Limited was opened by his brother-in-law late Mr. Sandeep Gavhane and the transactions in this account were done by late Mr. Sandeep Gavhane. There is no proof or logical explanation as for how AK has acted as his front entity.*

(iv) *It is clarified that Mr. Ghavane was never the employee of Kotecha Capital Services Private Limited as has been contemplated. It is submitted that during the course of investigations it has been repeatedly stated before the Investigating Authority that Mr. Ghavane was appointed as the Noticee's personal accountant and was never an employee of KCSPL and this fact seems to be neglected by investigation authority as the erroneous observation of late Mr. Sandeep being an employee of the KCSPL continues as an observation in the present SCN.*

(v) *In the month of May 2009 i.e. after the SEBI officials recorded his statement on February 27, 2009 AK came to the Noticee and handed over a copy of a letter dated May 06, 2009 addressed to Dr. K. M. Abraham, Whole Time Member, SEBI which as per him was the truth in which he categorically stated that all the statements given by him on February 27, 2009 were given under force and coercion of the SEBI officials. Further, he also stated that after giving the statements he felt heavy at heart as he had been forcibly asked to give certain statements against Our Client and that he in order to bring an end to the traumatic treatment offered to him by the SEBI officials had written and signed the statements as desired by the SEBI officials. Upon plain reading of the letter it is clear that the statements taken earlier were under fear, coercion and undue influence of the SEBI officials and therefore ought not to be relied upon.*

(vi) *The Noticee has no link with the banking transactions executed in the account of AK and thus no allegation can be levied against him in relation to the same.*

(vii) *PSTL, was one of the fastest growing entertainment company and volume generated in the scrip during the period mentioned in the paras under reference*

could be because of various positive announcements, and/or because of its improved financials presented by the Company during the relevant point of time. There could many factors which could be responsible for increased volume in the scrip of PSTL during the period under reference; however the SCN has presumed (without any evidence) that, the volume surge had to do with the Noticee's trading.

(viii) *The SCN has failed to show independent connection between him and /or connected group of entities, so as to allege that there existed any prior understanding or prior meeting of minds between the entities/individuals, regarding synchronization of trades. The alleged synchronised trades between the purported connected entities are very few to use the same as a basis of drawing connection between independent and separate parties.*

(ix) *The statement of Mr. Rakesh Sharma does not confirm to the standards and procedures established as per the provisions of Section 11C of the SEBI Act and hence has no probative value and is merely hearsay and hence cannot be relied in the present case.*

(x) *Wrong findings have been made against the Noticee with regard to the alleged meeting of him with Mr. Rakesh Sharma and Mr. Rajesh Unnikrishnan. The said finding has been made based upon the mobile tower locations of their numbers. The tower location determines location of the device used by the individuals and not the individual himself. As pointed out hereinbefore the tower locations as indicated by the call data records only confirms the presence of the recipient mobile in the range of the disseminating tower which is 35 Kms. As per the Newsletter of the Pollution Control Board, it does not and cannot indicate whether a person has met the inspite of the proximity of the disseminating towers.*

(xi) *The allegation that the e-mail containing the said SEBI letter was sent by Rakesh Sharma from Noticee's residence is denied.*

(xii) *The Noticee denies that he had masterminded the forged SEBI letter that was send to Shri Saminathan or that he had any role whatsoever in the forgery of the SEBI letter or in the process of sending the same to Shri Saminathan. Please note that forgery is a serious offence of criminal nature and cannot be alleged, based on whims and fancies without any supporting evidence. It is pertinent to note that, in case there was any probable evidence in existence or there was any sanctity in*

the proposition canvassed by SEBI, Our Client would have been definitely observed to have been involved in such alleged activity by the Mumbai Police, which is a competent authority for investigating the forged letter of SEBI. From the perusal of the charge sheet it can be seen that there is no mention of the name of Our Client in terms of his involvement in any of the alleged nefarious activities or forgery of the SEBI letter.

(xiii) *The Noticee had been selling shares in PSTL from June 2008 onwards in the month of June 2008, October 2008, and November 2008 December 2008 and continued selling up till January 2009. The Noticee had sold 30,80,442 shares in BSE and 11,16,574 in total 41,97,016 shares before December 22, 2008 and 22,84,377 shares in BSE and 23,79,504 in NSE in total 46,63,881 shares post December 22, 2008, thus it cannot be in any manner be stated that, the Noticee was part of the alleged design vide which the purported forged letter was circulated and he took undue by offloading a part of his holding on December 22, 2008 . Please note had it been the case where the Noticee was a part of the alleged forged letter circulation then he neither would have not sold a single share between the period of June - December 22, 2008 nor would have contributed in such meagre volume generated on December 22, 2008.*

(xiv) *The relevant disclosures under the SAST Regulations, 2011 and PIT Regulations, 2015 has now been made by the Noticee on May 31, 2017 to the Stock Exchange. It is also submitted that no loss has been caused to any investor or group of investor because of such delayed disclosure by the Noticee.*

12. I note from above that the Noticee has filed written submissions in the matter and has also availed of hearing opportunity. In view of the same, I now proceed further in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the charges levelled against the Noticee, their reply and the documents / material available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated Section 12A of SEBI Act, Regulations 3 (a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), (b), (d), (e), (f), (g), (k) and (r) of PFUTP Regulations, 2003, Regulation 7(1A) of SAST Regulations, 1997 and Regulation 13 (3) read with 13 (5) of PIT Regulations, 1992?

(b) Do the violations, if any, attract monetary penalty, as applicable, under Section 15HA and Section 15A(b) of the SEBI Act?

(c) 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?

14. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations as below:

Section 12A of SEBI Act

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

12A. No person shall directly or indirectly

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

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

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

PFUTP Regulations, 2003

Regulation 3: - 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: - Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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

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

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

PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. Continual disclosure.

(3) Any person who holds more than 5% shares for 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.

…

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within [two] working days of :

(a) the receipts of intimation of allotment of shares, or

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

SAST Regulations, 1997

7. Acquisition of 5 per cent and more shares or voting rights of a company.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges

where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.
Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

15. Before proceeding further, I note that the Noticee had requested for copies of various documents in the matter and also cross examination of various entities in the matter. In this regard, it was noted that inspection of relied upon documents and cross examination of entities whose statements were relied upon were already undertaken by the Noticee in the parallel proceedings before the Hon'ble Whole Time Member of SEBI. I note that the Noticee had cross examined 6 persons namely Dharmesh Shah, Mittal Acharya, Amol Kokane, Darshan Desai, Nirmal Shah and SEBI Officer Ansuman Dev Pradhan in the matter. Since the subject matter of the present Adjudication proceedings and the proceedings before the Hon'ble Whole Time Member of SEBI is based on the same facts and circumstances, I note that the Noticee has taken inspection of relied upon documents and cross examination of the relevant entities. In view of the same, I note that the Principles of Natural Justice have been duly complied with in the present matter and the Noticee has also availed of hearing opportunity before the undersigned.

16. I note that it was alleged in the SCN that Amol Kokane (AK) was being used by the Noticee as his front entity. When SEBI recorded his statement at his residence on February 27, 2009, AK admitted that the Noticee was operating all his accounts. Further, AK in his statement claimed to have opened a share trading account with the broker M/s. India Capital Markets Pvt. Ltd. (ICMPL) on the recommendation of his late brother-in-law, Mr Sandeep Gavhane (SG), who was working as an accountant with M/s. Kotecha Capital Services Pvt. Ltd. In his

statement, AK had also claimed that SG was operating that account for his boss (the Noticee) and that his brother-in-law used to take his signatures on forms and documents. AK had further claimed that he does not have any idea about the share market, that he has never visited the broker's office, and that he had never given any order (buy or sell) to the said broker. AK further stated that his account was operated by SG, till SG met with an accident on October 16, 2008 and had to be hospitalized. He further claimed that after the death of SG on November 01, 2008, the Noticee was operating his share trading account and also his bank account.

17. SCN further alleges that the Noticee claimed in his statement to SEBI that the mobile number 9819988816 belonged to him. However, as per the information obtained by SEBI from the telecom service provider Vodafone, the mobile number 9819988816 is registered in the name of AK with address - 622/B, Kushaba Kale Chawl, N.M. Joshi Marg, Byculla, Mumbai — 400027. AK had claimed in his statement to SEBI that he was a student of an Engineering College at Navi Mumbai and that he did not have any personal income. The family's annual income as disclosed in the Client Registration form of the broker ICMPL was in the range of Rs. 1-5 lakh only. On the other hand, it is observed that cash payments of as high as Rs. 40,000 in a month were made towards charges incurred on the aforesaid mobile number 9819988816. AK has further stated in his statement to SEBI that the mobile number 9819988816, which was registered in his name, was never used by him nor his brother-in-law, but was used by his brother-in-law's office staff at M/s. Kotecha Capital Services Pvt. Ltd.

18. It is further alleged in the SCN that the fund trail of AK's bank account held with Bank of India, D.N. Road branch (A/c no. 001710100058428) revealed that AK had received Rs. 10 lakhs from the bank account of one M/s. Om Associates held with Axis Bank on September 10, 2008. AK, vide his statement dated June 25,

2009, has confirmed that from January 01, 2008 to February 02, 2009, no funds in the said account were deposited by him and his family. A perusal of the bank account statement of M/s. Om Associates revealed that transactions running into crores of rupees were routed through that account of M/s. Om Associates. Investigations revealed that M/s. Om Associates does not carry any bonafide business activity. Further, it was found that the funds that were transferred from the bank account of M/s. Om Associates to the bank account of AK, were ultimately routed to the stock market through the broker ICMPL. It is observed that this client account of AK with the broker ICMPL was opened in his name on September 12, 2008, and on the very same day, it was also found that the Noticee too had opened a new client account with ICMPL.

19. I note that it is alleged in the SCN that a perusal of the statement of the Bank of India account of AK for the period September-October 2008 revealed that funds were transferred to the account of AK through cheques issued from the bank accounts of various persons / entities. It is observed that one such cheque bearing no. 769790 for Rs. 18 lakhs drawn on Indian Overseas Bank, Kalbadevi branch was credited in the bank account of AK on October 15, 2008. Investigations revealed that the said cheque was issued to AK by one Jignesh Amrutbhai Patel of Classic Enterprises. Investigations further revealed that the pay-in-slip dated October 14, 2008 used for depositing the said cheque into the account of AK was not deposited at D.N. Road branch of Bank of India, where AK's account was held, but was deposited at the Bandra Kurla Complex branch of Bank of India. Further, it is observed that on the said pay-in-slip, local contact phone number details were mentioned as: Tel Number: 22886202 and Mobile Number: 9867076307. Investigations carried out by SEBI have revealed that landline number 22886202 mentioned on the pay-in-slip was the landline number of M/s. Kotecha Capital Services Pvt. Ltd. The mobile number 9867076307 mentioned on the pay-in-slip belonged to one Ghanshyam Yadav, who worked

as a peon at Kotecha Capital Services Pvt. Ltd. This further confirmed that AK's bank account was operated on behalf of the Noticee.

20. In view of the above, it was alleged that the Noticee was the ultimate beneficiary of the Rs.10 lakh that were transferred from M/s Om Associates' account to AK's account on September 10, 2008. It was noted that these funds were ultimately routed to the stock market through the broker ICMPL. Therefore, it was alleged that the funds which were routed to the stock market through the account of AK and M/s Om Associates belonged to the Noticee and that AK's trading account as well as bank account were operated on behalf of the Noticee. AK in his statement dated June 25, 2009 had also stated that he has not filed any Income Tax and has also not paid any advance tax. From all the facts, it was alleged that the Noticee used AK as the front entity to camouflage his manipulative activities in the scrip of PSTL.

21. The Noticee in his submissions has stated that he had met AK for the first time when late Mr. Sandeep Gavhane had met with an accident and was hospitalized in the month of October, 2008. Before that he never had any interaction with AK. The Noticee has contended that the same is evidenced by the statement of AK and the cross examination of AK wherein he has stated that the trading account of AK with ICMPL was opened by SG and the transactions in this account were also done by SG. Thus, the Noticee has submitted that there is no explanation to show that AK has acted as his front entity. The Noticee has further contended that it has been expressly stated by AK during the cross examination, that, his late brother-in-law SG wanted to trade in securities market, however as he was not allowed to do so, SG requested AK to open an account in his name so that, he could trade in securities market and derive profits form the same. AK has further stated in his cross examination that after the death of SG, the trades in the account were done by one Mr. Darshan Desai. The Noticee has also relied on AK's statement dated June 25, 2009, wherein he has stated that he had

received the payout of Rs. 4,29,000/- from ICMPL trading account which was deposited in Abhyudaya Bank (Fort) on the name of sister Nirmala Sandeep Gavhane (wife of SG).

22. The Noticee in his reply further stated that on bare perusal of the statement recorded by SEBI officials, it can be deciphered that assuming Noticee was using AK's account as his front then the cheque amounting to Rs. 4,29,000/- as discussed in the said statement should have been received by Noticee instead of AK himself or in any event would not have been transferred to the account of Mrs. Nirmala Gavhane who is not even alleged to be connected to the Noticee. According to the Noticee, on June 25, 2009 when the second statement of AK was recorded, not a single question was asked to AK regarding discrepancy in the facts stated by him in his statement dated February 27, 2009 and the statement of Darshan Desai. In fact, the only question that was asked to AK regarding his trading account is regarding the receipt of payout from ICMPL to which AK has answered that he did receive the payout. No questions were asked about any flow or transfer of funds by AK to the Noticee nor was any attempt made at any time to establish how the Noticee used/had the benefit of or access to the gains earned by the alleged connected entities at the alleged behest of the Noticee.

23. The Noticee has claimed that he never operated AK's trading account and has not derived any benefit directly or indirectly there from. The Noticee in his submissions has admitted that was using a phone number that was registered in the name of Amol Kokane. This number was admittedly used by the Noticee and even in his statement to SEBI, the Noticee admitted to using the said number. The Noticee has stated that since he was admittedly using and paying the charges in respect of Mobile No.+91 9819988816 there is no question or need to examine whether AK or his family were in a position to pay the charges in respect

of the same. Further no negative inferences can be drawn against him merely because the number +91 9819988816 was used by the staff of his company.

