

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER

ORDER

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

In respect of:

S. No.	Name of the intermediary	Registration No.
1.	India Capital Markets Private Limited	INB/INF 011368934 INB/INF/INE231368938 INB/INF/INE 261368931

In the matter of Pyramid Saimira Theatre Limited.

1. The present matter emanates from a show cause notice dated December 23, 2020 (hereinafter referred to as “**SCN**”) issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to India Capital Markets Private Limited (hereinafter referred to as “**Noticee**”) under Regulation 28(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations, 2008**”) calling upon it to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as “**DA**”) or any other direction/ penalty as deemed fit should not be issued/imposed on it in terms of Regulation 28 (1) of the Intermediaries Regulations, 2008. The SCN enclosed with it the Report (hereinafter referred to as “**Enquiry Report**” or “**ER**”) of the DA.

2. SEBI had conducted an investigation in the matter of Pyramid Saimira Theatre Ltd (hereinafter referred to as '**PSTL/Company**') for the period from June 01, 2008 to December 19, 2008. The investigation *inter alia* revealed that the Noticee had traded in the shares of PSTL during the relevant period for its clients Nirmal Kotecha (director of PSTL), Mr Raju G Shah and Amol Kokane. The trading accounts of Raju G Shah, Amol Kokane and Nirmal Kotecha were opened at the same branch of the Noticee and around the same period. The client account in the name of Amol Kokane and Nirmal Kotecha was opened with the Noticee on September 12, 2008. It was observed that Amol Kokane, an engineering student and having no personal income, had opened an account with the Noticee on the recommendation of his late brother-in-law (Sandeep Gavhane), who was working for Kotecha Capital Services Private Ltd. It was observed from the KYC of Amol Kokane that his annual income was shown to be in the range of Rs. 1 to 5 lakhs. However, he was allowed to have a debit balance of Rs. 37,69,979/- as on October 03, 2008 and during the period October 27, 2008 to November 17, 2008, Amol Kokane purchased 4,19,084 shares and sold 4,21,974 shares on BSE. It was observed that Raju G. Shah traded in the scrip of PSTL through the Noticee on two trading days viz. December 19 and 22, 2008 on BSE. Raju G. Shah's client account was opened with the Borivali branch of Noticee in July 2008. It was further observed that on December 19, 2008, and December 22, 2008 a total of 47,542 shares bought by Raju G. Shah matched with Nirmal Kotecha's sell order. Investigation revealed that Darshan Desai executed trades for Amol Kokane who was the front of Nirmal Kotecha. It was observed that Darshan Desai was the husband of Priyanka Desai in whose name the Borivali (West) branch of the Noticee was registered and she was the remisier of the branch of the Noticee. Though Darshan Desai claimed to be the branch head of the Borivali (West) branch of the Noticee, however neither he nor Harsh Shah (Vice President of the Noticee) could produce any document proving Darshan Desai's employment with Noticee. It was further observed on perusal of a few Client Registration Forms of clients registered with Noticee that the details of Reference / Introducer, were always left blank in these forms. Investigation further observed that there was suspicious banking transactions and channeling of funds into the securities market. It was alleged

that in such a scenario and considering the income vis-à-vis the turnover details of the clients, it was improper on the part of the stock broker to have traded for its clients in large quantities.

3. In view of the above, the DA issued a show cause notice dated August 30, 2011, *inter alia* alleging that Darshan Desai was not in employment of the Noticee and that the Noticee's management was hand in gloves with Darshan Desai and was trying to cover up the fact that Darshan Desai was running the Borivali (West) branch of the Noticee without being in their employment. Further, that during this period Darshan Desai executed trades for his wife Priyanka Darshan Desai and Amol Kokane, who was the front of Nirmal Kotecha. From the trades on BSE and NSE of Priyanka D. Desai and Amol Kokane and the transactions between them and with other entities in the scrip of PSTL, as detailed in the SCN, it was alleged that Darshan Desai was not only using his wife Priyanka Desai's trading account for creating artificial volumes in the scrip of PSTL through synchronized trades, but, also conniving with other employees of the Noticee, such as Amit Joshi (then branch manager of Rashmi Building, Borivali (West) Branch of the Noticee) and other clients registered with Borivali (West) branch of the Noticee to facilitate Nirmal Kotecha in his attempt to show artificial volumes in the scrip of PSTL through his front Amol Kokane and thereby mislead unsuspecting investors in the market.
4. The ER observed that the Noticee connived with some of its employees along with some other clients and Stock Brokers and created artificial volumes in the scrip of PSTL to facilitate Nirmal Kotecha (one of the Directors of PSTL) to offload his stake in the market which adversely affected the integrity of the securities market. The ER further found that the stock brokers including the Noticee were in a game plan to facilitate Nirmal Kotecha to create artificial volumes in the scrip of PSTL and thereby mislead the innocent investors in the market. Further, that the Noticee colluded with Nirmal Kotecha and used the accounts of its low-income category clients and persons directly or indirectly connected with it to disguise the trail of funds of Nirmal Kotecha to carry out his nefarious activities in the securities market.

5. The ER further makes the following allegations/observations:

- a) The ER observed that Nirmal Kotecha was one of the Directors of Pyramid Saimira Theatre Limited and that Nirmal Kotecha was also a client of the Noticee registered with Borivali (West) Branch of the Noticee. That in the SCN it was alleged that the Noticee with the help of some of his employees and some of its clients aided and abetted Nirmal Kotecha to offload his shareholding in PSTL by creating artificial volumes in the shares of PSTL. It was noted from the material available on record that the Noticee had indulged in synchronised/reversal trading for some of its clients who were also front entities for Nirmal Kotecha or were acting in collusion with him. The ER observed that from the SCN that the Noticee failed to carry out due diligence in respect of the clients. The Noticee had allowed large exposure to low income group clients. The Noticee had also intermingled funds of the clients and used the funds of clients having credit balance to allow exposure to clients having debit balance.
- b) The ER observed that the Noticee as well as Darshan Desai have accepted that Darshan Desai was its employee and Branch Manager of Borivali (west) Branch of the Noticee. However, that Darshan in his statement dated March 13, 2009 to SEBI had admitted that he did not have any documentary evidence to prove that he was an employee of the Noticee. Later during the course of investigation vide letter dated June 26, 2009, Darshan had provided an appointment letter dated July 1, 2007 from the Noticee, appointing him as Branch Manager of the Borivali (west) Branch) along with a copy of Form 16 issued by the Noticee. The ER observed that it is understood that the aforesaid documents were created during the investigation to prove that Darshan was their employee, because if the aforesaid documents were available before the investigation, then Darshan would not have denied about the same in his statements as aforesaid. That as per the above documents, Darshan was supposed to be remunerated annually on commission basis. Further, the payment of remuneration on commission basis itself proves that Darshan was a commission agent rather than an employee of the Noticee. Further, even if, for the sake of

argument, it is accepted that Darshan was an employee and the remuneration was to be paid as aforesaid, the Enquiry Officer fails to understand the logic behind payment being made in the middle of the year and that too only once. Instead the payment should have been made at the end of the year after considering the volume of business generated or any other parameter followed/agreed upon to ascertain the quantum as per the terms of employment. The Noticee has also not explained /clarified the onetime payment of remuneration to Darshan as aforesaid. The ER observed that the Noticee with respect to the remuneration being paid to Darshan stated that his wife Priyanka Desai was paid Remiser Fees of Rs. 20 lac to Rs. 23 lac which was enough to compensate Darshan for his work as Branch Manager. It is understood that employment of a person is not a family affair, where one member of the family is paid for the work done by the other member of the family. Rather, a person is employed based on his/her own professional competence/talent/skill/knowledge and the remuneration paid to him/her is a reward for the same. Therefore, the ER did not accept the contention of the Noticee that the Remiser fee /Remuneration paid to Priyanka Desai should also be considered as remuneration paid to Darshan. Further, the ER did not accept the above contention of the Noticee as there is no material/documents available on record which suggests arrangement/agreement between the Noticee and Darshan or Priyanka Desai as aforesaid. Further, that if the aforesaid amount was enough to compensate Darshan then there was no need to pay even Rs. 70,400/- (financial year 2007-08) and Rs. 38,254/- (financial year 2008-09). The ER did not accept the above since it would mean that for the work done by Darshan payment was made to Priyanka Desai which is incorrect. The ER observed that Borivali (west) branch was one of the largest branches of the Noticee which generated a trade volume of approximately Rs. 418 crores and payment of Rs. 38254/- for financial year 2007-08 and Rs. 70400/- for financial year 2008-09 to the branch manager of the said branch was unjustified and is indicative of some other arrangements.