24. The Noticee has also denied the allegation that the funds which were routed to stock market through AK and M/s Om Associates belonged to the Noticee and stated that the SCN has not produced any evidence on record to establish the allegation levied upon him. The Noticee cannot be linked to the banking transactions of AK merely because one of the pay-in-slips had the landline number of KCSPL and mobile no. of a peon Ghanshyam Yadav, who worked with KCSPL, mentioned on it. Merely because of the mention of these numbers on the pay-in-slip of the cheque deposited, it cannot make the Noticee connected to AK's transactions. Mr. Ghanshyam was working with the Noticee as a peon and was directly reporting to SG and it appears that SG must have delegated the work to him. It would not be out of place to mention that other than the mention of the numbers, SEBI has no other evidence on record to justify all allegations that the account was opened on behalf of Our Client.

25. I have noted the charges in the SCN, the statements of the Noticee and AK and the submissions made by the Noticee. In this regard, I note that the Noticee initially claimed in his statement that mobile no. 9819988816 belonged to him. However, when confronted with the information obtained from Vodafone, that the number belonged to AK, he accepted that the mobile number belonged to AK and stated that he has been using this number for avoiding calls from media and market people and the same is not illegal. However, I note from available records that the mobile number 9819988816 has been used to contact and receive calls and sms from / to market people and therefore, I note that the said mobile number was also used for business purposes. In view of the same, I do not find any justification for the Noticee to have used the number of AK as if it was his own and inconsistent responses by the Noticee in his statements do lead to an inference that he had dubious intentions.

26. I also note that the Noticee was specifically asked by SEBI, to name all employees (past / present) working with him, vide summons dated July 08, 2009 and July 31, 2009. In response to the summons, the Noticee vide reply dated August 12, 2009, stated that the following persons were/ are working with him:

(i) Anil Raj (since last 2.5 years approx.)

(ii) Ruma Kinariwala (since last 1.3 years approx.)

(iii) Ms. Mittal Acharya (since last 1.5 years approx.)

27. I, therefore, note that the Noticee did not submit the name of SG, as a person who was working with him, in the said reply. It was only, vide letter dated August 25, 2009, that the Noticee submitted that inadvertently the name of Sandeep Gavhane was missed out. I have also noted the fact that in its response dated May 15, 2009 filed after the interim order dated April 23, 2009, Kotecha Capital Services Private Limited (KCSPL) has submitted to SEBI that SG was never its employee. KCSPL was incorporated on July 20, 2007 wherein Nirmal Kotecha, Shweta Kotecha and Manilal Kotecha held 9800, 100 and 100 shares respectively. Thus, the Noticee was in control of KCSPL and his initial submission was to mislead the regulatory investigation by stating that SG was not an employee of KCSPL. However, contrary to his initial stand, the Noticee subsequently made a submission that SG was an accountant of KCSPL.

28. I note that the Noticee has further relied on the statement of AK during his cross-examination to the effect that SG had opened the account in the name of AK for his own trading purpose, as SG had trading restrictions arising out of his employment. However, I note that the Noticee also opened a trading account on the very same day on which AK's account was opened with the same broker ICMPL. I further note that Darshan Desai of ICMPL was otherwise connected to the Noticee, as brought out later in this order. I also note that the size of transactions carried out in the bank account of the AK were not in tune with the

status of AK being a student. Some of the illustrative transactions carried out in the bank account of AK as alleged in the SCN, are as follows:-

(i) Received Rs. 10 lakhs from the bank account of one M/s. Om Associates held with Axis Bank on September 10, 2008.

(ii) Received Rs. 18 lakhs from the bank account of Jignesh Amrutbhai Patel of Classic Enterprises held with Indian Overseas Bank on October 14, 2008.

(iii) Received Rs. 15 lakhs as loan from Nigam V. Shah in October 2008.

(iv) Received Rs. 2.75 lakhs as loan from Hemal Gandhi in October 2008.

(v) Received credit of Rs. 12 lakhs from Janak H. Chitalia of M/s. J.H. Chitalia & Co. on October 10, 2008.

(vi) Loan of Rs. 50 lakhs given by Amol Kokane to Nikhil Securities Limited (Nikhil) during this period was stated to be refunded back by Nikhil to Amol Kokane vide cheques, the details of which are tabulated as below:

Cheque Date	**Cheque No.**	**Cheque Amount**	**Name of the bank**
2/3/2009	103148	10,99,060	Standard Chartered
3/3/2009	103149	8,00,000	Standard Chartered
4/3/2009	103150	8,00,000	Standard Chartered
5/3/2009	103151	8,00,000	Standard Chartered
6/3/2009	103152	8,00,000	Standard Chartered
7/3/2009	103153	8,00,000	Standard Chartered
Total		**50,99,060**	

29. From above, I am of the view that all the circumstances and transactions reasonably lead to the inference that the Noticee had directed SG to open an account in the name of AK and used AK as his front for trading in PSTL. I also note that Investigation revealed that the funds from the account of AK were transferred to the account of M/s Nikhil Securities, an entity connected to the Noticee. I note that Nikhil Securities, acting as a front of the Noticee, had traded in certain identified scrips of interest to the Noticee, such as SEL Manufacturing Company, Usher Agro Ltd and PSTL. The investigation had also identified that Nikhil Securities had sustained loss to the tune of Rs. 39,62,997.30, as a result of its trades in the scrips of PSTL and SEL, as on October 10, 2008.

30. I note that Nikhil Securities Ltd claimed that the said amount of Rs.50 lakhs was received from AK in the form of a loan and they have repaid the said amount. However, it is noted that the said cheques are yet to be cleared, which means that the cheques were not encashed. This also confirms the position that AK had not sent the cheques for collection thereby falsifying the case of the Noticee that it was a loan transaction between AK and Nikhil Securities. I observe that the reply of the Noticee does not give any explanation to this part of the allegations except stating that AK is not connected to him. Therefore, I am of the view that the fund transfer from AK's account to Nikhil Securities, which is another front entity of the Noticee, was done at the instance of the Noticee.

31. I am also of the view that SG, who was an accountant with the Noticee, could not have acquired a financial wherewithal within a short period of 3-4 months, between September 2008 to December 2008, to do transactions of this magnitude without the patronage and support of the Noticee. I have noted that AK in his statement dated February 27, 2009 had stated that initial salary of SG was Rs. 7,000 and last salary was Rs. 12,000 and therefore, I note that SG did not have sufficient means to enter into these transactions. Therefore, I find that neither AK nor SG had the financial strength to put through trades of such large amounts. The Noticee was admittedly using the mobile number of AK, while SG, who was the Noticee’s employee, opened the account in the name of AK with the same sub- broker ICMPL as that of his employer, i.e., the Noticee. I have also noted that large sums of money were transferred in and out of AK's bank account, without the financial means or other supporting reasons to back them up. I have further noted that the Noticee suppressed SG's name consciously while furnishing details of his employees during the investigation. After a due consideration of the above factors and circumstances, I find that the trading account and the bank account of AK and the mobile number of AK were actually being used by the Noticee for his trades.

32. The next allegation in the SCN was that the Noticee, as on May 31, 2008, held about 85 lakh shares representing about 30% of the share capital of PSTL which he was keen to dispose of. It was alleged that he used AK and also some other entities besides AK as his front entities for trading in the shares of PSTL to generate investor interest in the scrip of PSTL with a view to enable him to off load his large holding in PSTL shares. It was alleged that artificial volumes by fraudulent modes were put in the system through persons namely Amol Anand Kokane, Priyanka Darshan Desai, Ankit Girishkumar Vasani, Falguni Jayesh Shah, Inventure Growth & Securities Ltd., DKG Securities Pvt. Ltd., Milanbhai Hardik, SPJ Stock Broker Pvt. Ltd., B.K. Shah, APL Infrastructure Ltd., M/s Standard Securities &Investment Intermediaries Ltd., Transglobal Securities Ltd., MBL & Co. Ltd., Mansukh Securities & Finance Ltd., and Uttam Financial Services Ltd. (Mansukh Stocks Brokers Ltd.). They had also reversed their positions on the same day by executing synchronized / structured deals whereby the entities had nil / negligible trading positions on most of the trading dates which resulted in negligible pay-in positions, from their side, on the stock exchanges. SCN further alleged that in order to generate trading interest in the scrip, the Noticee also planted false news through his media contact.

33. In response to the said allegations, the Noticee *inter alia* denied any kind of link/connection/association with any of these entities. Particularly, when no cross examination was offered to the Noticee, such statements cannot be relied upon. The Noticee further submitted that synchronised trades between the purported connected entities are very few that it cannot form a basis of drawing connection between independent and separate parties. The Noticee has contended that the SCN has not brought out a single piece of evidence, which could establish connection and/or prior meeting of mind inter-se the purported connected entities and/or with him. Further, the SCN also failed to establish on record any evidence which could establish that the Noticee had facilitated trading by the purported

connected entities or that any of the purported entities were trading in the scrip of PSTL on the instruction of the Noticee either directly or indirectly. The Noticee has further denied that the Noticee had used his associated persons/entities to carry out circular and synchronised reversal transactions in his attempt to artificially push up the volumes in the scrip of PSTL as alleged.

34. With regard to the reversal, synchronized and circular trades executed between purported connected entities, the Noticee submitted that the SCN has failed to show independent connection between the alleged connected group of entities, so as to allege that there existed any prior understanding or prior meeting of minds between the entities/individuals, so as to allege synchronization of trades. Further, it was submitted that SEBI has not examined the entire order log and trade in respect of the trades conducted between the parties and only analyzed the trades on sample basis. Thus, the whole allegation of having executed circular and synchronized trades is based on partial analysis of data and must be dropped on the basis of the same.

35. I note that the SCN has brought out fraudulent trades executed in the scrip of PSTL through a web of inter-connected entities. The connections have been brought out by the investigation on the basis of analysis of trade and order log, fund movement from the account of one entity to another account, examination of certain entities, analysis of Call Data Records, etc. I note that certain entities who were examined by SEBI were not allowed to be cross-examined even though the Noticee had requested for the same and I do not wish to rely on the statements of those who were not cross examined by the Noticee.

36. It was alleged in the SCN that the Noticee used AK and also some other entities besides AK as his front entities for trading in the shares of PSTL to generate investor interest in the scrip of PSTL with a view to enable him to off load his large holding in PSTL shares. It is already established that Amol Kokane’s trading

account was actually operated by the Noticee. The data of trading done by AK in PSTL shares is represented in the table below:

	BSE	NSE	GROSS ACROSS BOTH EXCHANGES
BUY QTY BY AK	4,59,084	93,909	5,52,993
SELL QTY BY AK	4,21,974	1,31,019	55,29,93
NET QTY BY AK	37110	-37110	0
GROSS QTY BY AK	8,81,058	2,24,928	11,05,986
% Contribution of each exchange to AK's gross	79.66%	20.34%	100%

37. On examination of trades of AK, I note that that he had bought 4,59,084 shares and sold 4,21,974 shares in PSTL scrip during the said period (i.e., from June 1, 2008 to December 19, 2008) on BSE. On NSE, he had bought 93,909 shares and sold 1,31,019 shares during the same period. Hence, I note that his net trading position across both the exchanges taken together was Nil.

38. I note that a large proportion of AK's trading in the scrip was concentrated on three trading dates viz. 3-Nov-08, 4-Nov-08 and 5-Nov-08 as below:

Trading Dates	Buy Qty	Sell Qty	Gross Traded Quantity (B+S)
3-Nov-08	160883	155196	316079
4-Nov-08	152095	117828	269923
5-Nov-08	45222	64222	109444
for above 3 dates	358200	337246	695446
AK trades for the entire trading period (i.e. from June 1, 2008 to December 19, 2008**)**	**459084**	**421974**	**881058**
% of 3 dates on entire trading period vis-à-vis AK's trades in PSTL on BSE			**78.93%**

39. I note from above that the gross traded quantity of AK on the above three dates were 695446 shares as compared to his gross traded quantity of 881058 shares on BSE during the entire period of examination. The trades of AK on the aforesaid three dates constituted 78.93% of his gross trades on BSE in PSTL scrip during the relevant period. Upon the finding that out of a period of

seven months, almost 80% of the trading volume of AK is concentrated on these three days, the trades of AK on these three days were further examined. The counterparties of AK on each of the above trading dates were examined to ascertain whether he had executed any reversal trades and / or circular trades. I note that out of the list of fifteen entities who were found to be directly/ indirectly associated/ connected with the Noticee by virtue of trading pattern, nine entities namely Amol Kokane, S P J Stock Broker Pvt Ltd, Priyanka Darshan Desai, Ankit Girishkumar Vasani, Falguni Jayesh Shah, Inventure Growth & Securities Ltd., DKG Securities Pvt Ltd, Milanbhai Hardik and APL Infrastructure Ltd had connections with the Noticee other than by virtue of the trading in the shares of PSTL as brought out in the SCN. The said 9 entities are hereinafter referred to as AK entities. The connections of the entities with the Noticee are as follows:

(i) Ms. Priyanka Darshan Desai is the wife of Mr Darshan Desai, in whose name the Borivali (West) branch of India Capital Market Pvt Ltd (ICMPL) was registered. Her husband, Mr Darshan Desai did all the trading in her name. Mr Darshan Desai further arranged funds for the AK, through Mr Nitin Goradia, and, also stood as a guarantor for the same. Thus, it is seen that Ms. Priyanka Desai was indirectly connected to the Noticee through her husband Mr Darshan Desai and her Chartered Accountant Mr Nitin Goradia.

(ii) The Call Data Records of Mr Ankit Vasani's mobile number 9833884005 revealed that Mr Amit Joshi, the Branch Manager of Rashmi Building, Borivali (West) branch of ICMPL from his mobile number 9930002346 was in close touch with Mr Ankit Vasani on his mobile number 9833884005. Also, Mr Ankit Vasani was seen to be in touch with Sri Darshan Desai.

(iii) Falguni Jayesh Shah vide her letter has stated that her husband was trading in her name. From the trade and order log, it was observed that Falguni Jayesh Shah was executing reversal transactions with Priyanka Desai in PSTL scrip. Though Jayesh Kumar Chimanlal Shah declared his mobile number as 9324594069 and landline number as 20393631, investigation revealed that he had another mobile number 9322494242 also. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 revealed that he had received an incoming call from mobile number 9324594069 on December 24, 2008. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 further revealed that from mobile number 9322494242 of Jayesh Shah, Darshan Desai had received 4 Incoming calls/SMSes during the period. Further, Darshan Desai was regularly making outgoing calls to Jayesh Shah on mobile number 9322494242 and that too many times in a day. During the two month period Nov-Dec, 2008, Darshan Desai is observed to have made more than 150 outgoing calls/SMSes to Jayesh Shah. Further, Falguni Jayesh Shah's account with the Kapol Co-op. Bank Ltd. shows receipt of Rs. 4,76,340/- on Jan 23, 2008 from the account of Nitin Goradia HUF and the said funds were transferred to ICMPL on Jan 24, 2008. The Borivali (W) branch of ICMPL was being run in the premises of 202, B Wing, Goyal Shopping Centre, Borivali (W), Mumbai – 400092, which was owned by the said Nitin Goradia and lent on leave and license basis to ICMPL. The account of Falguni J. Shah with the Kapol Co-op. Bank Ltd. has been closed on Nov 13, 2009. Investigation further revealed that Nitin Goradia from his mobile number 9322233908 was also observed to be in close touch with Darshan Desai. The Call Data Records of Darshan Desai's number 9324540561 for Nov-Dec, 2008 revealed that Darshan Desai had made more than 50 outgoing calls/SMSes to Nitin Goradia on his mobile number 9322233908 and received more than 35 incoming calls/SMSes. The fact that Nitin Goradia HUF had transferred funds from his account to the account of Falguni J. Shah, which in turn, were transferred to ICMPL, clearly brings to light the fact that Falguni J. Shah was also one of the fronts of Nitin Goradia. Thus, here again it is observed that Falguni Shah was indirectly connected/ associated with Nirmal Kotecha through her husband Jayesh Kumar Chimanlal Shah, who in turn, was in touch with Darshan Desai. Also, her account shows that she had received funds from Nitin Goradia for trading purpose.

(iv) It was observed from the Schedule of Loans and Advances as on March 31, 2007 that Nirmal Kotecha had given an interest free loan of Rs. 25 lacs to Shanti Kanji Rita, who is the wife of one of the directors of Inventure, Kanji B. Rita. Thus, Inventure Growth & Securities Limited was having direct connection with the Noticee as he gave an interest free loan to inventure.

(v) Yatin Shah is not among entities who were involved in the creation of artificial volume and price in the scrip of PSTL. Yatin Shah is the connecting link between the Noticee and Milanbhai Hardik, SPJ Stock Brokers Pvt. Limited etc. In the SCN, it is alleged that as per the Schedule of Loans and Advances as on March 31, 2007 made available by Nirmal Kotecha, vide letter dated August 11, 2010, it is observed that Nirmal Kotecha had given a loan of Rs. 20 lacs to Yatin B. Shah. The Chartered Accountant had given a certificate stating that he had obtained all the information and explanation for the purpose of the Audit

(vi) The Call Data Records of Yatin Shah's mobile number 9890355693 revealed that he was in touch with Milan Mithani whose mobile number was 9374103518. It has further come to light that Milan Mithani from his mobile number had called up Nirmal Kotecha on his Amol Kokane's number on December 22, 2008. As submitted that all trading on behalf of Hardik Mithani was done by his father Milan Mithani, who had links with Nirmal Kotecha and Yatin Shah.

(vii) The Call Data Records of Nirmal Kotecha's Amol Kokane number revealed that he was in close touch with Radha Krishna Garg on his mobile number 9839084979 almost on a day-to-day basis. Radha Krishna Garg was an employee of DKG Securities Pvt. Ltd and used to take the trading decisions for DKG Securities Pvt. Ltd. SCN has brought out several instances of circular, reversal and synchronized traded by DKG Securities Private Limited.

(viii) The Call Data Records of Nirmal Kotecha's Amol Kokane number revealed that he was in close touch with Radha Krishna Garg on his mobile number 9839084979 almost on a day-to-day basis. Radha Krishna Garg was an employee of DKG Securities Pvt. Ltd and used to take the trading decisions for DKG Securities Pvt. Ltd.

(ix) The Call Data records of Yatin Shah's mobile number 9890355693 revealed that he has received calls from mobile number 9833178508 registered in the name of Pal Jain, on December 05, 2008 and Yatin Shah too had called on the said mobile number on December 02, 2008.

(x) APL Infrastructure (Pvt.) Ltd. is a promoter group entity of Bihar Tubes Ltd and Sanjay Gupta is the Managing Director of Bihar Tubes Ltd. An examination of Call Data Records reveal that Nirmal Kotecha was in close touch with Sanjay Gupta (Mobile No. 9810096439) from December 12, 2008 onwards and Nirmal kotecha was using the mobile number that was registered in the name of Amol Kokane.

40. I note that the market concentration of the AK entities in PSTL shares on BSE is as below:

S. No.	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty	% Contribution to Market
1	SPJ STOCK BROKER PVT LTD	27,46,250	27,46,275	54,92,525	8,55,50,058	6.42%
2	MILANBHAI HARDIK	17,95,004	17,95,004	35,90,008	8,55,50,058	4.20%
3	DKG SECURITIES PVT LTD	15,76,663	14,88,252	30,64,915	8,55,50,058	3.58%
4	INVENTURE GROWTH & SECURITIES LTD	9,07,634	9,15,719	18,23,353	8,55,50,058	2.13%
5	AMOL ANAND KOKANE	4,59,084	4,21,974	8,81,058	8,55,50,058	1.03%
6	APL INFRASTRUCTURE PRIVATE LTD	4,34,248	1,51,960	5,86,208	8,55,50,058	0.69%

7	ANKIT GIRISHKUMAR VASANI	2,24,367	2,24,367	4,48,734	8,55,50,058	0.52%
8	PRIYANKA DARSHAN DESAI	1,94,910	1,94,910	3,89,820	8,55,50,058	0.46%
9	FALGUNI JAYESH SHAH	1,40,265	1,40,265	2,80,530	8,55,50,058	0.33%
	Gross Total	84,78,425	80,78,726	1,65,57,151	8,55,50,058	19.36%

41. On the basis of the above table, I note that the above 9 entities constituted as much as 19.36% of the market gross traded quantity on BSE during the 6-month period taken for examination. I also note that SPJ Stock Broker and Milanbhai Hardik individually contributed as much as 6.42% and 4.20% of the gross market traded quantity during the relevant period and were the top two trading clients in the scrip on BSE.

42. The gross traded quantity of the AK entities during June 1, 2008 to December 19, 2008 on NSE was compared with the market gross traded quantity during the same period. The data is given below:

S. No.	Name of entity	Buy quantity in market	Sell quantity in Market	Gross quantity in market	Gross Market Traded Qty (all clients)	% Contribution to Market
1	HARDIK M MITHANI	17,47,056	18,01,026	35,48,082	9,28,43,518	3.82%
2	DKG SECURITIES PVT	13,81,895	15,43,197	29,25,092	9,28,43,518	3.15%
3	INVENTURE GROWTH	8,02,953	7,93,998	15,96,951	9,28,43,518	1.72%
4	APL INFRASTRUCTURE	2,80,000	2,288	2,82,288	9,28,43,518	0.30%
5	AMOL KOKANE	93,909	1,31,019	2,24,928	9,28,43,518	0.24%
5	PRIYANKA DARSHAN	35,255	35,255	70,510	9,28,43,518	0.08%
	Grand Total	43,41,068	43,06,783	86,47,851	9,28,43,518	9.31%

43. On the basis of the above table, I note that AK entities had constituted about 9.31% of the gross market traded quantity in the scrip of PSTL on NSE. Hardik Mithani and DKG Securities were the largest trading clients amongst the AK entities and they constituted 3.82% and 3.15% of the gross traded quantity on NSE respectively. In view of the above, I note that the AK entities had contributed

in a significant manner to the trading volume in the scrip of PSTL on both BSE and NSE during the relevant period.

44. I also note that the said entities had had bought and sold majorly from / to the same counterparties some of which are amongst the AK entities. For example, during the period from June 1, 2008 to December 19, 2008, SPJ Stock Broker Pvt. Ltd had purchased 27,46,250 shares and sold 27,46,275 shares on BSE. Examination of the major counterparties of SPJ Stock Broker Pvt. Ltd. revealed that it had purchased from the following major selling clients namely Milanbhai Hardik (3,40,103 shares), DKG Securities Pvt. Ltd. (1,86,657 shares), Matterhorn India Fund (1,39,318 shares), BK Shah (1,25,635 shares) and MBL & Co. Ltd. (96,337 shares). SPJ Stock Broker Pvt. Ltd. sold to the following major buying clients namely Milanbhai Hardik (4,48,856 shares), BK Shah (1,71,627 shares), MBL & Co. Ltd. (1,15,862 shares), M/S Standard Securities & Investment Intermediates Ltd. (1,02,958 shares) and Bihar Tubes Ltd. (65,315 shares). SPJ Stock Broker Pvt. Ltd. did not have any dealings in PSTL shares on NSE. Examination of the trades of SPJ Stock Broker Pvt. Ltd. with Milanbhai Hardik, BK Shah and MBL & Co. Ltd., on a sample basis revealed that these trades were in the nature of synchronized / structured and reversal transactions. Further, it is found that SPJ Stock Broker Pvt. Ltd. had bought and sold 79,259 shares in self-trades. I note that the SCN has noted similar trading pattern in respect of other AK entities also.

45. I also note that the SCN alleged execution of reversal trades amongst AK entities. I also note that the AK entities further executed reversal trades with few other entities alleged to have been connected to the Noticee. The entities with whom the AK entities allegedly executed reversal trades are Meet Shares and Stocks, B.K Shah and Co, M/s Standard Securities and Investments Ltd, Mansukh

Securities, MBL Co. Ltd, Transglobal Securities Ltd and Uttam Financial Services Ltd.

Date:	Name of the AK entity:	Buy/Sell	Counter-party AK entity:	No. of shares reversed:	No. of trades:
7-07-08	SPJ Stock Broker	Sell	Inventure Growth and Securities	22081	101
		Buy		18468	62
22-07-08	APL Infrastructure	Sell	SPJ Stock Broker	7060	10
		Buy		20,982	7
3-11-08	Falguni Jayesh Shah	Sell	Priyanka Desai	20,000	1
		Buy		19,900	2
4-11-08	Falguni Jayesh Shah	Sell	Priyanka Desai	25,847	1
		Buy		24,798	4
3-11-08	Priyanka Desai	Sell	Amol Kokane	27908	11
		Buy		36753	4
4-11-08		Sell		37987	12
		Buy		5,722	2
3-11-08	Amol Kokane	Sell	Inventure Growth	10,021	44
		Buy		7,041	68
4-11-08		Sell		5,014	17
		Buy		6,519	66
3-11-08	Amol Kokane	Sell	Ankit Girishkumar Vasani	6,700	4
		Buy		10,050	5
5-11-08		Sell		35,225	10
		Buy		5,238	10
18-12-08	Inventure Growth and Securities	Sell	APL Infrastructure	6,955	49
		Buy		9,909	23
30-06-08	SPJ Broker	Sell	Milanbhai Hardik	30,085	24
		Buy		52,661	27
4-07-08	Milanbhai Hardik	Sell	SPJ Broker	43,402	21
		Buy		11,969	6
7-07-08	SPJ Broker	Sell	Milanbhai Hardik	1,35,484	48
		Buy		1,03,753	47
8-07-08	Milanbhai Hardik	Sell	SPJ Broker	9,191	16
		Buy		45,920	13
9-07-08		Sell		36892	4
		Buy		67174	3
8-12-08		Sell		6232	2
		Buy		20,934	6
4-07-08	Milanbhai Hardik	Sell	DKG Securities	64482	25
		Buy		92090	6
7-07-08	DKG Securities	Sell	Milanbhai Hardik	4,19,211	
		Buy		11,537	
18-12-08	Meet Shares and Stocks	Sell	Milanbhai Hardik	19,679	3
		Buy		7,887	1
20-06-08	Milanbhai Hardik	Sell	BK Shah	11237	
		Buy		6,727	
4-07-08		Sell		22832	194
		Buy		36,070	63
07-07-08		Sell		46,051	
		Buy		9,854	
		Sell		21,199	118
		Buy		10,882	88

30-06-08	BK Shah	Sell	Milanbhai Mithani	28,849	
		Buy		17529	
		Sell		23001	233
		Buy		17492	88
8-07-08		Sell		8,022	
		Buy		5,927	
30-6-08	BK Shah	Sell	SPJ Stock Broker	22,462	234
		Buy		51197	392
9-07-08		Sell		15,048	98
		Buy		9,683	92
22-7-08		Sell		11,658	142
		Buy		9013	74
4-07-08	SPJ Stock Broker	Sell	BK Shah	7421	66
		Buy		4170	28
07-07-08		Sell		25,594	269
		Buy		24055	179
30-06-08	SPJ Stock Broker	Sell	M/s Standard Securities	8679	46
		Buy		10586	69
04-06-08		Sell		5697	29
		Buy		8159	17
07-07-08		Sell		30,953	143
		Buy		20597	103
08-07-08	M/s Standard Securities	Sell	SPJ Stock Broker	8915	47
		Buy		13024	41
09-07-08		Sell		17321	66
		Buy		13303	73
22-07008		Sell		18522	92
		Buy		18931	81
02-06-08	DKG Securities	Sell	BK Shah	11342	61
		Buy		17482	269
04-06-08	BK Shah	Sell	DKG Securities	14969	135
		Buy		8172	26
07-07-08		Sell		7445	21
		Buy		5631	11
04-07-08	SPJ Securities	Sell	Mansukh Securities	7362	18
		Buy		7332	17
07-07-08		Sell		15299	51
		Buy		11730	33
04-07-08	Milanbhai Hardik	Sell	Mansukh Securities	14,191	61
		Buy		10877	32
07-07-08		Sell		13582	38
		Buy		7365	15
04-07-08	Mansukh Securities	Sell	DKG Securities	7341	13
		Buy		6874	19
4-07-08	Milanbhai Hardik	Sell	MBL Co.	9301	62
		Buy		4508	36
07-07-08		Sell		35927	
		Buy		5574	
		Sell		19829	98
		Buy		6368	60
08-07-08		Sell		21680	58
		Buy		7001	24
		Sell		21638	

		Buy		11629	
04-07-08	Milanbhai Hardik	Sell	M/s Standard	11465	63
		Buy		9312	22
07-07-08		Sell		6707	40
		Buy		6161	37
08-07-08	M/s Standard	Sell	Milanbhai Hardik	6801	13
		Buy		11557	31
		Sell		7052	
		Buy		21658	
4-07-08	DKG Securities	Sell	M/s Standard	13009	9
		Buy		12635	34
7-07-08	Hardik Mithani	Sell	Transglobal	69200	
		Buy		13508	
		Sell		30947	73
		Buy		13625	37
7-07-08	SPJ Stock Broker	Sell	Transglobal	41143	154
		Buy		46350	121
7-07-08	SPJ Stock Broker	Sell	Uttam Financial	15890	91
		Buy		10910	82
9-07-08	Uttam Financial	Sell	SPJ Stock Broker	11738	33
		Buy		9412	44
7-07-08	SPJ Stock Broker	Sell	MBL	34871	205
		Buy		27230	189
8-07-08		Sell		19060	59
		Buy		10683	53
22-07-08	MBL	Sell	SPJ Stock Broker	10187	49
		Buy		9629	31

46. The SCN has also brought out instances of circular trades wherein AK entities Ankit Girishkumr Vasani, Amol Anand Kokane and DKG Securities Ltd. were found to be involved in circular with each other as below:

(i) On November 4, 2008, Amol Anand Kokane sold 40,363 shares of PSTL to Ankit Girishkumr Vasani.