- c) The ER observed that Darshan admitted that Borivali Branch of the Noticee was registered in his wife's name and that he was managing the same on behalf of his wife. Further, that since it may not have been possible to source new clients or business for the branch with the business card of his wife (Priyanka Desai), he got business cards printed in his own name instead of his wife's. The ER observed that the Noticee had also contended that the fact that Darshan had printed business card in his name was an evidence of his employment with the Noticee which the ER found illogical and absurd. If the aforesaid is to be true, then any person who prints a business card in his name pertaining to any of the establishment/company/organisation would become its employee which is absurd by any standard. The ER observed that the Noticee contended that Darshan had good knowledge of securities market and was qualified enough to be appointed as branch manager which the ER found again is devoid of merit as the person being appointed must have proper documents to prove his appointment and in absence of which his employment is null and void irrespective of the person's level of knowledge and competence.
- d) The ER observed that one of the main contentions of the Noticee was that by admitting that Darshan was their employee, they have demonstrated bonafide intention and that they would have been in a better position had they denied about Darshan's employment. Further, that had the Noticee not admitted that Darshan was their employee, then it would have meant that its Borivali (west) Branch was being managed by unauthorized persons and that a fraud was committed by Darshan in collusion with his wife who was Remiser and in whose name the Branch was registered and employees of the said branch which the Noticee failed to monitor and administer. The ER observed that the failure on the part of the Noticee to manage and administer, would have adversely impacted the credibility of the Noticee. The same would have also resulted in the Noticee being declared as not fit and proper. Further, the Noticee would have had to report the matter to Police, register FIR and action taken against Drashan, its Remiser and employees at the

said branch for the fraud committed by them which would have caused irreparable damage to the reputation, credibility and business of the Noticee. Therefore, the ER observed that by admitting that Darshan was their employee, the Noticee has taken a conscious decision and safeguarded and protected its own interest.

- e) In view of the above, the ER did not accept that Darshan was employed by the Noticee. In view of the same, the ER observed that Darshan took advantage of his wife being Remiser of Borivali (west) branch of the Noticee and used the same to indulge into manipulative trading on behalf of some of the clients at the said branch. He also used the aforesaid, position to assert his authority and collude with other branch of the Noticee and some other stock brokers also. The ER observed that the aforesaid was not possible without the support of the management of ICMPL and that ICMPL deliberately ignored the abovementioned fraudulent activities at some of its branches including Borivali (west) branch.
- f) The ER observed that the Noticee in its reply have submitted that the SCN does not allege any wrong doing /fraud on the part of the Noticee or its directors except for the alleged fraudulent activities at one of its branch. The Noticee had acted only as a stock broker in the regular course of business. The Noticee also contended that the brokerage earned in the aforesaid trades was meagre and there was no reason for it to indulge in the fraudulent activities for such a meagre brokerage. The ER observed that from the material available on record that Borivali (west) branch was one of the largest branch of the Noticee which generated a trade volume of approximately Rs. 418 crores for the financial year 2008-09 which the Noticee expected to rise in the coming years. Therefore, the continuity at the Borivali (west) branch was extremely important for the larger growth prospect of the Noticee and therefore the Noticee deliberately allowed Darshan to manage the Borivali (west) branch along with his dubious activities. Further, in view of the discussions in paragraph 12-16, it is amply clear that the Noticee was aware of the fraudulent

activities at its Borivali west branch and it deliberately ignored the same. Therefore, ER observed that the Noticee was part of the fraudulent scheme.

- g) The ER observed that another allegation in the SCN is that the Noticee brought in clients with low income such as Amol Anand Kokane (Amol), Raju Shah (Raju), Deepak Mali (Deepak) etc. and allowed them large exposure and indulged in manipulative trading through their trading accounts. It was also alleged that some portion in the KYC of clients such as introducers column in the KYC was not filled intentionally. The Noticee has denied the aforesaid allegation and contended that the declared income in the KYC was not the sole criteria for allowing trading exposure to the clients. The Noticee also suggested that there might be some other legitimate sources of income which the KYC may not capture such as gift, inheritance, savings or any other incidental income which increases the trading/payment capacity of the clients. The ER observed that the aforesaid sources are assumption of the Noticee and the material available on record do not indicate any such kind of income/assets. Further, that the said clients of the Noticee did not indicate any such source of income. The ER observed that the aforesaid clients of the Noticee were salaried employees having low monthly income or having no income as admitted by Amol in his statement to SEBI. Further, the aforesaid alleged sources are not regular and does not determine the credit worthiness of the client and therefore are not to be considered while ascertaining the risk bearing capacity of the clients. The ER observed that the KYC of the clients capture the income within a range which is not definite. For example, when a client declares income in the range of Rs. 1 to 5 lac which effectively means that his income may be Rs. 1 lac or Rs. 5 lac or anything within the range. Further, that the income declared in the KYC do not mean that he has trading /exposure capacity of the income declared. if a person is having annual income of Rs. 5 lac which means that his monthly income is approximately Rs. 42000/- and after meeting his personal and family needs/expenses he may not be left with enough money to trade in the shares. Further, the trading capacity of the clients may be much less than the income

declared because of various other obligation such as family etc. as explained above. Therefore, if a client declares that his annual income to be in a particular range, then as a prudent risk management, trading exposures of that client should be much lower than what was declared. The ER observed that the Noticee has admitted that the certain fields in some of the KYC were blank and not filled. However, the same were exception and there was no malafide intention. In view of the above, the ER observed that the contention of the Noticee that a debit balance of Rs. 1 lac is not large enough for such clients is not correct and, devoid of merit. Further, the same is indicative of collusion or deliberate and willful ignorance on the part of the Noticee.

- h) The ER observed that Amol Kokane was one of the clients of the Noticee whose account was opened on September 12, 2008 at the behest of Late Sandeep Gavhane (Sandeep), brother-in-law of Amol and was introduced by Priyanka Desai (Remiser of Borivali west branch). That Amol Kokane was a student and allegedly had no knowledge of securities market and investment/trading in securities. Further, reportedly he had an annual income in the range of Rs. 1 lac to Rs. 5 lac and admittedly, Amol had no knowledge of trading and investment in securities market and therefore immediately after opening the trading account (trading account opened on September 12, 2008) vide letter dated September 15, 2008, Amol authorized his brother-in-law to trade on his own behalf. Admittedly, trading was actively carried out in his account until the accidental death of his brother-in-law on October 16, 2008. It is pertinent to note that the Noticee admittedly had a robust risk management and client monitoring system at head office. The ER observed that the above was enough to alert the Noticee and verify or seek clarification with respect to the trading activities being carried out in the trading account of Amol. However, despite the above, the Noticee did not find it suspicious and did not verify or seek clarification in respect of the huge trading activities of a client who was admittedly not trading himself and reportedly had a declared income in the range of Rs. 1 lac to Rs. 5 lac. Admittedly there was large debit balance (approximately Rs. 12.60 lac) in the account of Amol with the Noticee at the time of death of his brother-in-law.

Further since there was no trading in the said account after the demise of his brother-in-law, the branch manager, Darshan sold off the shares (on the basis of power of attorney) in their possession to recover the debit balance and after selling of the said shares the account of Amol Kokane with the Noticee had positive balance to the extent of Rs. 3.12 lac.