(ii) On the same day, Ankit Girishkumar Vasani sold 41,019 shares to DKG Securities Pvt. Ltd. and DKG Securities Pvt. Ltd. in turn sold 31,538 shares to Amol Anand Kokane.

(iii) The aforesaid circular transaction involved 29 trades between the three Noticees. Some of the orders placed by Ankit Girishkumar Vasani, Amol Anand Kokane and DKG Securities Ltd. which resulted in large quantities of shares being traded amongst them were examined on a random and test check basis. The examination revealed that the orders were placed by the three entities in a synchronised manner so as to result in their orders getting matched in trades of large quantities of shares.

47. The SCN has also brought out instances of synchronised trades between AK entities, some of which are as below:

(i) On July 09, 2008 it was observed that SPJ Stock Broker Pvt. Ltd. had placed a buy order for 25,000 shares (at 2:46:27 P.M.) against which five entities namely B K Shah, Inventure Growth & Securities Ltd., Uttam Financial Services Ltd., M/S Standard Securities & Investment Intermediates Ltd. and MBL & Co. Ltd. placed 14 sell orders for 23,218 shares within a time gap two to nine seconds. The aforesaid buy and sell orders of the various entities got matched with each other resulting in 21,657 shares of PSTL getting traded amongst themselves.

(ii) Similarly, On July 09, 2008, Milanbhai Hardik placed sell order no.301822100000223581 for 36,000 shares (at 11:17:49 A.M.) against which six entities namely MBL & Co. Ltd., BK Shah, Mansukh Securities & Finance Ltd., Transglabal Securities Ltd., SPJ Stock Broker Pvt. Ltd. and M/s Standard Securities & Investment Intermediates Ltd. placed nine buy orders for 27,700 shares within a time gap 5 to 25 seconds. The aforesaid buy and sell orders of the various entities got matched with each other resulting in 22,685 shares of PSTL getting traded amongst themselves.

(iii) Further, on July 09, 2008, SPJ Stock Broker Pvt. Ltd. placed buy order for 15,000 shares (at 11:18:14 A.M.) against which entities namely Milanbhai Hardik, BK Shah and M/S Standard Securities & Investment Intermediates Ltd. placed 4 sell orders for 42,000 shares within a time gap zero to 25 seconds. The aforesaid buy and sell orders of the various entities got matched with each other resulting in 14,942 shares of PSTL getting traded amongst themselves.

48. I also note that the following AK entities executed trades wherein the very same entity was acting as buyer as well as seller. The summary of the self-trades by each of the AK entities is given below:

Name of entity	**Qty involved in self trades (net)**	**No. of self trades**
SPJ STOCK BROKER PVT LTD	79259	231
DKG SECURITIES PVT LTD	47925	4
INVENTURE GROWTH & SECURITIES LTD.	23299	1413
MILANBHAI HARDIK	7261	14
PRIYANKA DARSHAN DESAI	894	2
AMOL ANAND KOKANE	353	4
ANKIT GIRISHKUMAR VASANI	250	5
FALGUNI JAYESH SHAH	110	2
Grand Total	**159351**	**1675**

49. I note from the above circular, reversal, sychronised and self-trades in PSTL shares, which were executed by the AK entities as narrated above, that the Noticee used the AK entities in executing fraudulent/fictitious trades amongst themselves on various trading dates which resulted in manipulation of the price/volume in the shares of PSTL. They had also reversed their positions within a trading date by executing fraudulent/fictitious trades whereby the AK entities had nil / negligible trading positions on most of the trading dates which resulted in their having negligible pay-in positions on the stock exchange. This manner of trading by the AK entities enabled them to cause an appearance of artificial trading volume in the shares of PSTL without their having to invest in large number of shares or without their having to mobilize substantial sums of money for their manipulative trading.

50. The SCN also alleged that the Noticee along with Mr. Rakesh Sharma, Mr. Rajesh Unnikrishnan and Mr. Dharmesh Shah colluded in disseminating of the false information contained in the forged letter to the media. Investigation observed that the entities connected to the Noticee had significant trading activity

during July 2008 and on July 7, 2008, the market traded volume in the scrip was the highest on BSE. The reason for the sudden increase in the activity of entities connected to the Noticee during the first week of July 2008 was due to an article titled “Pyramid Saimira: US' Regal Entertainment, PEs eye 14% in Pyramid” in The Economic Times dated July 07, 2008 written by Rajesh Unnikrishnan along with Bobby Kurian. The article declared that the World's largest theatre chain, US-based Regal Entertainment Group and the private equity funds such as Bain Capital, Goldman Sachs and Texas Pacific Group were in talks with the promoters of PSTL to pick up around 14% stake in the company and that the deal, if concluded, will be in the range of Rs 250-300 crore. The article further stated that the Noticee, one of the promoters of the company, was in an exit mode and that NYSE-listed Regal Entertainment, controlled by billionaire Philip Anschutz and the PE funds are in discussions to pick up Noticee's stake in the company (which was stated to be around 14%) through a negotiated price of over Rs 350 per share. However, on the contrary, it is observed that PSTL had clarified to BSE on 7th July, 2008 that with reference to the news item appearing in a leading financial daily titled "US' Regal Entertainment, PEs eye 14% in Pyramid", the Company does not subscribe to any of the news expressed in those columns and the Company has nothing to do with this information, which seems to be a speculative report emanating from the media. Thus, I note that the Noticee through Rajesh Unnikrishnan had planted false news in the media through his contacts in media in order to generate interest in the scrip for common investors.

51. Based on the investigation, it is alleged in the SCN that the Noticee had masterminded the forgery. Due to the circulation of the forged SEBI letter, artificial interest in the scrip was created which resulted in increase in price and volume of the scrip, and as a result, the Noticee could off-load 15,05,862 shares on December 22, 2008. Investigation also revealed that the Noticee was the largest seller of the scrip of PSTL on both BSE and NSE on the said date, i.e., December

22, 2008. It was further observed that some of the other sellers were entities associated with the Noticee. On December 22, 2008, the Noticee sold 8,40,667 shares of PSTL on NSE for a total value of Rs.6,53,82,173.35, at an average sell price of Rs.77.77 per share. On BSE, the Noticee sold 6,65,195 shares for a total value Rs.4,88,47,485.25, at an average sell price of Rs.73.43.

52. The SCN also alleged that the associated /connected entities have made illegal gains from the sale of shares on December 22, 2008. In the SCN, it is alleged that most of these entities are found to have accumulated PSTL shares between December 16-19, 2008 and had off-loaded most of their holdings on December 22, 2008. Some of these entities have also facilitated the Noticee in creating artificial volumes/ price during the period December 16-19, 2008. SCN also alleged that their trading pattern and relation/ association with the Noticee indicated that they had prior knowledge of the fraud which was being perpetrated on the investors by the Noticee.

53. In reply to the said allegations, the Noticee *inter alia* submitted that he had been selling shares in PSTL from June 2008 onwards and not only on December 22, 2008 and that he continued to sell shares till January 2009. If it had been the Noticee's intention to take advantage of the "artificially inflated" price, he would have sold his entire shareholding on December 22, 2008. He further submitted that SEBI has sought to place reliance on a purported statement given by one Rakesh Sharma of Adfcators PR Pvt. Ltd., a PR agency, on January 10, 2009 allegedly given in the presence of two SEBI investigating officers. In the said statement, Rakesh Sharma stated that he met the Noticee along with one Mr. Rajesh Unnikrishnan on December 20, 2008 at which time the Noticee showed them the original of the SEBI letter and requested them to generate media attention for the said letter. The Noticee has submitted that the ‘purported statement' ought not to be relied upon for reasons set out hereinafter.

54. The Noticee had contended that the purported statement is not a statement in the eyes of law, as it does not meet the requirements prescribed under Section 11C of the SEBI Act, 1992 in relation to obtaining statements. The relevant provisions of Section 11C are as under:

> *"11C... (5)* Any *person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*
>
> *……*
>
> *(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.*
>
> ……

55. The Noticee had contended that the alleged version of the claims made by Mr. Rakesh Sharma is an unsupported version of the Investigation Team created just to somehow show his link with the alleged forgery of the purported SEBI letter. Taking into consideration the situations and circumstances regarding the recording of the statement of Rakesh Sharma on basis of the events as allegedly narrated by Mr. Rakesh Sharma in his 'purported' statement, it is submitted that the said statement of Mr. Rakesh Sharma does not confirm to the standards and procedures established as per the provisions of Section 11C of the SEBI Act and hence has no probative value and is merely hearsay and hence cannot be relied in the present case.

56. It is submitted by the Noticee that SEBI has sought to place reliance on the tower locations linked to the mobile phones of the Noticee and other involved persons and has sought to draw inferences on the basis of this tower location data. The

Noticee denied and disputed the veracity of the tower locations and the call data records as provided by SEBI. The Noticee had contended that SEBI has no power to call for such mobile phone records and cannot rely on the same as no opportunity to examine/ cross examine the author of the call data records has been provided. Further, the Noticee had sought to place reliance on an article of December 2010 published by Central Pollution Control Board, which states that the tower location covers a wide area and hence is not reliable.

57. The Noticee contended that in the ‘purported statement', Rakesh Sharma stated that he mailed the SEBI letter to some of his journalist friends on the afternoon of December 20, 2008 from the Noticee's house in Matunga. As per the Noticee, this is contradicted by Rakesh Sharma's second statement as also the Noticee's statement wherein there is no mention of any such meeting that took place at the Noticee's residence. Further, in the reinvestigation report filed by the BKC Police on January 05, 2015, it is clearly stated that the emails sent by Rakesh Sharma in the afternoon of December 20, 2008 were not sent from the Noticee's residence.

58. In this regard, I note that Rakesh Sharma was an executive from Adfactors PR Pvt. Ltd., a PR agency, and was an acquaintance and a friend of Rajesh Unnikrishnan, a reporter with the Economic Times, who used to contact the Noticee in connection with the news pertaining to PSTL. Based on SEBI's complaint before BKC police station dated January 1, 2009 regarding forgery of its letter and publication of the forged content in the media, Rakesh Sharma was arrested. The statement of Rakesh Sharma was recorded by SEBI officials on January 10, 2009 while he was in police custody. As the statement recording on that day was done by SEBI in connection with an internal Vigilance Enquiry, as apparent from the statement itself, the procedures prescribed in Section 11(5) and 11(7) were not followed. Subsequently, Rakesh Sharma was examined as part of investigation on two other occasions, as per the procedure laid down in

the provisions. Rakesh Sharma allegedly having played a key role in the forgery, cannot be expected to give two versions to SEBI, on the same issue, even though examined in two different contexts. I also observe that on the second and third occasions, he was not confronted with respect to the contradictions in his stance.

59. The Noticee had sought cross-examination of Rakesh Sharma amongst others, so as to adduce evidence on his side through the witness. Even though SEBI granted cross-examination of certain witnesses, Rakesh Sharma was not allowed to be cross-examined. Thus, considering the said fact, I am not placing reliance on the statement of Rakesh Sharma to establish that the Noticee had shown the allegedly forged SEBI letter to Rakesh Sharma, when he was accompanied by Rajesh Unnikrishnan, on December 20, 2008. However, the facts deposed by Rakesh Sharma to the extent that they are corroborated by other documents available on record cannot be dismissed as unreliable.

60. The Noticee has also tried to rely on the investigation report of BKC Police to show that Rakesh Sharma had not sent the email from the Noticee's residence. Though I note that BKC station report states that the e-mail was sent by Rakesh Sharma from a cybercafe it does not state where the cybercafé was situated. However, all records (CDR, Tower Location details etc.) corroborate that the Noticee, Rakesh Sharma and Rajesh Unnikrishnan were at Dadar and subsequently at Matunga (E) on that day, during that time as elaborated hereafter.

61. The tower locations of the Noticee's Amol Kokane's number, Rakesh Sharma's number and Rajesh Unnikrishnan's number indicate that the three had met in the afternoon of December 20, 2008, i.e., the day and around the time when the forged SEBI letter was circulated to the media through Rakesh Sharma's contacts in the media. The tower location details indicate that Nirmal Kotecha was at Matunga (E) (from 1:12 p.m. to 2:27 p.m.). Similarly, the tower location details

show that Rajesh Unnikrishnan was also at Matunga (E) between 12:57 p.m. and 1:44 p.m. I find that the tower location details indicate that Rakesh Sharma too was at Maheshwari Udyan, Matunga at 1:52 p.m. and King Circle at 1:53 p.m.