- i) The ER observed that from the above sequence of events that Amol was a front entity and his trading account was used by Sandeep for Nirmal Kotecha and this fact was known to Darshan and Priyanka and also to the Noticee. Further, since Priyanka had opened the account of Amol and had signed as introducer in his KYC, she was aware of the fraudulent scheme of Nirmal Kotecha and was part of it along with Darshan. It is also admitted that after the demise of Sandeep, Darshan was the one who was operating the trading account of Amol. The ER observed that from above sequence of events it is clear that the Noticee was in the know of the fraudulent scheme and was a participant (even if not active) in the same for reasons best known to them.
- j) The ER observed that the Noticee has stated that the risk management system of ICMPL is centralized at head office and is monitored on daily basis. The Noticee has further stated that the branch manager is allowed take business decision with permission of risk management team. The Noticee also submitted that the head office of ICMPL has access to the accounts of all the clients and the same is monitored on daily basis. The branch manager reports the daily status in respect of their branches and in respect of the clients having debit balance. Further, the clients having credit balance are monitored separately and payments are released as and when requested by them. The Noticee also submitted that all clients at Borivali branch maintain running accounts. From the above, the ER observed that the Noticee was aware of the trading activities being undertaken at its Borivali branch. Further, the Noticee also deliberately allowed Darshan who was not an employee of the Noticee, to manage and run the Borivali branch freely without any

objection/intervention. The fact that Amol had declared an income in the range of Rs. 1 lac to Rs. 5 lac and had Rs. 12.60 lac debit within a month of opening the trading account was more than enough to trigger suspicion and intervention by the Noticee had its intention been genuine and bonafide. However as admitted, the Noticee did not feel that the matter was suspicious and required intervention. The ER observed that since it was aware of the fraudulent scheme of Darshan at the Borivali west branch, the Noticee did not feel the need to intervene. Further, that to recover, the debit balance Darshan sold off the shares of Amol lying with the Noticee which is not correct. Further, that the Noticee has not brought on record any instruction from the client to sell of the shares to recover the aforesaid debits in his account. The ER observed that there is nothing on record to suggest that Darshan sold the shares of Amol upon instruction of the Noticee. The ER observed that shares of clients in demat account with the Noticee are held in a fiduciary capacity and any kind of parting with the same without notice to the client or instruction from the client is a breach of that fiduciary relationship between client and the stock broker. The ER observed that the Noticee did not sell the shares just to recover the debit amount from the client but it further sold the shares and the client had credit balance with the Noticee. Further admittedly, this amount was invested by Darshan on the alleged instruction from the client, Amol as he had no knowledge of investment and trading in shares. From the above, the ER observed that Amol had no knowledge of investments and trading in shares and that Darshan was the one who was trading in his account. Further, the Noticee despite so many suspicious circumstances did not intervene or take cognizance, makes it clear that the Noticee was aware of and involved in the fraudulent scheme at the Borivali branch of the Noticee.

- k) The ER observed that the Noticee submitted that the debits of the clients were not naked and that the same were covered by securities of the clients with the Noticee and therefore there was no need to disallow exposure to the clients or restrict their trading. The ER observed that the business of a stock broker is not to sell securities

of clients to recover its dues in the normal course of business. Rather it is to facilitate clients by making available a platform for trading without exposing itself to the financial risk associated with securities market in the event of default by the client. The ER observed that in case of default by any of the clients, the stock broker and its other clients are exposed to financial risk which can be minimized by the stock broker by adhering to certain guidelines and rules/regulations that have been framed by SEBI/Stock Exchanges. The ER observed that the aforesaid contention of the clients were not in consonance of the spirit of the SEBI circular and by allowing exposure to clients who apparently did not have risk bearing capacity exposed itself along with other clients to financial risk which was imprudent and not in consonance with the code of conduct for stock broker prescribed in the SEBI (Stock Broker And Sub-Broker) Regulations.

- I) The ER observed that one of the allegations in the SCN was that the Noticee failed to segregate funds and securities of clients. The Noticee adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance. The Noticee in its reply submitted that it has not resorted to netting of balances in respect of its clients. It also submitted that it has not traded in its proprietary account and therefore there is no basis for alleging failure to segregate funds and securities of the clients. The Noticee submitted that the risk management function is centralized. I note that the contradiction in the submission of the Noticee is evident. The Noticee first states that it has not done netting of balances of the clients then it states that it has done netting at the branch level. The Noticee has further submitted that the branch managers are allowed to extend further exposure to clients having debit balance based on their performance and within overall risk limit of the Noticee. From the above, the ER observed that a client having debit balance will be allowed further exposure which will be at the cost of other clients having credit balance with the stock broker. From the submission of the Noticee that each branch had a credit limit and they were allowed exposure within that limit. The ER observed that that if a client has debit balance, then any further exposure will be met from the balance

of other clients having credit balance. The ER observed that the Noticee has made reference to the account ledger of clients which do not show adjustments/netting of client balance. The ER observed that it is a common understanding that clients funds are kept in a separate bank account and are fungible and the same cannot be identified with each individual clients and when payment obligation of clients having debit balance are met, it is but obvious that the same has been met from the funds of the clients having credit balance with the stock broker, since the same has not been received from the clients having debit balance. In the instant matter, Noticee had allowed exposure to clients having large debit balance with the Noticee which was met from the funds of the clients having credit balance with the Noticee. In view of the above, the ER did not accept the contention of the Noticee regarding non-segregation of funds of the clients and as explained above, am of the considered view that the Noticee had used the funds of credit balance clients for allowing exposure to clients having debit balance with the Noticee. Therefore, the ER observed that the Noticee have failed to segregate the funds of the clients.

6. The ER observed that the Noticee has violated the provisions of Sections 12A (a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) read with Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) and Regulation 26 (xiii) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations, 1992**”) read with the Code of Conduct for Stock Brokers specified under Schedule II of the Stock Broker Regulations, 1992 read with Regulation 7 [now 9 (f)] of the Stock Broker Regulations, 1992, and made the following recommendation:

“...in terms of the provisions of Regulation 27 of the Intermediaries Regulations, 2008, I hereby recommend that the certificate of Registration of the Noticee i.e. India Capital Markets Private Limited; SEBI Registration No.: INB/INF 011368934,

INB/INF/INE231368938, INB/INF/INE 261368931 be suspended for a period of two years for the aforesaid violations committed by it.”

7. On the basis of the aforesaid ER, the matter was placed before another Whole Time Member for approval of issuance of the SCN on October 22, 2020. Thereafter, the SCN was issued on December 23, 2020. The SCN was served upon the Noticee and the Noticee vide reply dated June 09, 2021 filed its reply to the SCN. Upon the term of the then Whole Time Member coming to an end, the matter was transferred to me and the file was placed before me for obtaining a hearing date on August 02, 2021. An opportunity of hearing was granted to the Noticee on January 04, 2022. The authorized representative of the Noticee, Ravi Ramaiya, appeared via video conferencing on January 04, 2022 and made his submissions. The Noticee vide its reply dated June 09, 2021 *inter alia* submitted as follows:

- (i) *It is to be noted that Darsan Desai was an employee of the notice who used to handle the Borivalli (West) Branch of the Noticee along with his wife Priyanka Desai, in whose name the Borivalli Branch was registered. Priyanka Desai was also the Remisier of the Borivalli West branch.*
- (ii) *The DA in the enquiry report has held that Darsan Desai was not an employee of the noticee based on the assumption that Darsan Desai while deposing before SEBI on 13th March, 2009 had stated that he did not have any documentary evidence to prove that he was an employee of the Noticee and during the course of investigation, Darsan Desai vide his letter dated 26th June, 2009 provided SEBI with an appointment letter dated 01st July, 2007 (appointing him as the Branch Manager of the Borivalli (West) branch along with a Form 16 for the accounting year 2007-08 issued by the noticee. The DA has held that these documents were created during the course of the investigation as he had first denied about the same in his statement dated 13th March, 2009. It may be noted that he was questioned at his office during a surprise inspection till late evening and cannot be expected to have kept all the documents to prove his employment on an immediate basis. Further, the appointment letter and Form 16 could not have been produced by him if he was not an employee and therefore, the allegation of creation of documents as an afterthought is clearly misplaced.*

- (iii) The Noticee is not aware as to why Darsan Desai made the statement that he had no documentary evidence with him to show him employment with the Noticee and no opportunity has been given to the Noticee to cross examine Darsan Desai in spite of request for the same. Therefore, the reliance by the DA on the statement of Darshan Desai dated March 13, 2009 cannot be allowed and is completely misplaced.*
- (iv) The DA on basis of documents available on record has stated that, Darsan Desai was supposed to be remunerated annually on commission basis and such remuneration of commission proves that Darsan Desai was a commission agent rather than an employee. Also that such commission should have been paid to Darsan Desai at the end of each year rather than in the middle of the year. In this regard, it is submitted that the noticee had such an arrangement with Darshan Desai and Priyanka Desai collectively and that payment was made to both of them jointly for the work done by them. If at all Darsan Desai wanted certain payment in the middle of the year, the same was made to him on basis of the work done by him and the remaining payment was made to his wife annually.*
- (v) The DA has also stated that the Noticee has not explained/clarified the one time payment of remuneration to Darsan Desai. In this regard, it is submitted that the DA had never sought this information from the noticee and hence the said information was not given. The Noticee has always promptly replied to any letter/notice issued by SEBI and has never tried to evade answering any query raised by SEBI. It may be noted that payment was being made to his wife i.e. Priyanka Desai regularly.*
- (vi) For the sake of argument, even assuming whilst denying that Darsan Desai was not an employee of the Noticee and that he took advantage of his wife being the remisier of the Borivali west branch, it is still left for SEBI to prove as to how the noticee was aware and deliberately ignored such fraudulent activity of Darsan Desai or how the Noticee supported Darsan Desai in his fraudulent activities.*
- (vii) Nowhere in the ER it is stated as to how the Noticee was involved in the alleged manipulative trading or was aware about the same and how the noticee was connected or involved with Nirmal Kotecha in any manner. Merely by stating that the acts of Darsan Desai were not possible without the support of the management of the Noticee and that the noticee ignored the conduct of Darsan Desai, without providing any evidence to this effect, does not mean that the Noticee has violated the provisions of securities laws as alleged in the said Enquiry Report.*

- (viii) *A bare perusal of the above orders make it clear that it was Darsan Desai who was connected /involved with Nirmal Kotecha. Nowhere has it been alleged that the Noticee was involved in the alleged manipulative and fraudulent scheme of Nirmal Kotecha. Darsan Desai was 1 of more than 250 employees of the Noticee at that point in time and the acts of Darsan Desai cannot result in casting allegations that the Noticee was involved with Nirmal Kotecha in any manner. Supposing in any Company, if any employee is individually found to be indulging in any fraudulent or unfair practice.*
- (ix) *The fact as to whether Darsan Desai was an employee of the Noticee or not makes no difference, as it was Darsan Desai who had indulged in manipulative practice with Nirmal Kotecha. The Noticee was never aware or supported Darsan Desai in such dubious activities as alleged in the ER. In the present case there is no evidence to show lack of vigilance or bona fide on part of the Noticee to make it liable.*
- (x) *It is submitted that KYC forms were filled by the clients themselves and in cases where their employment details/income were not filled by them, the notice being merely a stock broker could not have forced that to do so. For such minor unintentional mistake/discrepancy the stock broker cannot be alleged to have not carried out proper due diligence. Due diligence does not mean doing everything that is expected to be done in hind sight, but doing things that general prudence would warrant. The steps taken by the Noticee as aforesaid substantiate that due diligence was always maintained and a minor mistake if any cannot lead to an allegation of failure of exercising due diligence on part of the Noticee.*
- (xi) *Now dealing with the allegation of brining of clients with low income and allowing them large exposure and indulging in manipulative trading through their account. Firstly, it is nowhere stated by the DA in the ER that the Noticee has indulged into manipulative trading or had a practice of registering low income clients. The Noticee had more than 25000 clients at the relevant time and a select few instances cannot be alleged to be a deliberate practice of the Noticee. At the highest it can be alleged that these entities might have indulged into manipulative trading. There is no reason for the Noticee to register an clients for using them as a front or otherwise. No benefit or gain can be attributed to the notice in this regard nor has the same been alleged in the ER. In fact, in the present case the notice has become a victim because of such trading by a few clients without actually being aware of such alleged fraudulent activity. Further collection of income proof and other documents was only mandatory for F&O segment and these clients mostly dealt in cash segment.*

- (xii) *The income details set out in the KYC forms by the clients may not be the only proof to major payments or trading capacity of a client. There can be other sources of funds for the client which would indicate the trading or payment capacity of a client. Further as the branch managers who are in constant touch with the clients knows the clients risk taking capacity based on various other factors. It also has been stated in the ER that these clients have not indicated to SEBI any such other source of income. It is to be noted that the Noticee as a broker was receiving the funds due from its client from the designated bank accounts, evidence for which was always maintained by the Noticee.*
- (xiii) *The DA in the ER repeatedly states that the Noticee was aware of the trading activities taking place at the Borivilli West Branch, however, has not brought a single iota of evidence on record to show that the Noticee was aware about the fraudulent trade practice of Darsan Desai or Nirmal Kotecha or show as to how the Noticee was involved in such fraudulent practices. It is SEBI's own case that Darsan Desai was involved/connected with Nirmal Kotecha and they were together operating the account of Amol Konkane, then how will the Noticee become aware of any fraudulent practice going on in its clients trading account if its own employee is part of the fraudulent scheme and the Client himself is part of the scheme. There was no opportunity for the noticee to intervene or take cognizance of such activity being taken place.*
- (xiv) *It is stated in the ER that the alleged conduct of the clients were not in consonance with the spirit of SEBI circular and by allowing exposure to the client who apparently did not have risk bearing capacity exposed itself along with other clients to financial risk which was imprudent and not in consonance with the code of conduct as prescribed in the stock broker regulations. As submitted earlier in this reply, the conduct of the noticee was in accordance with the risk management system in place and the clients were registered in normal course of business. The Noticee had no reason to doubt the genuineness of the trades of these entities and could have never been aware of any fraudulent activity/scheme of its client or its employee or Nirmal Kotecha. There had been no instance of any default in payment by these clients and no loss had been caused to other clients of the Noticee because of these clients.*
- (xv) *Likewise in the current case there is absolutely no evidence that the Noticee or any of its management aided or abetted Nirmal Kotecha and therefore, a similar treatment akin to Nimesh Chitalia ought to be given to the Noticee in the current matter as there is no evidence to the contrary.*

- (xvi) *The last finding in the ER is that the Noticee failed to segregate funds and securities of clients. The Noticee adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance. In this regard it is submitted that the risk management function of the noticee is centralised at the head office level. However, for the purpose of allowing some play in the joints, the branch manager is allowed to take business decisions in consonance with the overall risk management policies and with the permission of the risk management team. This is similar to TOD facility of banks where bank branch managers have discretion to some extent to allow credit to clients based on their record and managers confidence over the customer.*
- (xvii) *The head office of the Noticee had access to the accounts of each client and the same is monitored on a daily basis by the risk management team at the head office. The branch manager for each branch reports to the risk management team, the day to day status in relation to his branch. In relation to clients having debit balances, the branch manager reports to the risk management team the status of such accounts i.e. whether the obligations are being met at regular intervals and within reasonable time limits. The payouts in relation to clients having credit balances are also separately monitored and released at the request of the client. From a perusal of the running ledger copies of each of the customers of the Borivali branch of the Noticee, it is amply clear that there is not even a single instance where credit balance of any client has been utilized for the purpose of meeting the debit balance of the client. The same was also placed before the DA, however, has been ignored while preparing the Enquiry report.*
- (xviii) *In the ER there is no specific averment, allegation or statement against the Noticee as to how the Noticee was involved in the alleged fraud and how the Noticee has violated various rules and regulations of SEBI.*
- (xix) *It is submitted that nowhere in the ER it is stated that how the Noticee has facilitated Nirmal Kotecha or Darshan Desai or how the Noticee was aware about the alleged fraud, in the absence of the same it cannot be alleged that the Noticee had committed a 'fraud' as per the PFUTP Regulations.*