62. I note that Rakesh Sharma, forwarded the scanned copy of the forged SEBI letter from his own personal e-mail ID to his media contacts including one Partha Sinha of TOI. The copies of the e-mail submitted to SEBI by the reporters, reveals that the e-mail to Partha Sinha was sent at 1:43 p.m., i.e., around the time when the tower location for all three of them as seen in the data was Matunga (East) / King Circle. Kotecha's residence is also at Matunga (East) / King Circle. The e-mail details furnished by Ashish Rukhaiyar of Economic Times shows that the e-mail was sent by Rakesh Sharma from his personal e-mail ID to Rukhaiyar's personal e-mail ID at 3:03 p.m.

63. SCN also alleges that Rakesh Sharma forwarded the forged SEBI letter by e-mail to Dheer Kothari (one of his ex-colleagues in Adfactors who is based in Kolkata). From the copy of the e-mail made available by Dheer Kothari, I observe that Rakesh Sharma had forwarded the e-mail to him at 1:43 p.m. on December 20, 2008, i.e., again at a time when all three of them were at Matunga.

64. Further, Rakesh Sharma was in constant touch with Dheer Kothari on December 20, 2008 from about 12.30 p.m. in the afternoon right up to around 10.00 p.m.at night. Dheer Kothari disseminated the information to three newspapers — Business Standard, Telegraph and Hindu Business Line and received a Rs. 10,000 from Rakesh Sharma. The trail of the funds indicate that the funds were transferred from Rakesh Sharma's account with HDFC Bank, Borivali (West) branch, which was opened in July 2008. Rakesh Sharma submitted that Dheer Kothari had insisted for some financial help and it is for this reason that he had paid him from his personal HDFC account and had got nothing to do with the letter. It is observed from the Call Data Records of Rakesh Sharma's number

9821419263 that during the entire month of December 2008, he had called Dheer Kothari on his mobile number 9831113474 only on December 20, 2008 and then again on December 23, 2008. In fact, there are 11 outgoing calls by Rakesh Sharma to Dheer Kothari on December 20, 2008 and one call on December 23, 2008. Further, there are two incoming calls from Dheer Kothari to Rakesh Sharma on December 20, 2008 and a couple of incoming calls from Dheer Kothari to Rakesh Sharma on December 22, 23 and 24, 2008. It is seen from call data records that, out of the 11 outgoing calls by Rakesh Sharma to Dheer Kothari, 5 outgoing calls are between 13:52 to 14:46, i.e., immediately after the forged letter was e-mailed to him by Rakesh Sharma at 13.43 p.m. on December 20, 2008.

65. The second contention taken by the Noticee is that Rakesh Sharma retracted from his earlier statement, but the same was not questioned by SEBI in the second statement recording. The Noticee has further tried to show contradictions between the statement of Rakesh Sharma's first statement and his second statement. I note that the investigating officer had taken some leads for deciding the scope and direction of the investigation from the first statement of Rakesh Sharma. However, as no cross-examination of Rakesh Sharma was given to the Noticee, I do not intend to rely on the subsequent statements, unless the same is corroborated by other supporting evidence. For the purpose of this order, the tower location of the Noticee corroborated with the call data records of Rakesh Sharma and Rajesh Unikrishanan along with the emails and other surrounding factors are taken into consideration, though the Noticee has questioned its accuracy.

66. In this regard, the test for consideration 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 and not of proof beyond reasonable doubt. Even if it is presumed that there can be a possibility of error in reading the mobile location for one mobile number, the probability of

having three wrong readings for three different mobile numbers at the same point of time is negligible and remote. Moreover, the strict rules of Evidence Law cannot be made applicable in the instant proceedings, it being quasi-judicial in nature. I am inclined to give due credence to the call data record and Tower Location sheet, if the same coincides with other persons contacted from a mobile number in and around a particular time band, repetitive calls made/ received to or from the same person, the previous call history of the person etc. Thus, I find that the Noticee and two others had worked in close concert and meticulously planned the dissemination of the news through a few others in the media and the securities market, whom they knew otherwise. The email sent from Rakesh Sharma's personal email ID is also a part of the record.

67. The next contention raised by the Noticee is that the police after investigation has not named him in the circulation of the forged letter and held Rakesh Sharma responsible for the same in the Charge sheet. Considering the documents submitted by the Noticee during the hearing, I am not inclined to rely on the said Police report for the following reasons:

a. SEBI filed its complaint on January 1, 2009, but it is noted that the email of cybercell Mumbai Police requesting the details regarding ‘Login' for email ID rakesh2605@gmail.com, belonging to Rakesh Sharma used for sending the information regarding the open offer to his media colleagues, was requested from Google on March 13, 2009. Google in its response dated March 13, 2009 submitted that they maintain such details only for 4 weeks. Hence nothing material transpired from the response.
b. The email sent by cyber cell Mumbai police states - *“This office is enquiring into a complaint wherein hacked, defamatory and abusive mail was sent from the said Email ID rakesh2605@gmail.com. You are hereby requested to provide us the following information (1) Login and Logout details for email ID from 15/1212008 to 25/12/2008....”.*

Thus, it is noted from the above email that the police went ahead on the premise that the aforesaid email was hacked, whereas Rakesh Sharma himself never had such a case.

68. The Noticee has further contended that SEBI had without investigating into the forgery of the letter sent to him is proceeding against him on the basis of his sale of shares on December 22, 2008. The Noticee had further submitted in his statement that on Saturday he was busy with the preparations for the wedding of one of his relatives, which was scheduled for Sunday and he was at his in-law's place at Ghatkopar. Vide the aforesaid statement, the Noticee had claimed that he had left home at 1:00 pm on Saturday, December 20, 2008 and was there at his in-laws place at Ghatkopar the whole day and was not at his home and had returned home from his in-laws place in Ghatkopar only on Sunday evening. He further stated that the SEBI letter addressed to him was received by his wife at around 3:00 pm on Saturday, December 20, 2008. However, the tower location of Nirmal Kotecha's Amol Kokane number revealed that on December 20, 2008 from 13:12:06 to 19:19:40, he was at Matunga (East), after which he left from there and reached Ghatkopar only around 21:00:29, which is completely at variance with his own contention that he moved to Ghatkopar at 1 PM. Clearly, the attempts of the Noticee to build up a case of alibi have been rendered hollow by the tower location details. The Noticee had failed to submit the cover and details of courier agency which delivered the forged letter at his residence and submitted that the cover was misplaced at his residence.

69. The Noticee had also contended that SEBI had failed to find out who forged the letter. This issue is beyond the scope of instant proceedings. Further, this question becomes irrelevant so long as it is established that the letter in question was forged and that it was the Noticee who had used the forged letter for making illegal gains. The facts and circumstances detailed above, makes it clear that the

Noticee was the master mind behind the circulation of forged letter in order to offload his stake in PSTL.

70. In view of the above, I find that Rakesh Sharma, an acquaintance of the Noticee had sent emails to certain media entities disseminating the alleged news. The tower location shows that the Noticee's case that he was at Ghatkopar at 1 PM on December 20, 2008 is untrue and is merely a ruse set up as an afterthought. I also note that the tower location of all the three persons was at Dadar and Matunga (E) and since they knew each other, the preponderance would show that they had a meeting after which the alleged dissemination of information took place. The Noticee's identifiable interest in this scrip from the time of acquisition in 2006 onwards and his move to manipulate volumes of trades in the scrip at both NSE and BSE also assumes significance while ascertaining the charge of public dissemination of the forged letter. The continued motive of the Noticee to exit from the scrip is evident from the market manipulation brought out in this order elsewhere. Factors such as Noticee's connections with associated entities and the media, his constant habit of switching stance on various issues before the Regulator and acting in an inexplicably dubious manner, by using mobile number that was not his own, using his employees for trading in identified scrips, extending interest free loans to various entities in the market etc. only confirm that the forgery was master minded by him.

71. It was also alleged in the SCN that there were several persons/ entities, directly/ indirectly related to the Noticee, who traded in large quantities in the scrip of PSTL during the relevant period. Certain persons/ entities had bought PSTL shares on BSE and NSE during December 15-19, 2008 and sold these shares on December 22, 2008, i.e., after the price rise in the shares on December 22, 2008 consequent to the publication of the forged SEBI letter. It was also observed that some persons/ entities had sold PSTL shares on December 22, 2008 and bought back the shares at lower prices on the same day taking advantage of both the price

rise which occurred due to the publication of the forged SEBI letter as well as the price fall which occurred due to a clarification issued by Mr. PS Saminathan that the company had not received any communication from SEBI regarding the media reports on Open Offer.

72. I note that Investigation observed that a list of 20 entities namely, Mr. Rajesh Jayantilal Shah, Mr. Shailesh Jayantilal Shah, Mr. Nirmal Rohitbhai Shah, Mr. Deveng R Shah, Ms. Ritaben Rohitkumar Shah. Mr. Jayantilal Ratilal Shah, Ms. Binaben Shaileshkumar Shah, Ms. Namitaben Sachinkumar Shah, Mr. Sachin Jayantilal Shah, Ms. Manishaben Rajeshkumar Shah, Ms. Jinny Nirmal Shah, Mr. Maheshbhai Himatlal Sheth, Mr. Deepak Thakkar, Mr. Raju G. Shah, Ms. Sharda Pujara, M/s Meet Shares and Stock Services Ltd, Ms. Monali Harsh Doshi, Mr. Harsh Doshi, Mr. Mukesh Jain and Mr. Sanjay Gupta (hereinafter collectively referred to as the Nirmal Kotecha entities/NKA) had connections with the Noticee other than by virtue of the trading in the shares of PSTL.

73. I note that many of these entities, who were related to / associated with the Noticee, had attempted to generate trading interest in the scrip of PSTL by placing large orders during the month of December 2008 in PSTL shares which occurred consequent to the publication of the forged SEBI letter. An examination of trading in PSTL shares during the month of December 2008 clearly indicates that the offloading by the Noticee during the period December 1 to 19, 2008 was primarily done to his related / associated persons / entities:

	At BSE			At NSE			Across Both the Exchanges		
Trade Date	**GP**	**GS**	**Net**	**GP**	**GS**	**Net**	**GP**	**GS**	**Net across both Exchanges**
1-Dec-08	-	50,000	(50,000)	-	-	-	-	50,000	(50,000)
5-Dec-08	-	48,071	(48,071)	-	-	-	-	48,071	(48,071)
8-Dec-08	-	2	(2)	-	3,934	(3,934)	-	3,936	(3,936)
Sub Total	**-**	**98,073**	**(98,073)**	**-**	**3,934**	**(3,934)**	**-**	**102,007**	**(102,007)**
16-Dec-08	-	102,088	(102,088)	-	53,188	(53,188)	-	155,276	(155,276)

17-Dec-08	-	140,000	(140,000)	-	140,000	(140,000)	-	280,000	(280,000)
19-Dec-08	-	25,000	(25,000)	-	25,000	(25,000)	-	50,000	(50,000)
Sub Total	-	267,088	(267,088)	-	218,188	(218,188)	-	485,276	(485,276)
22-Dec-08	-	665,195	(665,195)	-	840,667	(840,667)	-	1,505,862	(1,505,862)
Cumulative up to Dec 22, 2008	**-**	**1,030,356**	**(1,030,356)**	**-**	**1,062,789**	**(1,062,789)**	**-**	**2,093,145**	**(2,093,145)**
23-Dec-08	-	140,982	(140,982)	-	140,000	(140,000)	-	280,982	(280,982)
30-Dec-08	-	130,000	(130,000)	-	106,921	(106,921)	-	236,921	(236,921)
31-Dec-08	-	238,983	(238,983)	-	-	-	-	238,983	(238,983)
Sub Total	**-**	**509,965**	**(509,965)**	**-**	**246,921**	**(246,921)**	**-**	**756,886**	**(756,886)**
Grand Total	**-**	**1,540,321**	**(1,540,321)**	**-**	**1,309,710**	**(1,309,710)**	**-**	**2,850,031**	**(2,850,031)**

74. I note from above that during the period December 1-19 2008, the Noticee sold a total of only 4,85,276 shares. Thereafter, on December 22, 2008 (the trading day following the publication of the forged SEBI letter), he sold 15,05,862 shares. During the period from December 23-31, 2008, he sold another 756,886 shares of PSTL. Therefore, during the month of December 2008, he sold a total of 28,50,031 shares of PSTL. In terms of traded quantity, it was observed that large portions of the Noticee‘s sale of PSTL shares were done during the month of December 2008. Further, the forged SEBI letter was made public on December 20-21, 2008 and the large-scale off-loading of PSTL shares were done by the Noticee on December 22, 2008.