Consideration of issues and findings:

8. I have gone through the SCN, ER, reply of the Noticee and its submissions before me during the personal hearing. I note that the allegation against the Noticee is that the

Noticee with the help of some of his employees and some of its clients aided and abetted Nirmal Kotecha, one of the directors of PSTL, to offload his shareholding in PSTL by creating artificial volumes in the shares of PSTL. It is alleged that the Noticee had indulged in synchronised/reversal trading for some of its clients who were also front entities for Nirmal Kotecha or were acting in collusion with him. Further, that the Noticee failed to carry out due diligence in respect of the clients and had allowed large exposure to low income group clients. The Noticee had also intermingled funds of the clients and used the funds of clients having credit balance to allow exposure to clients having debit balance. The aforesaid activities of the Noticee were allegedly in violation of Section 12 A of the SEBI Act, 1992, read with Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b) and 4(2)(e) of PFUTP Regulations, 2003 and Regulation 26 (xiii) of Stock Broker Regulations, 1992 read with the Code of Conduct for Stock Brokers specified in Schedule II of the Stock Brokers Regulations read with Regulation 7 [now 9(f)] of Stock Brokers Regulations, 1992.

9. The relevant extracts of the provisions of law allegedly violated by the Noticee are mentioned as under:-

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

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(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;

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

Brokers Regulations, 1992

26. (xiii) Failure to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 7, now 9(f)]

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

10. I note that the ER finds the Noticee in violation of provisions of the PFUTP Regulations, 2003 and Stock Broker Regulations, 1992 on the following four counts:

- a) the Noticee had knowingly allowed a third person i.e. Darshan Desai to operate and manage one of its branches (Borivali West). Further, that the Noticee allowed

Darshan Desai to represent himself as an agent (Branch head of Borivali West Branch) of the Noticee without being an employee of the Noticee.

- b) that Darshan Desai in collusion with the Noticee and Nirmal Kotecha conspired to mislead the unsuspecting investors by disguising their nefarious activities. The ER observed that they executed their plans by using the names, trading accounts and bank accounts of Amol Kokane, a front entity for Nirmal Kotecha who was a relative of one of the employees of Nirmal Kotecha. Further, that Darshan Desai connived with the Noticee and some of its employees and used other clients of the Noticee registered with its Borivali (West) Branch and executed synchronised reversal/structured trades and created artificial volume in the scrip of PSTL.
- c) that the Noticee failed to carry out due diligence in respect of the clients and had allowed large exposure to low income group clients.
- d) The Noticee had also intermingled funds of the clients and used the funds of clients having credit balance to allow exposure to clients having debit balance.

In view of the aforesaid, the ER had observed that the Noticee along with some of its employees and clients had connived with Nirmal Kotecha and other stock brokers and aided and abetted him to offload his shareholdings thereby trapping the genuine, unsuspecting investors in the aforesaid fraudulent scheme.

A. The Noticee permitted Darshan Desai to operate and manage one of its branches.

11. With regard to the observations in the ER that Darshan Desai was not an employee of the Noticee, I note that the Noticee has reiterated its submissions made before the DA that Darshan Desai was an employee of the Noticee who used to handle the Borivalli (West) Branch of the Noticee along with his wife Priyanka Desai, in whose name the Borivalli Branch was registered. I note that the ER had observed that Darshan Desai in his statement dated March 13, 2009 to SEBI had admitted that he did not have any

documentary evidence to prove that he was an employee of the Noticee. However, that later during the course of investigation vide letter dated June 26, 2009, Darshan Desai had provided an appointment letter dated July 01, 2007 from the Noticee, appointing him as Branch Manager of the Borivali (west) Branch) along with a copy of Form 16 issued by the Noticee. In this regard, the DA was of the view that the aforesaid documents were created during the investigation to prove that Darshan was their employee, because if the aforesaid documents were available before the investigation, then Darshan would not have denied about the same in his statements as aforesaid. Further, from the said documents, the ER had observed that Darshan was supposed to be remunerated annually on commission basis and that the payment of remuneration on commission basis itself proves that Darshan was a commission agent rather than an employee of the Noticee. The ER had also observed that there was no logic as to why payment to Darshan was made in the middle of the year and that too only once, instead of paying at the end of the year after considering the volume of business generated.

12. With regard to the above observations of the ER, the Noticee has submitted in its reply that they are not aware as to why Darsan Desai made the statement that he had no documentary evidence with him to show his employment with the Noticee and no opportunity has been given to the Noticee to cross examine Darsan Desai in spite of request for the same before the DA and therefore, the reliance by the DA on the statement of Darshan Desai dated March 13, 2009 cannot be allowed and is completely misplaced. Accordingly, the Noticee has reiterated its stand taken before the DA that Darshan Desai was an employee of the Noticee and have submitted that Darshan Desai's salary was being paid to his wife i.e. Priyanka Desai. With regard to the aforesaid submissions of the Noticee, I find that the same are not tenable for the following reasons:

- a) ER has observed that Darshan Desai was not an employee of Noticee. In response to the said observation, Noticee has stated that such observation is not correct as it has proceeded on the premises that since while giving his statement on March 13, 2009, Darshan Desai could not produce the proof of his employment therefore, the proof of employment i.e. appointment letter and Form 16 produced with his

letter dated June 26, 2009 are an afterthought and cant be relied upon. Noticee submitted that statement of Darshan Desai on March 13, 2009 was recorded in his office where he may not have had his proof of employment. Thus, document of proof of employment submitted with June 26, 2009 letter cannot be said to be an afterthought. In this regard, I note from the statement dated March 13, 2009 of Darshan Desai that he had stated that he did not have any proof that he was an employee of the Noticee and nowhere has he stated that he would or could produce such proof later. I further note that in response to the observations in the ER that Noticee has not explained/clarified the one time payment of remuneration to Darshan Desai, Noticee has submitted that payment was being made to his wife Priyanka Desai regularly. It is a strange case, where Darshan Desai is being claimed as an employee by the Noticee, however, salary was being paid to his wife. This shows that there was no employer-employee relationship between Darshan Desai and the Noticee and only the wife of Darshan Desai was the remiser and branch head of the Borivali (West) branch of the Noticee for which payment was being made to her by the Noticee.

- b) I note that a finding has already been given against Darshan Desai that he was not an employee of the Noticee in the SEBI Order dated June 23, 2020, which was *inter alia* passed against Darshan Desai in the same matter of PSTL. I note that the same has not been contested in appeal by Darshan Desai.
- c) I note that an employer-employee relationship needs to be established by the Noticee to prove that Darshan Desai was its employee and in this regard, I note that the Noticee in this proceeding has only submitted Form 16A of Priyanka Desai, the wife of Darshan Desai, to prove that salary of Darshan Desai was being paid regularly to Priyanka Desai. I find that this does not in anyway prove that Darshan Desai was an employee of the Noticee and it only shows that his wife i.e. Priyanka Desai was an employee of the Noticee.

d) I also note that Harsh Shah, Vice President of the Noticee, vide his statement dated March 13, 2009 to SEBI, had clarified that Darshan Desai was not an employee of the Noticee.

13. In view of the above, I find that aforesaid submissions of the Noticee that Darshan Desai was its employee is untenable, and agree with the observations of the ER that Darshan Desai was not an employee of the Noticee.

B. The Noticee indulged in synchronised/reversal trading for some of its clients who were front entities for Nirmal Kotecha or were acting in collusion with him.

14. The ER has observed that Amol Kokane was one of the clients of the Noticee, whose account was opened on September 12, 2008 at the behest of Late Sandeep Gavhane, brother-in-law of Amol Kokane and was introduced by Priyanka Desai. Further, that Amol Kokane was a student and allegedly had no knowledge of securities market and investment/trading in securities and had an annual income in the range of Rs. 1 lac to Rs. 5 lac. Amol Kokane vide letter dated September 15, 2008 authorized his brother in law to trade on his behalf, until the accidental death of his brother in law on October 16, 2008. The ER observed that the Noticee admittedly had a robust risk management and client monitoring system at head office and that was enough to alert the Noticee and verify or seek clarification with respect to the trading activities being carried out in the trading account of Amol Kokane thereafter. However, despite the above, the Noticee did not find it suspicious and did not verify or seek clarification in respect of the huge trading activities of a client who was admittedly not trading himself and reportedly had a declared income in the range of Rs. 1 lac to Rs. 5 lac. That there was large debit balance (approximately Rs. 12.60 lac) in the account of Amol with the Noticee at the time of death of his brother-in-law and since there was no trading in the said account after the demise of his brother-in-law, Darshan Desai sold off the shares in their possession to recover the debit balance and after selling of the said shares, the account of Amol Kokane with the Noticee had positive balance to the extent of Rs. 3.12 lac. The ER

observed from the above sequence of events that Amol Kokane was a front entity and his trading account was used by his brother in law for Nirmal Kotecha and this fact was known to Darshan Desai and Priyanka Desai and also to the Noticee. Further, since Priyanka Desai had opened the account of Amol Kokane and had signed as introducer in his KYC, she was aware of the fraudulent scheme of Nirmal Kotecha and was part of it along with Darshan Desai. Further, the ER also observed that after the demise of Sandeep Gavhane, Darshan Desai was the one who was operating the trading account of Amol Kokane. The ER observed that from the above sequence of events it is clear that the Noticee was in the know of the fraudulent scheme and was a participant (even if not active) in the same for reasons best known to them.

15. With regard to the aforesaid observations of the ER, the Noticee has submitted that nowhere in the ER it is stated as to how the Noticee was involved in the alleged manipulative trading or was aware about the same and how the Noticee was connected or involved with Nirmal Kotecha in any manner. The Noticee has submitted that the fact as to whether Darshan Desai was an employee of the Noticee or not makes no difference, as it was Darshan Desai who had indulged in manipulative practice with Nirmal Kotecha and the Noticee was never aware or supported Darshan Desai in such dubious activities as alleged in the ER. With regard to the aforesaid submissions of the Noticee, I find that the same are not tenable for the following reasons:

- a) I note that the Noticee has not denied any of the transactions alleged to have been committed from the account of Amol Kokane etc at its branch by Darshan Desai.
- b) Further, the Noticee has not denied that it was Darshan Desai who was operating the account of Amol Kokane. In this regard, I note that Darshan Desai was not authorized to operate the account of Amol Kokane. Yet Darshan Desai was permitted by the Noticee to operate the account of Amol Kokane, who was the front man of Nirmal Kotecha. Therefore, I note that Noticee has played an important role in permitting Darshan Desai, who was close conduit of Nirmal Kotecha, to operate freely at its Borivali (West) branch. Had the Noticee performed its duty and

not permitted Darshan Desai in operating the account of Amol Kokane the fraudulent trades through the account of Amol Kokane would not have taken place.

c) Further, I note that Darshan Desai was also operating the account of Priyanka Desai and that Priyanka Desai and Amol Kokane had entered into synchronized trades, which meant that Darshan Desai was the one placing order for both sides of the parties to the trade. The allegations on synchronized transactions between Priyanka Desai and Amol Kokane, as given in the show cause notice dated August 30, 2011, issued by the DA to the Noticee, are as under:

- (i) It was observed that on November 3, 2008, Priyanka Darshan Desai sold 27,902 shares of PSTL through 11 trades to Amol Kokane on BSE through the broker Venture Broking. It was observed that Amol Kokane was trading through the Noticee. On the same day, Priyanka Darshan Desai bought back 36,753 shares through 4 trades from Amol Kokane on BSE. Examination of the trades between Amol Kokane and Priyanka Darshan Desai revealed that there were a total of 15 trades between them on November 03, 2008 on BSE. Some of the orders placed by Amol Kokane and Priyanka Darshan Desai 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 Amol Kokane and Priyanka Darshan Desai in a synchronized manner so as to result in their orders getting matched in trades of large quantities of shares.
- (ii) On November 4, 2008, Priyanka Darshan Desai sold 37,087 shares of PSTL to Amol Kokane on BSE through the broker Venture Broking. On the same day, Priyanka Darshan Desai bought back 5,722 shares from Amol Kokane on BSE. Copy of the trades dated November 3, 2008 and November 4, 2008 were provided as Annexure 6 to the show cause notice issued by the DA.
- (iii) An examination of the order log and trade log on a random sample basis revealed that Priyanka Darshan Desai and Amol Kokane had executed

synchronized reversal transactions. It was observed that the aforesaid trades of Priyanka Desai were executed by Darshan Desai through the broker Venture Broking. The trades of Amol Kokane too were executed by Darshan Desai, but, through the Noticee. Therefore, during the said period, it was Darshan Desai himself who was allegedly executing the trades in the names of both viz. his wife Priyanka Desai, through Venture Broking, and, Amol Kokane, through Noticee, which had matched.

16. Hence, it is evident that the Noticee had facilitated the synchronized/reversal trading between Priyanka Desai and Amol Kokane, whose account was operated by Darshan Desai, from the branch of the Noticee. As observed in the ER, I note that the Noticee had given a free hand to Darshan Desai to operate the accounts of Amol Kokane, through which various fraudulent transactions took place in the scrip of PSTL to facilitate Nirmal Kotecha. I note that the Noticee admittedly had a robust risk management and client monitoring system which was centralized at head office and is monitored on daily basis. Given that such fraudulent activity was being carried out from its Borivali (West) branch, the participation of the Noticee in the fraudulent activity is evident and the Noticee cannot simply claim that it wasn't aware of what its own branches were doing. The Noticee is liable for the fraudulent activities committed at its branches. In view of the above, I find the submission of the Noticee that they were never aware or supported Darshan Desai in such dubious activities as observed in the ER, is untenable, and agree with the findings of the ER that the Noticee colluded with Darshan Desai in facilitating the fraudulent activities of Nirmal Kotecha in the scrip of PSTL.

C. The Noticee failed to carry out due diligence in respect of its clients and had allowed large exposure to low-income group clients.

17. The ER observed that the Noticee brought in clients with low income such as Amol Kokane, Raju Shah, Deepak Mali etc. and allowed them large exposure and indulged in manipulative trading through their trading accounts. The ER observed that the Noticee

adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance. The ER also observed that some portion in the KYC of clients such as introducers column in the KYC was not filled intentionally. Further, the aforesaid clients of the Noticee did not indicate any such source of income and were salaried employees having low monthly income or having no income as admitted by Amol Kokane in his statement to SEBI.