75. I note that the trading in PSTL shares in the month of December 2008 has been examined in the Investigation Report in each of the following three time periods:

1. December 1-12, 2008
2. December 15-19, 2008
3. December 22, 2008

76. The date -wise traded quantity of PSTL shares on BSE and NSE during the period December 1-12, 2008 is as below:

Trading Date	BSE Market traded quantity	NSE Market traded quantity	Total Market traded quantity (BSE +NSE)	% contribution
1-Dec-08	110,617	62,588	173,205	5.27%
2-Dec-08	21,178	26,614	47,792	1.45%
3-Dec-08	53,388	133,589	186,977	5.69%
4-Dec-08	63,211	121,107	184,318	5.61%
5-Dec-08	194,756	317,233	511,989	**15.57%**
8-Dec-08	558,830	848,969	1,407,799	**42.82%**
10-Dec-08	80,947	153,121	234,068	7.12%
11-Dec-08	116,507	170,615	287,122	8.73%
12-Dec-08	77,867	176,518	254,385	7.74%
Total	**1,277,301**	**2,010,354**	**3,287,655**	**100.00%**

77. From the above table, I note that the gross market traded quantity in PSTL shares on BSE and NSE during the period from December 1, 2008 to December 12, 2008 was 3,287,655 shares out of which as many as 1,407,799 shares were traded on December 8, 2008 and 511,989 shares were traded on December 5, 2008. The traded quantity in PSTL shares on the aforesaid two trading dates viz. December 5 and 8, 2008 constituted as much as 58.39% of the traded quantity during period from December 1, 2008 to December 12, 2008. I note that the following six trading clients were identified as major trading clients in PSTL shares on BSE and NSE on December 8, 2008 and their trading data is summarized below:

No	Name of entity	Gross Traded Quantity on BSE	Gross Traded Quantity on NSE	Gross Traded Quantity of the entity on BSE and NSE	Market Gross Traded Quantity on BSE and NSE	% contribution to the market
1.	HARDIK M MITHANI	90,000	159,096	249,096	2,815,598	8.85%
2.	SPJ STOCK BROKER PVT LTD.	115,368	0	115,368	2,815,598	4.10%
3.	INVENTUREGROWTH&SECURITIESLTD.	137,384	130,974	268,358	2,815,598	9.53%

4.	SYKES & RAY EQUITIES (I) LTD.	42,806	46,136	88,942	2,815,598	3.16%
5.	SHARDA C PUJARA	35,000	30,000	65,000	2,815,598	2.31%
6.	MEET SHARES AND STOCKS SERVICES PVT LTD.	0	112,410	112,410	2,815,598	3.99%
	Total	**420,558**	**478,616**	**899,174**		**31.94%**

78. From the above table, I note that the above identified six trading clients constituted as much as 31.94% of the market traded quantity in PSTL shares on BSE and NSE on December 08, 2008. I also note that the five clients namely Hardik M. Mithani, SPJ Stock Brokers Pvt. Ltd., Inventure Growth & Securities Ltd., Sharda C. Pujara and Meet Shares and Stocks Services Pvt. Ltd. have executed reversal transactions amongst themselves. These transactions by the aforesaid five trading clients, some of whom were directly/ indirectly associated with the Noticee, resulted in creating an appearance of abnormal trading volume the scrip of PSTL on December 8, 2008.

79. I further note that December 5, 2008 was the second largest trading day (next only to December 8, 2008 during the period December 1-12, 2008) with a gross traded quantity of 5,11,989 shares of PSTL on BSE and NSE. I note that, on December 5, 2008, the Noticee sold 48,071 shares to Mr. P S Saminathan and this trade constituted 24.68% of the market net traded quantity of 194,756 shares on BSE. On NSE, on December 5, 2008, one of the connected entities of the Noticee - Rajesh Jayantilal Shah bought 52,638 shares on NSE and his purchase constituted 16.59% of the market net traded quantity of 317,233 shares on NSE. It is observed that there were no other major buyers or sellers on NSE. Investigations further revealed that Rajesh Jayantilal Shah along with various persons belonging to their family were having financial/ business dealings with the Noticee.

80. In view of the above, I note that, during the period December 1-12, 2008, December 5, 2008 and December 8, 2008 were the major trading dates on which there were significant trading volume. The major trading clients among entities connected to the Noticee on the two major trading dates were Meet Shares and Stock Services Pvt. Ltd., Ms. Sharda Pujara and Mr.Rajesh Jayantilal Shah.

81. The date-wise traded quantity of PSTL shares on BSE and NSE during the period December 15-19, 2008 are given below:

Trading Date	BSE Market traded quantity	NSE Market traded quantity	Total Market traded quantity (BSE +NSE)	% contribution
15-Dec-08	311,257	374959	686,216	10.07%
16-Dec-08	1,019,838	1003863	2,023,701	29.70%
17-Dec-08	603,687	697524	1,301,211	19.10%
18-Dec-08	422,517	388542	811,059	11.90%
19-Dec-08	1,008,097	982682	1,990,779	29.22%
Total	**3,365,396**	**3,447,570**	**6,812,966**	**100.00%**

82. From the above table, I note that the gross market traded quantity during the period from December 15, 2008 to December 19, 2008 was 68,12,966 shares. The top three trading dates during the above period were December 16, 2008, December 17, 2008 and December 19, 2008. The top five buyers of PSTL shares on BSE and NSE on December 16, 2008 are as follows:

Name	Quantity bought- BSE	Qty Bought-NSE	Gross Qty.	% to total traded qty.
MUKESH JAIN	150,000	140,000	290,000	14.33%
BIHAR TUBES LIMITED	140,000	140,000	280,000	13.84%
APL INFRASTRUCTURE PRIVATE LTD	140,000	140,000	280,000	13.84%
BHOMIYA SUPPLIERS PVT LTD	97,522	NA	97,522	4.82%

INVENTURE GROWTH & SECURITIES LTD.	41,167	41,538	82,705	4.09%
Total	**568,689**	**41,538**	**1,030,227**	**50.91%**
Market net traded qty.	**1,019,838**	**1003863**	**2,023,701**	**100.00%**

83. I note from above that, on December 16, 2008, the major trading clients in PSTL shares were the entities associated with the Noticee such as Bihar Tubes Ltd, APL Infrastructure Private Ltd, Inventure Growth & Securities Ltd. and DKG Securities Pvt. Ltd.

84. I note that the largest buying and selling clients on BSE and NSE on December 17, 2008 is as below:

Name of trading client	**Bought quantity**		**Sold quantity**		**Gross quantity**	**Total Market (BSE + NSE) traded quantity**	**% to market quantity**
	BSE	**NSE**	**BSE**	**NSE**			
MR.NIRMAL KOTECHA	-	-	140,000	140,000	280,000	1,301,211	21.52%
APL INFRASTRUCTURE PRIVATE LIM	140,000	140,000	-	-	280,000	1,301,211	21.52%

85. From the above table, I note that the Noticee and APL Infrastructure Pvt. Ltd. were the largest selling and buying clients respectively on December 17, 2008. I also note that the Noticee and APL Infrastructure Pvt. Ltd. had dealt with each other. The orders which resulted in the trades between the Noticee and APL Infrastructure Pvt. Ltd. were examined and I note that there were synchornised trades between the Noticee and his connected entities:

(i) On December 17, 2008, the Noticee sold 1,28,262 shares to APL Infrastructure Pvt. Ltd. and 5,000 shares to Mr.Deepak Thakkar on BSE. Examination of the orders relating to the aforesaid trade revealed that

a. At 10:25:41 A.M., the Noticee placed a sell order, through the broker Kotak Securities Ltd. for 1,00,000 shares at Rs. 60.00 per share with a disclosed quantity of 14,000 shares.

b. At 10:27:04 A.M. the Noticee placed second sell order, through the broker Kotak Securities Ltd. for 40,000 shares at Rs. 60.00 per share.

c. At 10:38:49 A.M., APL Infrastructure Pvt. Ltd placed a buy order through the broker Religare Securities Ltd., for 99,000 shares at Rs. 60.00 per share.

d. At 10:38:50 A.M., the first sell order of the Noticee and the buy order of APL Infrastructure Pvt. Ltd. got matched at the common order rate (i.e., Rs. 60.00 per share) for trade quantity of 93,102 shares.

e. The balance portion of buy order of APL infrastructure Pvt. Ltd. (i.e., 5,898 shares) got traded with various third parties through 25 trades.

f. Thereafter at 10:40:21 A.M., APL Infrastructure Pvt. Ltd. placed its second buy order through the broker Religare Securities Ltd. for 40,000 shares at Rs. 60.00 per share.

g. At 10:40:21 A.M., the second buy order of APL Infrastructure Pvt. Ltd. got matched with the balance quantity of the Noticee‘s first sell order (i.e., 6,898 shares) at a price of Rs. 60.00 per share

h. At 10:40:21 A.M., out of the balance portion of the second buy order of APL Infrastructure Pvt. Ltd., 28,262 shares got matched with second sell order of the Noticee at a price of Rs. 60.00 per share.

i. The balance portion of the second buy order of APL Infrastructure Pvt. Ltd., (i.e., 4,840 shares) got traded with various third parties through eight trades.

j. At 10:49:26 A.M., Deepak Thakkar placed a buy order of 5,000 shares at a price of Rs. 60.00 per share.

k. Out of the balance portion of second sell order of the Noticee, 5,000 shares got matched with Deepak Thakkar's aforesaid buy order at a price of Rs. 60.00 per share vide trade no. 785 at 10:49:26 A.M.

l. The balance portion of the second sell order of the Noticee (i.e., 67,387 shares) got traded with various third parties through 13 trades.

(ii) I note that there was a time difference of 13:08 minutes between the placing of APL Infrastructure Pvt. Ltd's buy order and the placing of the Noticee's sell order (10:38:49 A.M minus 10:25:41 A.M). Examination of trade logs of PSTL shares on December 17, 2008 revealed as follows:

a. At 10:25:41 A.M., when the Noticee placed his sell order at `.60.00 per share, the last traded price was Rs. 58.15. Thus, the Noticee had placed a sell order at a price which was higher than the last traded price by Rs. 1.85 per share.

b. During the time period between 10:25:41 A.M and 10:38:49 A.M (i.e. between the placing of the Noticee's sell order and the placing of APL Infrastructure Pvt. Ltd's buy order), PSTL shares were being traded on BSE at price range of Rs. 58.40 per share to Rs. 59.20 per share.

c. Therefore, the sell order of the Noticee remained unexecuted in the order book of the stock exchange.

d. Thereafter, at 10:38:49 A.M, APL Infrastructure Pvt. Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of the Noticee which was pending in the order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share.

e. Thus, the trade between the Noticee and APL Infrastructure Pvt. Ltd. resulted in an increase in the traded price of PSTL on BSE on December

17, 2008 and the market traded price of PSTL became Rs. 60.00 per share.

(iii) I also note that, on December 17, 2008 APL Infrastructure Pvt. Ltd. purchased 96,049 shares from the Noticee through eight trades. The details of the orders placed by APL Infrastructure Pvt. Ltd. and the Noticee and the details of eight trades as narrated below:

a. At 10:27:25 A.M., the Noticee placed a sell order for 1,40,000 shares at Rs. 60.00 per share with a revealed quantity of 14,000 shares.
b. At 10:44:04 A.M., APL Infrastructure Pvt. Ltd. placed a buy order for 99,000 shares at Rs. 60.00 per share.
c. Thereafter, at 10:44:30 A.M., APL Infrastructure Pvt. Ltd. placed another buy order for 1,000 shares at Rs. 60.00 per share.

(iv) The aforesaid buy and sell orders of APL Infrastructure Pvt. Ltd. and the Noticee got matched as follows:

a. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689162.
b. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689179.
c. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689185.
d. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 AM. vide trade no. 2008121733689190.
e. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689195.
f. 14,000 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689200.
g. 11,928 shares got matched at Rs. 60.00 per share at 10:44:04 A.M. vide trade no. 2008121733689205.
h. 121 shares got matched at Rs. 60.00 per share at 10:44:30 A.M. vide trade no. 2008121733692260.

(v) I therefore note that 96,049 shares got traded between APL Infrastructure Pvt. Ltd and the Noticee in respect of the aforesaid orders. The balance portion of buy order of APL Infrastructure Pvt. Ltd. (i.e., 3,951 shares) got matched with various third parties through 50 trades. The balance portion of sell order of the Noticee (i.e., 808 shares) got matched with various third parties through seven trades. At 10:48:35 A.M. the Noticee deleted the unexecuted portion of his sell order (i.e., 43,143 shares).

(vi) I note that there was a time difference of 16:39 minutes between the APL Infrastructure Pvt. Ltd's buy order placement time and the Noticee's sell order placement time (10:44:04 A.M minus 10:27:25 A.M). Examination of traded logs for the aforesaid period revealed as follows:

a. At 10:27:25 A.M., when the Noticee placed his sell order at Rs. 60.00 per share, the last traded price was Rs. 58.75. Thus, the Noticee had placed a sell order at a price which was higher than the last traded price by Rs. 1.25 per share.
b. During the time period between 10:27:25 A.M and 10:44:04 A.M (i.e. between the placing of the Noticee's sell order and the placing of APL Infrastructure Pvt. Ltd's buy order), PSTL shares were being traded on NSE at price range of Rs. 58.00 per share to 59.50 per share.
c. Therefore, the sell order of the Noticee remained unexecuted in the order book of the stock exchange.
d. Thereafter at 10:44:04 A.M APL Infrastructure Pvt. Ltd. placed a buy order at Rs. 60.00 per share which got matched with the unexecuted order of the Noticee which was pending in the order book of the stock exchange and the trade got executed between their order at the common order rate of Rs. 60.00 per share.
e. Thus, the trade between the Noticee and APL Infrastructure Pvt. Ltd. resulted in an increase in the traded price of PSTL on BSE on

December 17, 2008 and the market traded price of PSTL became Rs. 60.00 per share.

86. I note from the SCN that APL Infrastructure Ltd. is a promoter group entity of Bihar Tubes Ltd., where Mr. Sanjay Gupta, is the promoter and director. The Call Data Records of the Noticee's Amol Kokane number on December 17, 2008 mentioned below reveals that the Noticee was in touch with Mr. Sanjay Gupta on his mobile number 9810096439 through calls and SMSs just prior to the execution of the aforesaid trades on BSE (starting 10:25) and NSE (starting 10:27) and again at 10:50, i.e., immediately after the Noticee deleted the unexecuted portion of his sell order (i.e. 43,143 shares) at 10:48:35.The relevant Extract of the Noticee's Amol Kokane number CDR is given below:

Called No.	Calling No.	Type	Duartion	Date and time
9810096439	9819988816	OUT	163	12/17/2008 9:29
9810096439	9819988816	SMS	1	12/17/2008 9:50
9810096439	9819988816	SMS	1	12/17/2008 10:08
9810096439	9819988816	OUT	20	12/17/2008 10:50
9810096439	9819988816	SMS	1	12/17/2008 11:19
9810096439	9819988816	SMS	1	12/17/2008 11:19
9810096439	9819988816	OUT	36	12/17/2008 12:04
9810096439	9819988816	OUT	19	12/17/2008 13:58
9810096439	9819988816	OUT	86	12/17/2008 14:54
9810096439	9819988816	OUT	111	12/17/2008 14:57
9810096439	9819988816	SMS	1	12/17/2008 18:45
9810096439	9819988816	OUT	6	12/17/2008 21:34
9819988816	9810096439	INC	90	12/17/2008 9:57
9819988816	9810096439	INC	112	12/17/2008 10:06
9819988816	9810096439	INC	2	12/17/2008 15:08

87. I note from the examination of the trades between APL Infrastructure Pvt. Ltd and the Noticee and the aforesaid Call Data Records of the Noticee's Amol Kokane number on December 17, 2008, that the Noticee was in close contact with the director of APL Infrastructure Pvt. Ltd., while the Noticee and APL Infrastructure Pvt. Ltd executed synchronized trades among themselves.