18. With regard to the aforesaid observations of the ER, the Noticee has submitted that KYC forms were filled by the clients themselves and in cases where their employment details/income were not filled by them, the Noticee being merely a stock broker could not have forced them to do so. The Noticee has submitted that for such minor unintentional mistake/discrepancy the stock broker cannot be alleged to have not carried out proper due diligence and the steps taken by the Noticee substantiate that due diligence was always maintained and a minor mistake if any cannot lead to an allegation of failure of exercising due diligence on part of the Noticee. With regard to the aforesaid submissions of the Noticee, I find that the same are not tenable for the following reasons:

- a) The Noticee has admittedly not taken complete KYC forms from its clients and have submitted that they could not have forced the clients to fill the forms. However, I note that the duty and responsibility is upon the Noticee to ensure that the KYC forms are duly filed by the clients, particularly the employment/income details, which is imperative and necessary for the Noticee to identify the trading and risk appetite/ability of the client.
- b) I note that the KYC not being filled is not being seen in isolation, but with the fact that clients like Amol Kokane who did not have any source of income was given large exposure which was imprudent and not in consonance with the code of conduct for stock broker prescribed in the Stock Broker Regulations. As observed in the ER, the Noticee admittedly had a robust risk management and client monitoring system which was centralized at head office and is monitored on daily basis. The ER observed that the above was enough to alert the Noticee and verify or seek clarification with respect to the trading activities being carried out in the

trading account of Amol. However, despite the above, I note that during the period October 27, 2008 to November 17, 2008, Amol Kokane, bought 4,19,084 shares of PSTL at a value of Rs. 2,25,57,138.82/- and sold 4,21,974 shares of PSTL at a value of Rs. 2,15,54,295/- on BSE. I note that the Noticee did not find it suspicious and did not verify or seek clarification in respect of the huge trading activities of a client who was admittedly not trading himself and reportedly had a declared income in the range of Rs. 1 lac to Rs. 5 lac.

19. From the above, it is evident that the Noticee's failure in ensuring that the KYC of its clients were filled and also allowing large exposure to its low-income clients, is part and parcel of the entire fraudulent scheme of facilitating Nirmal Kotecha in manipulating the scrip of PSTL. Hence, I agree with the observations of the ER that the Noticee failed to carry out due diligence in respect of its clients.

D. The Noticee failed to segregate funds and securities of its clients.

20. Further, the ER has observed that the Noticee failed to segregate funds and securities of clients and adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance. With regard to the said observation of the ER, the Noticee has submitted that the risk management function of the Noticee is centralised at the head office level. However, for the purpose of allowing some play in the joints, the branch manager is allowed to take business decisions in consonance with the overall risk management policies and with the permission of the risk management team. That this is similar to TOD facility of banks where bank branch managers have discretion to some extent to allow credit to clients based on their record and managers confidence over the customer. The Noticee submitted that the payouts in relation to clients having credit balances are also separately monitored and released at the request of the client. Further, that from a perusal of the running ledger copies of each of the customers of the Borivali branch of the Noticee, it is clear that there is not even a single instance where credit balance of any client has been utilized for the purpose of meeting the debit

balance of the client. That the same was also placed before the DA, but has been ignored while preparing the Enquiry report.

21. With regard to the aforesaid submissions made by the Noticee, I note that the Noticee has not provided any supporting documents to prove that there was not even a single instance where credit balance of any client has been utilized for the purpose of meeting the debit balance of the client. Whereas, I note that from the show cause notice dated August 30, 2011, issued by the DA, it was *inter alia* alleged that:

"It is alleged that in case of the Borivali Branch, there was branch level limits assigned, the debit balances in some of the client accounts were adjusted/ netted against the credit balances lying in some other clients accounts. It is alleged that the Noticee violated regulation 26(xiii) of SEBI Brokers Regulation which states that a stock broker or a sub-broker shall be liable for monetary penalty if it fails to segregate his own funds or securities from the client's funds or securities or using the securities or funds of the client for his own purpose or for purpose of any other client. Analysis of the balances of all the clients of the Borivali Branch for the period September 9-24, 2008 revealed that the branch would have been in debit balance on almost all the days during the period September 15-22, 2008, if the credit balance in the account of Nirmal Kotecha was not taken into consideration. It is observed that Nirmal Kotecha had transferred an amount of Rs. 1 crore to his account with the Noticee on September 15, 2008, which was lying with the Noticee till September 22, 2008. The branch went into debit balance immediately after Nirmal Kotecha withdrew the said amount and the balance in his account became nil. A summary of some of such instances where, but, for Nirmal Kotecha's funds, the branch would have been in debit is provided as Annexure 20 and a summary of instances where the branch actually went in debit balance after he withdrew his funds is at Annexure 21. From the above, it is clear that Darshan Desai, who was running the affairs at Borivali (West) branch of the Noticee was adjusting the credit balance lying in the account of certain clients to allow other clients to trade without having credit balance/ sufficient credit balance in their account. It is also observed that Darshan Desai traded for Amol Kokane (Nirmal Kotecha's front), through Borivali (West) branch of the Noticee, where he claimed to be the branch manager, by using the credit balance/ securities lying in other client's account for meeting the exposure / margin obligation of Amol Kokane for

32 days after Nirmal Kotecha withdrew his funds lying in his account with the Noticee, Borivali (West) branch.”

22. From the above, I note that the observations in the ER that the Noticee was adjusting the credit balance lying in the account of certain clients to allow other clients to trade without having credit balance/ sufficient credit balance in their account, are based on the aforesaid allegations, for which annexures providing summary of instances that show that the Borivali (West) branch would have been in debit balance, if not for Nirmal Kotecha's funds, were also provided to the Noticee along with the SCN issued by the Designated Authority. I note that the Noticee has not provided copy of the running ledger copies of each of the customers of the Borivali branch, upon which the Noticee has relied upon to contend that there is not even a single instance where credit balance of any client has been utilized for the purpose of meeting the debit balance of the client. Hence, they appear to merely be statements without any supporting documentary proof. In view of the above, I agree with the observations of the ER that the Noticee failed to segregate funds and securities of clients and the Noticee adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance.
23. I note that the Noticee has also relied upon the cases of *SEBI vs. Rakhi Trading Pvt. Ltd.* (CA No. 1969 of 2011 decided on February 08, 2018) and *SEBI vs. Kishore R. Ajmera* in CA No. 2818 of 2008 decided on February 23, 2016 to contend that there is no evidence that the Noticee or any of its management aided or abetted Nirmal Kotecha. In this regard, it would be appropriate to refer to the Order dated April 25, 2018 of the Hon'ble Securities and Appellate Tribunal in the matter of *Bhavesh Patel and Others vs. SEBI* in the matter of S J Corporation Limited in Appeal No. 456 of 2015 reaffirming the rationale cited in the matter of *SEBI vs. Rakhi Trading Private Ltd.* and *SEBI vs. Kishore R. Ajmera* in and held that:

“..... 44. Learned Counsel Shri. Gaurav Joshi relied on the following judgments of the Supreme Court (a) Securities and Exchange Board of India vs. Rakhi Trading Private Ltd. (Civil Appeal No. 1969 of 2011 decided on February 08, 2018); (b) Securities and Exchange Board of India vs Shri Kanaiyalal Baldevbhai Patel, 2017 SCC On Line SC 1148 decided on September 20, 2017 and (c) Securities and Exchange Board of India vs. Kishore R. Ajmera, (2016) 6 Supreme Court Cases 368 decided

on February 23, 2016 and submitted that in deciding on PFUTP violation, totality of facts and preponderance of probabilities have to be resorted to as full evidence may not be forthcoming and manipulative, fraudulent schemes also include deliberately making losses as held in Rakhi Trading (supra).

50. Argument made by each of the appellant individually that each of them played only a small trade in isolation or as per normal course of their business or some of them did not trade at all or some small loan has been given etc. stand no merit when totality of the picture is looked at. All of them together enabled launching this major fraud by using a dormant, low capital base and low public float company. In this context, we also find that the argument that many of the appellants did not off-load either full or major chunk of their holding even in Phase-III or thereafter also has no merit since with the still limited liquidity of about 1100 shares per day there was an inbuilt absorptive limitation for the market and thereafter the ad-interim restraint order of the WTM of SEBI came on their way on February 5, 2010. As held by the Hon'ble Supreme Court in several orders such as SEBI vs Rakhi Trading (supra), SEBI vs. Shri Kanaiyalal Baldevbhai (supra) and SEBI vs. Kishore R. Ajmera (supra) complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In Rakhi Trading (supra) it is held that in some cases parties may even incur willful losses in the market to achieve some objectives."