88. I also note that, on December 19, 2008, Mr.Raju Ghanshyamdas Shah, a connected entity of the Noticee, was the top buyer and seller on gross basis on both the stock exchanges. Mr.Raju Ghanshyamdas Shah had bought 13,657 PSTL shares from SPJ Stock Broker Pvt. Ltd, another connected entity of the Noticee, and sold 25,986 to SPJ Stock Brokers Pvt. Ltd. An examination of the orders which resulted in the trade between Mr. Raju Ghanshyamdas Shah and SPJ Stock Broker Pvt. Ltd was carried out and the observations in this regard are narrated below:

(i) On December 19, 2008 Mr.Raju Ghanshyamdas Shah purchased 12,000 shares from SPJ Stock Broker Pvt. Ltd. vide trade no. 2654 at 11:19:50 A.M. Examination of the order related to the aforesaid trade revealed that:

a. At 11:19:47 A.M., SPJ Stock Broker Pvt. Ltd. placed a sell order, in its proprietary account for 12,000 shares at Rs. 72.00 per share.

b. At 11:19:50 A.M., Mr.Raju Ghanshyamdas Shah placed a buy order, through the broker India Capital Markets Pvt. Ltd. for 15,000 shares at Rs. 72.00 per share.

c. Thus, aforesaid sell order of SPJ Stock Broker Pvt. Ltd. fully got matched with aforesaid buy order of Raju Ghanshyamdas Shah for 12,000 shares at common order rate. Out of the balance quantity of Raju Ghanshyamdas Shah’s buy order (i.e., 3,000), 725 shares got matched with Inventure Growth Securities Ltd and 2,250 shares were got matched with various third parties through 21 trades.

(ii) Similarly, on December 19, 2008, Mr.Raju Ghanshyamdas Shah sold 25,000 shares to SPJ Stock Broker Pvt. Ltd. vide trade no. 2040 at 10:51:31 A.M. Examination of the order related to the aforesaid trade revealed that

a. At 10:50:37 A.M., Mr.Raju Ghanshyamdas Shah placed a sell order, through the broker India Capital Markets 25,000 shares at Rs. 73.25 per share.

b. At 10:51:30 A.M., SPJ Stock Broker Pvt. Ltd. placed a buy order, in its proprietary account for 30,000 shares at Rs. 73.25 per share.

c. Thus, aforesaid sell order of Mr.Raju Ghanshyamdas Shah got fully matched with aforesaid buy order of SPJ Stock Broker Pvt. Ltd for 25,000 shares at common order rate. Out of the balance quantity of SPJ Stock Broker Pvt. Ltd's buy order (i.e. 5,000), 500 shares were got matched with Inventure Growth Securities Ltd and 2,500 shares got matched with various third parties through 10 trades.

89. I also note from the Call Data Records of the Noticee's Amol Kokane number on December 19, 2008 that the Noticee was in touch with Mr.Yatin Shah, the cousin brother of Mr.Raju G. Shah on Mr.Yatin Shah's mobile numbers 9323055693 and 9890355693, just prior to the execution of trades by Mr.Raju G. Shah and SPJ Stock Broker Pvt. Ltd. as above on December 19, 2008. The details of calls between the Noticee from his number and Mr.Yatin Shah's aforesaid two numbers is as given below:

Called No.	Calling No.	Type	Duartion	Date and time
9323055693	9819988816	OUT	350	12/19/2008 9:25
9323055693	9819988816	OUT	74	12/19/2008 12:48

Called No.	Calling No.	Type	Duration	Date and Time
9890355693	9819988816	OUT	51	12/19/2008 9:21
9890355693	9819988816	OUT	40	12/19/2008 11:07
9890355693	9819988816	OUT	266	12/19/2008 13:24
9890355693	9819988816	OUT	163	12/19/2008 14:13
9890355693	9819988816	OUT	241	12/19/2008 15:53
9890355693	9819988816	OUT	260	12/19/2008 16:59

Calling No.	Called No.	Type	Duration	Date and Time
9819988816	9323055693	INC	56	12/19/2008 10:18

Calling No.	Called No.	Type	Duration	Date and Time
9819988816	9890355693	INC	50	11/19/2008 10:30
9819988816	9890355693	INC	50	11/19/2008 10:30
9819988816	9890355693	INC	42	11/19/2008 12:56
9819988816	9890355693	INC	93	11/19/2008 13:25

9819988816	9890355693	INC	7	11/19/2008 13:37
9819988816	9890355693	INC	9	11/19/2008 14:33
9819988816	9890355693	INC	11	11/19/2008 14:45

90. From the above analysis, I note that Mr. Raju G Shah and SPJ Stock Broker Pvt. Ltd. have executed synchronized reversal transaction between them on December 19, 2008, while the Noticee was in close contact with Yatin Shah, the cousin brother of Mr. Raju G Shah.

91. I note that, on December 22, 2008, the price of PSTL shares on BSE and NSE opened higher at Rs. 82.90 when compared to the closing price of Rs. 75.40 on December 19, 2008, i.e., the scrip price opened at a price of 10% more than the previous trading day's closing price on account of the news that SEBI had issued a direction to Mr. P.S. Saminathan allegedly directing him to make an open offer at Rs. 250.00 per share. There was significant increase in the trading volume in the scrip with 32,02,228 shares being traded on BSE and 40,29,254 shares being traded on NSE. The price of scrip witnessed significant intra-day fall and the scrip closed at Rs. 67.90 on BSE. The examination of trading in the scrip revealed that the following trading clients including few of the connected entities and also the Noticee had sold 15000 shares or more on net basis on BSE & NSE taken together on December 22, 2008 before 10:30 a.m.:

No	Name	BSE			NSE			BSE+ NSE
		Buyer	Seller	Net	Buyer	Seller	Net	
1.	NIRMAL KOTECHA	-	233,434	(233,434)	-	420,667	(420,667)	(654,101)
2.	SOPHIA GROWTH	-	140,000	(140,000)	-	140,000	(140,000)	(280,000)
3.	DEEPAK THAKKAR	-	45,085	(45,085)	-	54,758	(54,758)	(99,843)
4.	SHILPA VISHAL VASA	-	-	-	-	55,000	(55,000)	(55,000)
5.	JEETENDRA VALLABH SANGHAVI	-	25,000	(25,000)	-	25,000	(25,000)	(50,000)
6.	RAJESH JAYANTILAL SHAH	11,000	60,000	(49,000)	-	-	-	(49,000)
7.	AMISHA DEVELOPERS LTD	-	-	-	-	30,000	(30,000)	(30,000)

8.	NISHA JIGNESH MEHTA	-	-	-	-	30,000	(30,000)	(30,000)
9.	SHAILESH JAYANTILAL SHAH	-	5,000	(5,000)	-	22,000	(22,000)	(27,000)
10.	REGENT FINANCE CORPORATION PVT. LTD.	-	-	-	-	25,000	(25,000)	(25,000)
11.	NIRMAL ROHITBHAI SHAH	-	10,000	(10,000)	-	12,565	(12,565)	(22,565)
12.	DEVANG R SHAH	-	-	-	-	20,000	(20,000)	(20,000)
13.	RITABEN ROHITKUMAR SHAH	-	5,000	(5,000)	-	13,000	(13,000)	(18,000)

92. The examinations revealed that out of aforesaid 12 major net sellers (other than the Noticee), 11 net sellers' trading behavior (excluding Regent Finance Corporation Pvt. Ltd) during December 16, 17, 18, 19 & 22, 2008 was substantially different from their trading pattern in PSTL during the period from June – December 15, 2008. Specifically, it was observed that these 11 major net sellers had accumulated PSTL shares in huge quantity on December 16, 17, 18 and / or 19, 2008 and they had off-loaded most of these accumulated holdings on December 22, 2008 before 10:30 a.m. hence it is alleged that the NK entities might have had prior knowledge of the fraud which was being perpetrated on investors by the Noticee.

93. As mentioned above, six of the NK entities viz; Mr.Deepak Thakkar, Mr.Rajesh Jayantilal Shah, Mr.Shailesh Jayantilal Shah, Mr.Nirmal Rohitbhai Shah, Mr.Devang R Shah and Mr.Ritaben Rohitkumar Shah were amongst the major net sellers on December 22, 2008 who were found to be related/ associated with the Noticee.

94. I note from available records that the following NK entities sold PSTL shares on net basis on BSE & NSE taken together on December 22, 2008:

No.	Name	Buy quantity - BSE	Buy quantity - NSE	Total Buy quantity on BSE and NSE	Sell quantity on BSE	Sell quantity on NSE	Total sell quantity on BSE and NSE	Net traded quantity on BSE and NSE
1	DEEPAK THAKKAR	85	0	85	45,085	54,758	99,843	(99,758)
2	RAJESH JAYANTILAL SHAH	22,252	10,000	32,252	65,000	22,537	87,537	(55,285)
3	SHAILESH JAYANTILAL SHAH	0	28,700	28,700	5,500	37,000	42,500	(13,800)
4	NIRMAL ROHITBHAI SHAH	0	0	0	10,000	15,000	25,000	(25,000)
5	DEVANG R SHAH	0	200	200	100	36,100	36,200	(36,000)
6	RITABEN ROHITKUMAR SHAH	0	0	0	5,000	17,000	22,000	(22,000)
7	MAHESHBHAI HIMATLAL SHETH	0	0	0	0	10,000	10,000	(10,000)
8	JAYANTILAL RATILAL SHAH	0	0	0	1,000	13,400	14,400	(14,400)
9	BINABEN SHAILESHKUMAR SHAH	0	0	0	4,262	8,240	12,502	(12,502)
10	NAMITABEN SACHINKUMAR SHAH	0	0	0	2,000	7,100	9,100	(9,100)
11	SACHIN JAYANTILAL SHAH	0	0	0	0	10,000	10,000	(10,000)
12	MANISHABEN RAJESHKUMAR SHAH	0	0	0	2,000	3,000	5,000	(5,000)
13	JINNY NIRMAL SHAH	0	0	0	1,000	1,500	2,500	(2,500)
14	MONALI HARSH DOSHI	0	1,000	1,000	0	2,000	2,000	(1,000)

95. I note that the trading behavior of aforesaid entities during December 16 to 19 & 22, 2008 was substantially different from their trading pattern in PSTL during the period from June – December 15, 2008. I note that most of these entities have accumulated PSTL shares between December 16 to 19, 2008 and had off-loaded most of their holdings on December 22, 2008. Their trading pattern and relation/ association with the Noticee indicates that they allegedly had prior knowledge of the fraud which was being perpetrated on investors by the Noticee.

96. I note from the SCN, that during the period from June 1, 2008 to December 19, 2008, the Noticee had sold PSTL shares primarily to Mr P S Saminathan. He had executed self-trades on two trading dates namely October 24, 2008 and October 27, 2008. On October 24, 2008, it was observed that the Noticee's self-trades constituted as much as 47.75% of the market traded quantity in PSTL shares on BSE. Similarly on October 27, 2008 the Noticee's self-trades constituted as much as 66.25% of the market traded quantity in PSTL shares on BSE. Thus the Noticee's self-trade created an appearance of trading in the scrip of PSTL on BSE on October 24, 2008 and October 27, 2008. The details of self-trades by the Noticee are as below:

Trading Date	**Name of entity**	**Net Buy quantity in market**	**Self - trade qty**	**% of self-trade qty (net) to entity's net buy traded**	**No. of buy Trades in market**	**No. of self - trades**
24-Oct-08	NIRMAL KOTECHA	140000	125568	89.69%	26	10
27-Oct-08	NIRMAL KOTECHA	200000	192985	96.49%	24	7
	Total	340000	318553	93.69%	50	17

97. The self-trades executed by the Noticee on October 24 and October 27, 2008 on BSE and NSE were compared with the market traded quantity on the concerned stock exchanges on the respective dates. The data is tabulated below:

	BSE			NSE		
	Market Traded Quantity (Net)	Self - trade by NK (Net)	% Contribution of Self trade to Market Quantity	Market Traded Quantity (Net)	Self-trade by NK (Net)	% Contribution of Self trade to Market Quantity
24-Oct-08	2,62,964	125568	47.75 %	127973	0	0 %
27-Oct-08	2,91,298	192985	66.25 %	276969	50000	18.05 %

98. In response to the said allegation of self-trade, the Noticee has submitted that he wanted to shift his position from one broker to another and the same resulted into inadvertent self- trades. It has also been submitted that the volume generated by

these self-trades when compared to the total volume during the investigation period is miniscule. In this regard, I am of the view that no reasonable person would try to transfer position from one broker to another by entering into cross deal and self-trades, when the transfer of position from one broker to another, could have been done more easily by giving suitable instruction to depository, without misusing the stock exchange mechanism for executing trades without any intention of change in beneficial ownership. In view of the same, I find that the Noticee has consciously used the Stock Exchange mechanism to carry out bogus trades, which was not intended to change the beneficial ownership from the transferor to a third party but to boost volumes in the scrip. Therefore, it can be concluded that the self-trade by the notice, to the tune of more than 47% and 66% on October 24 and 27, 2008, was only for the purpose of artificial volume creation on the trading platform.

99. I also note that the Noticee was the single largest net seller on BSE during the period from June 1, 2008 to December 19, 2008. He had sold 24,15,247 shares on gross basis and 20,75,247 shares on net basis during the said period. I note that the sale on June 20, 2008 was made by the Noticee to Saminathan through a negotiated deal. This deal has been discussed in detail in the later part of the SCN. Thereafter, the sale of PSTL shares was made by the Noticee from October 24, 2008 onwards. I note that on October 24 & 27, 2008, the sales by the Noticee were in the nature of self-trades. Thereafter from November 19, 2008 to December 5, 2008, the Noticee sold shares on the market mainly to Saminathan. On December 8, 2008, the Noticee sold two shares of PSTL. Thereafter, the market sale by NK commenced from December 16, 2008 when he sold shares to third parties (i.e. entities other than Saminathan). I further note that on December 16 and December 17, 2008, the major trading clients in PSTL shares were the Noticee and the entities associated with him.

100. As far as cross deals of the Noticee with P. S Saminathan are concerned, it is noted from the SCN that P.S. Saminathan did not make any funds transfer to the broker for the purchase of 13,58,896 shares of PSTL @ of Rs. 250 on June 20, 2008. Instead, Nirmal Kotecha, vide letter dated June 24, 2008 requested the broker to transfer the credit (Rs.34 crore) lying in his account to the account of P.S. Saminathan. Pursuant to the same, the broker passed a ledger entry, transferring an amount of Rs. 33,99,04,292.28 to Saminathan's account. It is observed that Kotecha paid Rs. 25,95,707.26 vide postdated cheque dated December 02, 2008 to the broker towards brokerage payable by Saminathan. The aforesaid transaction is represented in a tabular form below:

Details of Cross-deals through stock broker Keynote Capital:

S. No.	**Description**	**P.S. Saminathan**	**Nirmal Kotecha**
A	Value of transaction excluding brokerage	34,25,00,000 (actually Rs.33,97,24,000 = 250*1358896)	34,25,00,000
B	Brokerage and other charges payable	24,37,679.54	24,37,870
C	Amount payable/ receivable (A+B for Buyer and A-B for seller)	34,49,37,679.50	34,00,62,129.52
D	Adjustment entry between buyer and seller	33,99,04,292.28	33,99,04,292.28
E	Balance amount payable to the broker	50,33,387.26	0 (after adjustment of the debit balance lying in ledger account of Nirmal Kotecha)
F	Amount actually paid to the broker	24,37,680	25,95,707.26 (by Post Dated Cheque dated December 02, 2008)

101. The Noticee has stated that Mr. Saminathan wanted to increase his stake in the company after he became the chairman of the company. He wanted to buy the shares from the promoters, including the Noticee and therefore, the Noticee

decided to sell part of his holding to Mr. Saminathan. After various discussions it was mutually agreed that the Noticee would sell to Mr. P.S. Saminathan 13,70,000 equity shares PSTL worth Rs. 34,25,00,000/-. The Noticee further submitted that he had entered into a loan agreement dated June 24, 2008, wherein he decided to give a loan of Rs. 34.25 Crore to Mr. P. S. Saminathan. As per the Loan Agreement, the Noticee had sold to Mr. Saminathan shares worth the loan amount and that Mr. Saminathan had requested the Noticee to lend him the Loan Amount, i.e., Rs. 34.25 Crore to complete the purchase of the shares set out in the contract note.

102. I note that the shares got transferred from the Noticee to Saminathan, on market through negotiated deal. The records show that the brokerage for the deal amounting to Rs. 24,37,680/- was paid by the Noticee vide a post-dated cheque of December 2, 2008. Besides this, post the transfer of shares, market disclosures were made, by both the promoters, to the effect that the Noticee had sold and Mr. Saminathan had purchased the shares, which showed that the one of the promoters still had interest in the shares. I also note that if the intention of the Noticee was only to give loans in the form of shares, he could have transferred these shares by giving suitable instructions to DP rather than using the market mechanism for such transfers and private lending arrangements. I am of the view that the motive behind such huge transfers is to create a misleading impression that there is considerable interest in the scrip.

103. I note from available records that the sale of entire 98,071 shares of PSTL by the Noticee on December 1 and 5, 2008 was to Mr.P.S. Saminathan. During the period, December 15-19, 2008, out of the total of 4,85,276 shares of PSTL sold by the Noticee on NSE and BSE, the counter-parties for 4,32,965 shares were among the entities, which accounted for 89.22% of his total sale during the said period. Therefore, the offloading by the Noticee during the period December 1 to

19, 2008 was primarily done to his related / associated persons / entities as there was not much genuine interest in the scrip during the said period.

104. Investigation has observed that the trading behavior of persons/ entities related/ associated with the Noticee and has identified as having gained from sell of shares on December 22, 2008, during the period December 16-22, 2008 was substantially different from their trading pattern in PSTL from June to December 15, 2008. Most of these persons/ entities were found to have accumulated PSTL shares between December 16-19, 2008 and had off-loaded most of their holdings on December 22, 2008.

105. In response to the alleged trading pattern of the Nirmal Kotecha Associate / connected group, the Noticee had submitted that no connection among the group is established or put forth by the SCN. In this regard, I do not agree with the submissions of the Noticee, for the reason that the trading pattern, the volume of trades, the period of trading in the scrip; the particulars of the buy and sell orders, the proximity of time between the two orders and frequency of such orders, coupled with the call data records between the connected entities, financial transactions (Loans) between the connected entities etc. taken together prove otherwise. The facts and circumstances, as revealed in specific details by the investigation, if judged in its entirely leads to the conclusion that the Noticee along with his associates had indulged in fraudulent trade practices with respect to the scrip of PSTL.

106. The Noticee has denied the charge of synchronized and manipulative trades (reversal / circular etc.) on the ground of anonymity of the trading platform and his inability to see or know or control the counter party. However, the jurisprudence on the issue of the standard of proof in similar cases in securities market which has evolved through the case laws such as SEBI Vs. Rakhi Trading Pvt. Limited (Judgment delivered by the Hon'ble Supreme Court on 8th February,

2018); SEBI Vs. Kishore R. Ajmera [(2016) 6 SCC 368]; Ketan Parekh Vs. Securities and Exchange Board of India,(decided by Hon'ble SAT on 14th July, 2006) etc. render the arguments of the Noticee irrelevant. The relevant paragraphs from the above cited judgments relied by me are reproduced below:

SEBI Vs. Rakhi Trading Pvt. Limited (MANU/SC/0096/2018)

"We are fortified in our conclusion by the judgment of this Court in Securities and Exchange Board of India v. Kishore R. Ajmera, though it is a case pertaining to biokeis, wherein it has been held at paragraph 25:

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

In this case it was also held that in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or the provision of the Regulations is concerned. " (emphasis supplied)

SEBI Vs. Kishore R. Ajmera (2016) 6 SCC 368

"..While the screen based trading system keps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. 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.

The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. ...." (emphasis supplied)

Hon'ble SAT, in the matter of Ketan Parekh Vs. Securities and Exchange Board of India (Appeal No. 2 of 2004):

"….Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, 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." (emphasis supplied)

107. While applying the principle laid down in the above-mentioned judgments to the facts of the present case, I find that the arguments advanced by the Noticee regarding anonymity of the trading screen and other related issue are not acceptable. In view of the reversal and sychronised trades in PSTL shares which

were executed by the Noticee and his connected entities, I am of the view that the Noticee indulged in manipulation of the price/volume in the shares of PSTL. This manner of trading by such entities enabled them to cause an appearance of artificial trading in the shares of PSTL without their having to invest in large number of shares or without their having to mobilize substantial sums of money for their manipulative trading. By executing these fraudulent/ fictitious trades, the Noticee used the entities associated to him who facilitated him to offload his stake in the scrip of PSTL in the market.

108. In view of the foregoing, I conclude that the Noticee viz. Nirmal Kotecha violated the provisions of Section 12A of SEBI Act and Regulations 3 (a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), (b), (d), (e), (f), (g), (k) and (r) of PFUTP Regulations, 2003.

Findings in respect of wrong / delayed disclosures of the Noticee

109. I note from the SCN that, as on September 30, 2008, the Noticee was holding 7,036,619 shares, accounting for 24.89 % of the share capital of the PSTL. It was observed the shareholding of the Noticee in PSTL changed during October 24, 2008 to December 31, 2008 as below:

Trade Date	Gross Purchase(BSE and NSE)	Gross sale (BSE and NSE)	Net across both Exchanges	% Change in Holding	Cumulative % Change in Holding	Whether disclosure was required to be made under Regulation 7 (1A) of SEBI (SAST) Regulations	Whether disclosure was made as per the regulation	Whether disclosure was required to be made under Regulation 13 (3) of SEBI (PIT) Regulations	Whether disclosure was made as per the regulation
24-Oct-08	1,40,331	1,40,331	0	0	0	No	N.A.	No	N.A.
27-Oct-08	2,50,000	2,50,000	0	0	0	No	N.A.	No	N.A.
19-Nov-08	0	2,80,000	-2,80,000	0.99	0.99	No	N.A.	No	N.A.
28-Nov-08	0	63,540	-63,540	0.22	1.21	No	N.A.	No	N.A.
1-Dec-08	0	50,000	-50,000	0.18	1.39	No	N.A.	No	N.A.
5-Dec-08	0	48,071	-48,071	0.17	1.56	No	N.A.	No	N.A.
8-Dec-08	0	3,,936	-3,936	0.01	1.58	No	N.A.	No	N.A.
16-Dec-08	**0**	**1,55,276**	**-1,55,276**	**0.55**	**2.12**	**Yes**	**No**	**Yes**	**No**
17-Dec-08	0	2,80,000	-2,80,000	0.99	3.12	No	N.A.	No	N.A.
19-Dec-08	0	50,000	-50,000	0.18	3.29	No	N.A.	No	N.A.
22-Dec-08	**0**	**15,05,862**	**-15,05,862**	**5.33**	**8.62**	**Yes**	**No**	**Yes**	**No**
23-Dec-08	0	2,80,982	-2,80,982	0.99	9.61	No	N.A.	No	N.A.
30-Dec-08	0	2,36,921	-2,36,921	0.84	10.45	No	N.A.	No	N.A.
31-Dec-08	**0**	**2,38,983**	**-2,38,983**	**0.85**	**11.29**	**Yes**	**No**	**Yes**	**No**

110. I note that the Noticee was required to make disclosure under Regulation 7 (1A) of SAST Regulations, 1997 and Regulation 13 (3) of PIT Regulations, 1992 for change in his shareholding in PSTL by 2%. From the table given above, it was observed that on the following days there was a change of 2% in the shareholding of the Noticee as of December 31, 2008:

No.	Date	% change in shareholding
1	16/12/2008	2.12
2	22/12/2008	6.5
3	31/12/2008	2.67

111. I note that the Noticee, on December 22, 2008, had made two disclosures with regard to the trading of the Noticee on NSE. The second disclosure on December 22, 2008 was made by the Noticee for his trading during the 05/12/2008 to 17/12/2008 and as per the said disclosure, he had sold 1.55% shareholding in PSTL. However, the change in his shareholding on December 16, 2008 was 2.12% and as on December 17, 2008 it was 3.12%. Therefore, the disclosure made by him did not disclose his actual sales and did not comply with the requirements under Regulation 7 (1A) of SAST Regulations, 1997 and Regulation 13 (3) of PIT Regulations, 1992. I also note the Noticee also did not comply with the disclosure requirement under the aforesaid two regulations for his change in shareholding as on December 22, 2008 and December 31, 2008.

112. I note that the Noticee in his submissions has stated that that the relevant disclosures under the SAST Regulations, 2011 and PIT Regulations, 2015 has now been made by him on May 31, 2017 to the Stock Exchange. It is also I also note that the Noticee has requested that a lenient view be taken with regards the violation of Regulation 7(1A) of SAST Regulations, 1997 and Regulation 13 (3) of the PIT Regulations, 1992.

113. In this regard, I note that the Noticee has admittedly made wrong / delayed disclosure in respect of his trading in the scrip of PSTL. In this context, I would like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that *"…..When a law prescribes a manner in which a thing is to be done, it must be done only in that manner…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments….."*

114. The Noticee has further submitted that no loss has been caused to any investor or group of investor because of such delayed disclosure by the Noticee. In this respect, I note that the Hon'ble SAT in the matter of Komal Nahata Vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) has held that - *"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 15J of 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."*

115. In view of the above, I find that the allegation of violation of Regulation 7(1A) of SAST Regulations, 1997 and Regulation 13(3) read with 13(5) of PIT Regulations, 1992 is established against the Noticee.

116. I note that Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".* In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HA and Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for failure to furnish information, return, etc.-

15A. 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

117. While determining the quantum of penalty under Section 15HA and Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

118. I am of the view that any manipulation in the volume or price of the stocks caused by vested interest always erodes investor confidence in the market so that investors find themselves at the receiving end of market manipulators. The PFUTP Regulations aim to preserve and protect the market integrity in order to boost investor confidence in the securities market. By executing manipulative trades, as has been executed by the Noticee along with his connected entities in the instant matter, the price discovery system itself is affected. It also has an adverse impact on the fairness, integrity and transparency of the stock market. I note that the Whole Time Member of SEBI in Order dated March 22, 2018 had restrained the Noticee from dealing in securities market for a period of 14 years, with effect from April 23, 2009. The Noticee was also directed to disgorge an amount of Rs. 32,50,882 along with interest calculated at the rate of 12% per annum from December 22, 2008 onwards. In view of the same, I find it appropriate to consider the direction in the nature of debarment and disgorgement that has already been passed against the Noticee herein as a relevant factor while deciding the quantum of penalty. I also note that the impugned transactions pertain to the year 2008 and that a considerable amount of time has lapsed since the act of the Noticee took place. I understand that SEBI has also commenced prosecution proceedings against the Noticee and the same is in progress. I have also taken into account the fact that the Noticee’s role in manipulation in the scrip was that of the mastermind. I have also taken into account the disclosure violations by the Noticee which deprived genuine investors about crucial information that the largest shareholder of PSTL, who was a part of the promoter group, was offloading large quantity of his holding in PSTL scrip. In view of the same, I am inclined to consider that the Noticee is responsible for the aforesaid violations and therefore, I impose an appropriate penalty on the Noticee.

ORDER

119. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee viz. Nirmal Kotecha:

S. No.	Penalty	Under the provisions of
1	Rs. 18,00,000 (Rupees Eighteen Lakh only)	Section 15HA of the SEBI Act
2	Rs. 2,00,000 (Rupees Two Lakh only)	Section 15A(b) of the SEBI Act
Total	Rs. 20,00,000 (Rupees Twenty Lakh Only)	

120. I am of the view that the above penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

121. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-II, SEBI, SEBI Bhavan 2, Plot No. C –7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400051". The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity

b) Name of the case / matter

c) Purpose of Payment – Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

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

123. 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 Securities and Exchange Board of India.

Date: June 30, 2021	**VIJAYANT KUMAR VERMA**
Place: Mumbai	**ADJUDICATING OFFICER**