24. From the aforesaid judgement, while referring to Orders such as *SEBI vs Rakhi Trading (supra)*, *SEBI vs. Shri Kanaiyalal Baldevbhai (supra)* and *SEBI vs. Kishore R. Ajmera (supra)*, it has been made clear that complete evidence may not be forthcoming in every such matter and what is needed is to prove that in a factual matrix preponderance of probabilities indicate a fraud. In the present case, as discussed in the aforesaid paras, Darshan Desai was not an employee of the Noticee, but as the husband of Priyanka Desai, who was the branch manager of the Borivali (West) Branch of the Noticee, Darshan Desai was given a clear hand to manage the said branch and operate the accounts of the clients of the Noticee for manipulating the scrip of PSTL for Nirmal Kotecha. By the very act of permitting a non-employee i.e. Darshan Desai to manage the branch of the Noticee and permitting him to operate the accounts of clients, such as Amol Kokane, through whose accounts synchronized/reversal trades were carried out, shows that the Noticee was well aware of the fraudulent activity being carried out by Darshan Desai and Nirmal Kotecha. This is further evident from the fact that the Noticee is trying to claim that Darshan Desai was actually an employee, when he actually wasn't.

Further, as discussed in the aforesaid paras, the synchronized trades between Priyanka Desai and Amol Kokane could not have happened if the Noticee had not permitted Darshan Desai from operating the account of Amol Kokane, for which he was not authorized. Further, the Noticee admittedly had a robust risk management and client monitoring system at head office to alert the Noticee and verify or seek clarification with respect to the trading activities being carried out in the trading account of Amol. However, despite the above, the Noticee did not find it suspicious and did not verify or seek clarification in respect of the huge trading activities of a client who was admittedly not trading himself and reportedly had a declared income in the range of Rs. 1 lac to Rs. 5 lac. Furthermore, despite the fact that Darshan Desai was not authorized by Amol Kokane, the Noticee did not intervene or take cognizance, which makes it clear that the Noticee was aware of and involved in the fraudulent scheme. The Noticee also failed to segregate funds and securities of clients and adjusted funds of the clients having credit balance for allowing exposure to clients having debit balance. Given that such fraudulent activity was being carried out from its Borivali (West) branch along with the Branch Managers of its other branches, the participation of the Noticee in the fraudulent activity is evident and the Noticee cannot simply claim that it wasn't aware of what its own branches were doing. The Noticee is liable for the fraudulent activities of its branches. The Hon'ble Supreme Court in the matter of *SEBI vs. Kishore R. Ajmera (supra)*, as also relied upon in the case of *SEBI vs Rakhi Trading (supra)*, held that "26. *It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*" Therefore, in view

of the above factual matrix of circumstances which show the Noticee's participation, as have been discussed in detail in the aforesaid paras, I find that there is sufficient evidence to reach a reasonable conclusion that the Noticee has aided and abetted Darshan Desai in facilitating Nirmal Kotecha in his fraudulent scheme to manipulate the scrip of PSTL.

25. I further note that vide SEBI Orders dated June 23, 2020 in the matter of Pyramid Saimira Theatre Limited, directions have been issued *inter alia* against Darshan Desai, Priyanka Darshan Desai, Amit Joshi and Amol Kokane for facilitating Nirmal Kotecha in off-loading his stake in PSTL at the detriment of the common investors and having colluded with Nirmal Kotecha to disguise the trail of funds used by Nirmal Kotecha to carry out his nefarious activities through the accounts of Amol Kokane, who was a client of the Noticee.
26. In view of the above, I find that the Noticee through Darshan Desai, its employees and some of its clients aided and abetted Nirmal Kotecha, one of the directors of PSTL, to offload his shareholding in PSTL by creating artificial volumes in the shares of PSTL. I find that the Noticee had indulged in synchronised/reversal trading for some of its clients who were also front entities for Nirmal Kotecha or were acting in collusion with him. Further, I find that the Noticee failed to carry out due diligence in respect of the clients and had allowed large exposure to low income group clients and intermingled funds of the clients and used the funds of clients having credit balance to allow exposure to clients having debit balance. In view of the same, I agree with the conclusion of the DA that the Noticee has violated Section 12 A of the SEBI Act, 1992, read with Regulations 3(d), 4(1), 4(2)(a) and 4(2)(e) of PFUTP Regulations, 2003 and Regulation 26 (xiii) of Stock Brokers Regulations, 1992 read with the Code of Conduct for Stock Brokers specified in Schedule II of the Stock Brokers Regulations read with Regulation 7 [now 9(f)] of Stock Brokers Regulations, 1992.
27. I note that the SCN called upon the Noticee to show cause as to why action as deemed appropriate by the competent authority should not be taken against it in terms of Regulation 27 read with Regulation 28 of Intermediaries Regulations. I note that by the

amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by DA in case of default, has been substituted and Regulation 28 which dealt with procedure for action on receipt of the recommendation from DA, has been omitted and these matters now stand governed by the Regulations 26 and 27, respectively. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in **CIT, Bangalore Vs. Venkateshwara Hatcheries (P) Ltd. and Ors. (1999) 3 SCC 632** wherein it was held as under:

".....15. As noticed earlier, the omission of Section 2(27) and re- enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions....."

28. The aforesaid judgment has been quoted with approval by Hon'ble Supreme Court in its subsequent judgment in **Fibre Boards (P) Ltd., Bangalore Vs. CIT, Bangalore (2015) 10 SCC 333**. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before DA and designated member (hereinafter referred to as "**DM**") was provided under Regulations 25 to 28 of the Intermediaries Regulations wherein Regulation 25 dealt with issue of SCN by DA, Regulation 26 dealt with reply of SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the DA and Regulation 28 dealt with conduct of proceedings before DM like issue of SCN, hearing and passing of final order. After the amendment, Regulation 25, as substituted deals with holding of enquiry proceedings before DA, Regulation 26 deals with recommendation for actions which can be made by DA and Regulation 27 deals with conduct of enquiry proceedings before DM and passing of order by DM. Thus, the proceedings before DM which were earlier

governed by the provisions of Regulations 28 are now governed by the provisions of Regulation 27 with certain modifications. Therefore, by virtue of the judgment of Hon'ble Supreme Court in *Venkateshwara Hatcheries case (supra)*, the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of new Regulation 27 i.e. January 21, 2021. Accordingly, the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations and for the violations committed by the Noticee discussed in the previous paragraphs, directions under Regulation 27 of the Intermediaries Regulations can be issued.

29. I note that as per the ER, there is no proprietary trading by the Noticee. I note that the matter pertains to transactions in the year 2008, i.e. around fourteen years have elapsed from the date of the defaults. Further, I note that the Noticee has submitted that it has been 4 years that the Noticee has stopped its broking business and had applied for surrender of its registration in January 2017. Taking into consideration the facts and circumstances of the case, I find that suspension of six months will meet the ends of justice.

Direction:

30. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, and upon consideration of the facts and circumstances as above, hereby suspend the certificate of registration of the Noticee i.e. India Capital Markets Pvt. Ltd., for a period of six months for the aforesaid violations committed by it.
31. The obligation of the Noticee as a stock broker, suspended by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the suspension imposed by this Order. Further, all open positions, if any,

of the Noticee, suspended in the present Order, in the F&O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the suspension imposed by this Order.

32. In case of any existing clients of the Noticee as Stock Broker, the Noticee shall allow such clients to withdraw or transfer their securities or funds held in its custody or withdraw any assignment given to it, without any additional cost to such clients within 45 days from the date of this order.
33. The order comes into force with immediate effect.
34. A copy of this order shall be served on the Noticee and all recognized Stock Exchanges.

Place: Mumbai

Date : August 02, 2022

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA