BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/GG/BS/2022-23/16917-16921

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

In respect of:

Noticee No.	Name of the Entities	Pan No. of the entities
1	Malay Bhow	AEJPB3509C
2	Taresh Gorasia	AHJPG9764F
3	Himanshu Tiwari	AKRPT7733J
4	Paresh Lavjibhai Mehta (Partner- HET Enterprise)	AEKPM6708F
5	Kavitaben Pareshbhai Mehta(Partner- HET Enterprise)	AJIPM8425A

In the matter of South Indian Bank Limited

A. BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") was in receipt of a complaint on February 23, 2017 attaching the screenshots of certain SMSes circulated in the market. In the SMSes sent to the investors, it was recommended to buy PUT options in the scrip of The South Indian Bank at Rs.0.05/- (which is out of the money) for intraday target of Rs.0.50/-. Multiple complaints of even date were also received from Buyers who bought such PUT option contracts on the expiry day on the basis of SMS tips received by them and having lost their money. It was alleged that the above SMSes were being sent by Malay Bhow and Himanshu Tiwari (Noticee No. 1 and

Noticee No. 3 respectively). Malay Bhow is the CFO of Sunflower Broking Pvt Ltd. (hereinafter referred to as Sunflower/SBPL). SEBI conducted an investigation into the matter. Investigation revealed that Himanshu Tiwari availed the services of Onering.in and Walkover Web Solutions Pvt. Ltd. (Walkover) (re-seller- Yatindra Singh) to circulate bulk SMSes with a recommendation to buy deep out of the Money contract in the scrip of South Indian Bank Ltd. (i.e. at strike price of Rs.17.50). The contents circulated through bulk SMSes was per se misleading as the price of the scrip had not fallen to Rs. 17.50/- at NSE during the period November 01, 2016 to February 23, 2017. Himanshu Tiwari disguised himself as one 'Subodh'. It was alleged that Himanshu Tiwari and Malay Bhow were aware of misleading representation in the SMSes. Taresh Gorasia is an employee of Roofone Securities Private Ltd. (*hereinafter referred to as Roofone*) which is an Authorized Person (A.P.) of Sunflower broking Pvt. Ltd. Het Enterprise was the major seller who traded through Sunflower Broking Pvt. Ltd. Taresh Gorasia had spoken to Het Enterprises. Partners of Het Enterprise are Paresh Lavjibhai Mehta and Kavitaben Pareshbhai Mehta. It was alleged that Malay Bhow **(Noticee No. 1), Taresh Gorasia (Noticee No. 2), Himanshu Tiwari (Noticee No. 3), Paresh Lavjibhai Mehta (Noticee No. 4) Kavitaben Pareshbhai Mehta (Noticee no. 5)** has violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992, read with Regulation 3 (a), (b) (c) and (d) and Regulation 4 (1), 4 (2) (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003 **(hereinafter referred to as SEBI PFUTP Regulations)** in the matter of South India Bank Limited (hereinafter referred to as **"SIBL")**.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed me, as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “SEBI Adjudication Rules”) vide order dated November 12, 2021 to inquire into and adjudge under section 15HA of the SEBI Act, against the Noticees for the alleged violations referred above.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A show cause notice dated 30.12.2021 (hereinafter referred to as “SCN”) was issued against the Noticees under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated against them and why penalty should not be imposed against them under section 15HA of the SEBI Act, as applicable, for the alleged violation of the provisions of Sections 12A (a), (b), (c) of the SEBI Act 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) , 4(2) (k) & (r) of the PFUTP Regulations.

4. Partners of Het Enterprise viz. Paresh Lavjibhai Mehta & Kavitaben Pareshbhai Mehta, vide letter dated 17.01.2022 *inter alia*, requested for inspection of documents. An opportunity of inspection of documents was granted on 14.03.2022 and the same was communicated to them vide letter dated 08.03.2022. However, inspection of documents was rescheduled to 15.03.2022 on their request. Authorized Representative of both the Partners of Het Enterprise duly availed the opportunity of inspection of documents on 15.03.2022. In the interest of natural justice, opportunity of personal hearing was granted to the Noticees/entities on 06.04.2022 and the same was communicated to all the Noticees vide letter dated 29.03.2022. However, personal hearing scheduled on 06.04.2022 was adjourned on the request of the 3 Noticees. Vide letter dated 05.04.2022 second opportunity of personal hearing was granted to all the Noticees on 19.04.2022. Mr. Meit Shah Authorized representative (Prakash Shah & Associates, Advocates) of partners of Het Enterprise viz. Paresh Lavjibhai Mehta & Kavitaben Pareshbhai Mehta appeared before me and sought further time to argue on merits. Ms. Rinku V. (Advocate) appeared on behalf of Malay Bhow and requested for adjournment of hearing. Taresh Gorasia and Himanshu Tiwari did not appear before me on 19.04.2022. Third opportunity of hearing was granted to all Noticees on 21.04.2022 which was communicated to all Noticees vide letter dated 20.04.2022. On 21.04.2022, Ms. Rinku V. Advocate, represented Malay Bhow, Mr. Rushin S. Kapadia, Advocate represented Taresh Gorasia and Mr. Meit Shah, Advocate, represented Partners of Het Enterprise viz. Paresh Lavjibhai Mehta & Kavitaben Pareshbhai Mehta and argued the matter on merit. Himanshu Tiwari did not appear before me and failed to avail any opportunity of personal hearing.

Replies of Noticees

5. Partners of Het Enterprise, Paresh Lavjibhai Mehta & Kavitaben Pareshbhai Mehta filed common replies vide letters dated 17.01.2022, 22.03.2022, 01.04.2022 (email), 13.04.2022 and detailed reply vide letter dated 26.04.2022. Malay Bhow filed his replies vide letter dated 12.04.2022, 21.04.2022 and 29.04.2022. Taresh Gorasia filed his reply vide letter dated 24.04.2022 which was received through email on 02.05.2022. Himanshu Tiwari forwarded his reply vide email dated 16.01.2022.

Background

As brought out in the investigation conducted by SEBI, the facts leading to violations mentioned in the SCN dated 30.12.2021 by the Noticees are as under:-

6. SEBI was in receipt of a complaint on February 23, 2017 attaching the screenshots of certain SMSes circulated in the market. The content of the SMSes are mentioned below:

SMS-I: FOBULL special option Buy SOUTHBANK 17.50 PE (Put-Option-FEB- Exp) At 5-10 Paisa for TGT 50 Paisa Intraday. (Lot Size 33141) For 25k Investment Buy 15 Lots.

SMS.2: Hurry. Catch it SOUTHBANK 17.50 PE@5 Paisa Quickly. See Volumes Are Flying. It Will Go Up Like Rocket In 1 Hour. Buy 25-50-100 Lots Now. TGT 50 Paisa Intraday.

7. The complainant alleged that the above SMSes were being sent by Malay Bhow and Himanshu Tiwari i.e. Noticee No. 1 and Noticee No. 3. Malay Bhow is the CFO of Sunflower Broking Pvt Ltd. In the SMSes sent to the investors, it was recommended to buy put options in the scrip of South Indian Bank Ltd. at 0.05 (which is out of the money) for intraday target of 0.50. Further, the complainant also alleged that:

It is clearly seen that target is not going to hit and they have already placed nearly 12 crore quantity selling bid so all retail investors will buy and they will be the sellers and at the end of the day retails investors' money will become zero and all money will go to Himanshu and Malay's pocket.

8. SEBI was also in receipt of several complaints from the buyers who bought PUT options of South Indian Bank Limited. They have alleged that they were receiving calls and SMSes. They lost money in the expiry scam done by www.fobull.com.

9. Multiple complaints of even date were also received from Buyers who bought such put option contracts on the expiry day on the basis of SMS tips received by them and having lost their money. In the SMSes sent to the investors, it was recommended to buy PUT options in the scrip of South Indian Bank Ltd. at Rs. 0.05/- (which is out of the money) for intraday target of Rs.0.50/-.

10. On the day of expiry i.e February 23, 2017, scrip opened at Rs.20.55/- (in Cash segment) indicating that for the put option to be in "In-the-Money", underlying had to fall by more than 10%, which seemed difficult in the absence of any negative news about the stock at that moment. The price of the scrip had not fallen to 17.5/- at NSE during the period from November 1, 2016 to February 23, 2017.

In the wake of the incidents stated above, SEBI initiated investigation.

11. Investigation findings in a nutshell:

11.1. Based on complaints, investigation tried to trace back the origin of SMS, identifying the service provider, tele-marketing agencies whose services/platform was used for SMS circulation, the person(s) who procured the service, sender id/email id used etc.

11.2. As the complainant indicated the names of Noticee No. 1 and Noticee No. 3, attempts were made to correlate the facts and see whether the person(s) who was/were responsible for sending the SMSs were any of the Noticees as alleged in the complaint. Investigation looked at call data records, and location of mobile numbers by tracing location, account opening forms, CAFs etc. available with telecom service providers, bank verifications and also recorded statements of few relevant entities such as Yatindra Singh and Chiranjiv Harishbhai Pavar.

11.3. Trade log analysis of contract on the Expiry day i.e. 23.02.2017 was carried out to see who the major sellers were and to ascertain their connection with Noticee no. 1 and Noticee No. 3, who were named in the complaint. Noticee No. 2 is an employee of Authorized person of the broking entity in which Noticee No. 1 is a director. Certain clarifications were also obtained through emails from the Noticees. It was seen that Het Enterprise, a partnership firm where Noticee Nos. 4 & 5 are the partners, was the largest seller in terms of value i.e. Rs. 8,94,807/-.

11.4. All the proof and findings of the investigation have been elaborated in the SCN dated 30.12.2021 which was served on the Noticees. The factual allegations made in the SCN and response of each Noticee to those allegations are being dealt with hereunder in seriatim along with evidence, as part of adjudication exercise to come to specific findings.

D. FACTUAL MATRIX, REPLIES & FINDINGS:

Identification of source of circulation of bulk SMS:

12. It was alleged in one of the complaints that Noticee No. 3, in connivance with Noticee No. 1 (CFO & Director of Sunflower Broking Pvt Ltd.) has defrauded the investors by giving the recommendation to buy Put Option in South Indian Bank Ltd. (Expiry : 23.02.2017; Strike Price: Rs. 17.50) 5 — 10 paisa for target of 50 paisa. The complainant has also alleged that Himashu Tiwari has used the fake name "Subodh" for the purpose of the fraud. Further, the complainant has stated that the entities connected to Himashu Tiwari and Malay Bhow would be the sellers of the instant contract and all the money (premium) would go to Himanshu Tiwari and Malay Bhow. The clients were registered via missed call service of onering.in or the website www.fobull.com. In case of missed call service by onering.in, the client had to give missed call to 08030636021.

13. Taking a cue from the complaint, details were sought from onering.in (a missed call service provider) during the course of investigation. Onering.in submitted that the owner of registered missed call no. 08030636021 is 'Subodh'. From Annexure 3 of the SCN dated 30.12.2021, I note that Onering.in has assigned the Number 08030636021, to Subodh specifically to activate missed call service. Onering.in, has furnished the list of numbers who have given missed call to this number to Subodh. Onering.in has also stated that “Subodh was used to obtain the data regarding missed call numbers”. The sender Ids provided to ‘Subodh’ are FBULLS and NSEWIN. The username is 7226871219 and email id is subodhtrick@gmail.com. It was also stated that the portal of onering.in does not support sending Bulk SMS (Push SMS) to the clients. However, list of numbers who have given missed call to this number was furnished to Subodh. For the services availed by Subodh, Onering has shared 3 invoices which are available on record. Against one of the invoices, Onering also confirmed that payment was received in cash in the ICICI Bank Account number 085305000862 from Vaishali Nagar Branch, Ajmer. Himanshu Tiwari is holding his bank Account No. 088201500701 in said branch of ICICI Bank. Himanshu Tiwari is named in the complaints received by SEBI. Investigation revealed that clients started receiving Auto SMS replies by giving missed calls on number 08030636021 from February 15, 2017 and 1,114 clients registered for the missed call service.

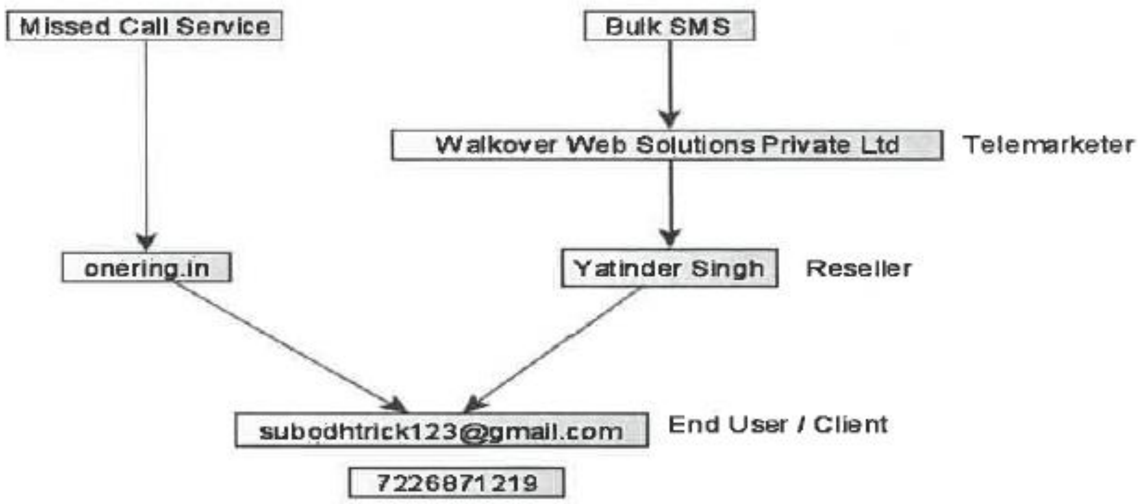
14. The complainants have stated that they received messages through sender ids: AD-FBULLS and HP-FBULLS. It was observed that bulk SMSs were sent by telemarketer 'Walkover Web Solutions Pvt. Ltd' (Walkover) in the month of February 2017. Walkover, during the course of investigation submitted that these sender ids were registered in the name of their reseller Yatindra Singh. Information was sought from Yatindra Singh and he submitted that these bulk SMSs were sold by him to one Subodh. Following information was provided at the time of registration with Walkover:

Table No. 1

Reseller Details	
Name	Yatindra Singh
Email Id	info@dndopensms.com
Company	dndopensms.com
Address	405/28 Bhajan Ganj, Ajmer(305001)
Number	9680101444
Username	yatindra
End User/Client Details	
Name	Subodh Patel
Email Id	subodhtrick123@gmail.com
Company	rgoption
Address	2/345 nirvan nagar, Ahmedabad
Number	7226871219
Username	rgoption

Yatindra Singh in his statement recorded on 10.01.2018 has stated that any user can sign up the account and the account is verified by mobile number and no KYC documents are collected from the user.

15. The diagrammatic representation of the above mentioned modus operandi is as shown below:



16. As per the information sought from onering.in, the mobile nos. 7226871219 and 8030636021 belong to Subodh. Customer Application forms (CAFs) were sought from the Telecom Service Providers (TSPs) and it was revealed during the course of investigation that mobile no. 7226871219 belongs to Chirinjiv Harishbhai Pavar. However, Chirinjiv Harishbhai Pavar, in his statement recorded on 15.02.2018 stated that the number 7226871219 does not belong to his family or relatives. He also stated that his documents have been used at wrong place.

17. Investigation revealed that call data records (CDRs) for the mobile numbers — 7226871219 (Subodh) and 8441836823 (Himanshu Tiwari) for the period January 01, 2017 to February 23, 2017 was perused and Cell-IDs with **maximum talk time** are shown in table below.

Table No. 2

Mobile number	**TSP**	***Cell_ID/Tower_ID along with total call duration**	
7226871219 (Subodh)	Airtel	**Cell_ID**	**Total Duration (hh:mm:ss)**
		331_10772	03:17:02
		331_10812	03:15:15
8441836823 (Himanshu Tiwari)	Idea	**Cell_ID**	**Total Duration (hh:mm:ss)**
		40460-3001-30386	25:00:13
		40460-3001-30497	23:39:49
		40487-3102-28293	09:19:52
		40487-3102-28292	07:01:26
		40487-3102-28211	05:57:53

(Cell_ID is the identification no. for tower of respective TSPs/mobile no. during the time of call)*

18. Accordingly, for Cell- IDs with **maximum talk time** shortlisted as above, their corresponding tower locations were sought from the respective TSPs. The tower location of the abovementioned Cell IDs is placed below

Table No. 3

Mobile number	**Cell.ID**	**Tower Location corresponding to Cell_ID**	**Total stay duration(on call) during Jan-01, 2017 to Feb 23, 2017 (hh:mm:ss)**

7226871219 (Subodh)	331_10772	Smt. Jubeda Begam W/o Lt. Sh. Mohd. Yakub, A - 86, Panchsheel Colony, Near Chanakaya Smark, Ajmer	03:17:02
	331_10812	Tata Sharing Dr. R C Guptavaishali Hospital & Research Center, Vaishali Nagar, Ajmer	03:15:15

Mobile Number	**Cell-ID**	**Tower Location**	**Total stay duration(on call) during Jan-01, 2017 to Feb 23, 2017 (hh:mm:ss)**
8441836823 (Himanshu Tiwari)	40460-3001-30386	Khasra No. 2441, LIC Colony, Vaishali Nagar, Ajmer	25:00:13
	40460-3001-30497	A-14-C Rajeev Marg Nr. Rajeev Circle Panchsheel Nagar A-Block Ajmer	23:39:49
	40487-3102-28293	Jubeda Begum W/o Lt. Sh. Mohd. Yakub, A-86, Panchsheel Colony, Near Chankaya Smark, Ajmer	09:19:52
	40487-3102-28292	Jubeda Begum W/o Lt. Sh. Mohd. Yakub, A-86, Panchsheel Colony, Near Chankaya Smark, Ajmer	07:01:26
	40487-3102-28211	37, Ana Sagar Circular Rd. LIC Colony, Vaishali Nagar, Ajmer, 30	05:57:53

19. Investigation revealed that on making a google search for "Panchsheel Colony Ajmer", it directed to "Panchsheel Nagar Ajmer". That is, the area "Panchsheel colony Ajmer" and "Panchsheel Nagar Ajmer" are same.

Similarly, on making a google search for Tata Sharing Dr. R C Guptavaishali Hospital & Research Center, Vaishali Nagar, Ajmer, it directed to “Plot No. 246, Ana Sagar Circular Rd, Near Bank of Baroda, Saket Colony, Vaishali Nagar, Ajmer, Rajasthan 305006**.**

20. As TSPs provide address of house/building where they house their respective towers as location address of Cell_IDs, it may happen that two Cell_IDs although located in same area/colony may capture different nearby location. Hence, above Cell-IDs for both mobile numbers - 7226871219 (Subodh) and 8441836823 (Himanshu Tiwari) were categorized based on same locality/area/colony as shown in table below:

Table No. 4

Location	**Mobile Number**	**User_Name**	**TSP**	**Cell_ID**
	7226871219	Subodh	Airtel	331_10772

Panchsheel Colony, Ajmer	8441836823	Himanshu Tiwari	Idea	40460-3001-30497
	8441836823	Himanshu Tiwari	Idea	40487-3102-28293
	8441836823	Himanshu Tiwari	Idea	40487-3102-28292
Vaishali Nagar, Ajmer	7226871219	Subodh	Airtel	331_10812
	8441836823	Himanshu Tiwari	Idea	40460-3001-30386
	8441836823	Himanshu Tiwari	Idea	40487-3102-28211

21. As it can be seen from the tables above, the tower locations for both the mobile numbers are showing the same city i.e. Ajmer. Further, in Ajmer, tower location is limited to two places i.e. Vaishali Nagar and Panchsheel Colony/Panchsheel Nagar for both mobile numbers. – 7226871219 (number obtained by using documents of Chiranjiv Harishbhai Pavar) and 8441836823 (Himanshu Tiwari's number).

22. An analysis of respective locations for both mobile number on the day – SMSs were circulated i.e. February 23, 2017 is shown in table below:

Table No. 5

Himanshu Tiwari (8441836823) - Idea				**Subodh (7226871219) - Airtel**			
From	**To**	**Cell-ID**	**Tower location**	**From**	**To**	**Cell-ID**	**Tower location**
08:16:58	09:15:17	40487-3102-28292	Jubeda Begum W/o Lt. Sh. Mohd. Yakub, A-86, Panchsheel Colony, Near Chankaya Smark, Ajmer	08:16:26	09:16:52	331_10772	Smt. Jubeda Begam W/o Lt. Sh. Mohd. Yakub, A - 86, Panchsheel Colony, Near Chanakaya Smark, Ajmer
09:35:45	11:13:13	40487-3102-28211	37, Ana Sagar Circular Rd. LIC Colony, Vaishali Nagar, Ajmer, 30	09:28:30	11:19:31	331_10812	Tata Sharing Dr. R C Guptavaishali Hospital & Research Center, Vaisali Nagar, Ajmer
13:24:40	22:20:15	40487-3102-28292	Jubeda Begum W/o Lt. Sh. Mohd. Yakub, A-86, Panchsheel Colony, Near Chankaya Smark, Ajmer	11:55:00	21:37:33	331_10772	Smt. Jubeda Begam W/o Lt. Sh. Mohd. Yakub, A - 86, Panchsheel Colony, Near Chanakaya Smark, Ajmer

23. From the table above, the investigation inferred that both mobile numbers - 7226871219 (Subodh) and 8441836823 (Himanshu Tiwari) were in the same location around the same time. From the same, it was primarily inferred that both these mobile numbers were operated by the same person i.e. Mr. Himanshu Tiwari.

24. Investigation revealed that Noticee No. 3 viz. Himanshu Tiwari stays in Ajmer having address as *B-2/233 Panchsheel Nagar. Ajmer*. I also note that bank account of Himanshu Tiwari is held with ICICI Bank bearing Account no. 088201500701 having IFSC Code as ICIC0006808 and this IFSC code belongs to Ajmer-Vaishali Nagar branch of ICICI Bank. As mentioned in previous paragraphs, in reference to the services availed by Subodh from Onering.in, the payment was received in cash by onering.in, in its ICICI Bank Account number 085305000862 from Vaishali Nagar-Ajmer Branch of ICICI Bank.

25. Noticee No. 3 filed his reply on 16.01.2022. Further, vide email dated 05.04.2022, the Noticee stated that his earlier reply may be considered and the same was reiterated by the Noticee vide his email dated 19.04.2022 wherein the Noticee also expressed his inability to attend the personal hearing. Relevant extract of his reply is given below:

25.1. That the contents mentioned in para no. 3 of the SCN are not admitted in the manner it has been stated, rather the replying noticee would be pleased to bring to the kind notice of this Hon'ble Authority that he never sent the alleged messages to anyone and the replying noticee has been falsely implicated in the entire matter just to satisfy the ill grudge of the complainant. The replying noticee has not indulged into any sort of practice for circulating the bulk SMSes with regard to the said complaint.

25.2. It is true that the replying noticee had spoken to Mr. Malay Bhow as he was owner of the Company namely Sunflower Broking Pvt. Ltd. and at that moment the replying noticee was trying to engage himself in getting franchise of any broking agency. Further, the replying noticee had also spoken on the mobile number of Mr. Taresh who was employee of the aforesaid broking company but most of the time, the calls were responded by Mr. Malay only. The communication between the replying noticee and the rest of two persons were purely with regard to getting franchise of the said broking company. Connecting the said communication with the alleged scam would be very harsh and lethal for the replying noticee.

25.3. The replying noticee never had communication and not even knows any of the persons associated with Het Enterprise.

25.4. The replying noticee is totally stranger to the website namely www.fobull.com and SMSes from the sender ids: AD-FBULLS and HPFBULLS.

25.5. The noticee did not defraud anyone by using a fake name 'Subodh'.

25.6. The noticee never asked anyone for giving missed call to said number.

25.7. Replying noticee does not know Mr. Yatinder Singh, Mr. Chirinjiv Harishbhi Pavar. And the noticee is totally stranger to the mobile no. 7226871219.

25.8. The replying noticee is the resident of B-2/233, Panchsheel Nagar, Ajmer and he has been implicated merely on the basis of location of mobile no. 7226871219 and his own number. The mobile no. 7226871219 is stated to be in the tower location of Panchsheel Colony and Vaishali Nagar, Ajmer and the tower location of replying noticee was also of Vaishali Nagar and Panchseel Nagar, Ajmer. However, it is worth to mention here that the Panchseel Colony and Vaishali Nagar having the radius of more than 8 kilometers and since the complainant having the knowledge that the replying noticee is resident of said tower location has concocted a fake story just to implicate the present noticee in a fraud case. Panchseel Colony and Vaishali Nagar covers almost 8-9 km in radius wherein many firms, companies or individuals run their business of trading and yet Implicating the replying noticee on the basis of tower location would not be tenable under the law. Therefore, the conclusion derived by the investigating officer that since both mobile numbers were in the same location which indicated that both were operated by the same person i.e. replying noticee is totally illegal, arbitrary and unjust.

25.9. It is humbly submitted that the ICICI Bank Account bearing number 088201500701 was opened initially in Merta City, Nagaur, Rajasthan and the same was transferred to Ajmer, Vaishali Nagar Branch few months back and the same was initiated at the opinion of the bank because of change in address, meaning thereby during the alleged period, the bank account of replying noticee was in Merta City. Further, there is no branch of ICICI Bank in the radius of almost 10 kms except the said branch. There is no transaction from replying noticee's bank account related to the present matter which cannot be overlooked.

25.10. The replying noticee did not avail the services of Onering**.**in in the name of Subodh and never recommended buying of scrip of the South Indian Bank Ltd. and also never defrauded the retail investors.

25.11. The replying Noticee is neither known to Mr. Chirinjiv Harishbhai Pavar nor been issued with any forged sim card on his name.

25.12. The replying Noticee is neither associated with the company namely Walkover Web Solutions nor with Yatinder Singh. The replying noticee neither disguised himself as 'Subodh' nor availed any services either of SMSes or of Calls.

26. I have noted from the submissions of Noticee No.3 that he resides in Ajmer having address as *B-2/233 Panchsheel Nagar. Ajmer*. Though the Noticee No. 3 claimed that he is totally a stranger to the website namely www.fobull.com and the SMSs from the sender Ids: AD-FBULLS and HPBULLS, I cannot overlook the facts brought out by investigation that mobile no. 7226871219 was used to take the services of Onering.in and Walkover. As brought out in the investigation, Mobile no. 8441836823 belongs to Noticee No. 3. The tower location analysis of both numbers revealed that both the numbers were used in the same location around the same time. Noticee No. 3 used the documents of one Chiranjiv Harishbhi Pavar to get SIM card having mobile no. 7226871219 (TSP-Airtel). Since intention of Noticee No. 3 was to use the number for taking services of Telemarketing agencies for sending misleading SMSs, he refrained himself from using his own mobile number. To strengthen the case that it is Noticee No. 3 who was behind the creation of Subodh id, the Investigation had also brought out an additional corroborative fact. It was found that in respect of one of the vouchers of Onering.in, the payment was received in cash in its ICICI Bank Account number 085305000862 from Vaishali Nagar-Ajmer Branch of ICICI Bank which happens to be the branch of Himanshu Tiwari.

27. I note that Himanshu Tiwari i.e. Noticee No. 3 has denied most of the allegations. He has no knowledge of Subodh, nor the services of Onering.in or Walkover etc. He has only admitted having spoken to Noticee No. 1 & Noticee No. 3 which he says was with respect to procuring franchiseeship of Sunflower Broking Pvt. Ltd. From this, it can be inferred that Noticee No. 3 personally knew Noticee Nos. 1 & 2, and that they were in touch with each other for some purpose. The next question to be considered is whether Noticee No. 3 had a role in getting the mobile number 7226871219. The information provided by TSP Airtel is an independent piece of evidence found in Annexure 16 to SCN. The information furnished along with the recorded statement of Chiranjiv Harishbhai Pavar shows that the said number belonged to a person other than Chiranjiv Harishbhai Pavar but that the sim was obtained using one Chiranjiv Harishbhai Pavar's documents. It is doubtful why any person would obtain a sim showing another person's documents unless it was intended to be used for illegal purpose or with some ulterior motive. In this connection, it is relevant to be reminded of the fact that the complainant had named the persons responsible for circulating the misleading SMS to be Himanshu Tiwari and Malay Bhow. That being so, I note that the investigation brought out two stark facts (i) analysis of tower location of both the Sims - the one obtained fraudulently and the other that belonged to Noticee No. 3 himself; and (ii) the situs of the payment made for the services of Onering.in being the same bank branch where Himanshu Tiwari also had his account. I note that the complaint preceded the Expiry Date on which the alleged fraud took place. And as such, the narration in the complaint perfectly matched the information given by the TSPs, with respect to Subodh name, email ids, sender ids of bulk SMSs, usage of Onering.in for missed call service etc. Cross verification done with Onering.in and Walkover also confirmed the person to be Subodh who was the subscriber. The corroborations brought out by investigation with respect to the proximity of Himanshu Tiwari's sim and the sim of Subodh along with ICICI bank branch details, wherein Himanshu Tiwari's account was also there, and the calls made to Noticee No. 1 & Noticee No. 2, indicate that the complainant was aware of all the movements of the plan. I do not find any gaps in the complaint as the factual links are perfectly connecting with each other such that I get a strong feeling that Subodh is none other than Himanshu Tiwari i.e. Noticee No. 3. It cannot be a mere coincidence that Tower location of mobile number of Noticee No. 3 i.e. 8441836823 and that of the mobile number obtained by using the documents of Chiranjiv Harishbhai Pavar i.e. 7226871219, is in same location around the same time as shown in Table No. 5. I note that investigation has stated that tower location analysis was done on the basis of maximum talk time of both numbers. Noticee No. 3 failed to appear for the proceedings even though he filed a reply, which again raises some doubts.

28. Therefore, in view of the facts brought out hereinabove, I concur with the findings of investigation that Noticee No. 3 viz. Himanshu Tiwari masked himself as Subodh and availed the services of Onering.in and Walkover Web Solutions Pvt. Ltd. (re-seller- Yatindra Singh) to circulate the misleading Bulk SMS by using sender ids AD-FBULLS and HPBULLS recommending to buy deep out of the Money contract in the scrip of South Indian Bank Ltd. (i.e. at strike price of Rs.17.50). The content circulated through bulk SMSes was per se misleading as the price of the scrip had not fallen to Rs. 17.50/- at NSE during the period November 01, 2016 to February 23, 2017, as elaborated later.

Sell Transactions on the Expiry Day

29. List of all the sellers (writers) of Put Option (Strike Price: Rs. 17.50; Expiry: 23.02.2017) for trading date – 23.02.2017 is given below:

Table No. 6

Sell Client PAN	Sell Client Name	Sell Member Name	Sum of Traded Quantity	Sum of Traded Value
AAIFH3330A	HET ENTERPRISE	SUNFLOWER BROKING PVT. LTD.	17896140	894807
AADCK5177A	KALASH SHARES AND SECURITIES PVT LTD.	KALASH SHARES & SECURITIES PRIVATE LIMITED	17001333	850066.65
AANHM7605L	MANAN BHAVESH SANGHAVI HUF	PRAGYA SECURITIES PRIVATE LIMITED	5932239	296611.95
COAPP2864K	NUTANBEN KISHORKIJMAR PRAJAPATI	ASE CAPITAL MARKETS LTD.	3314100	165705
AABPC4066B	CHIUDHARY INVESTMENTS(UMASH ANKER CHOUDHARY)	PASHUPATI CAPITAL SERVICES PVT. LTD.	2187306	109365.3
AZKPP8352R	BHUPENDRA DHANJIBHAI PARMAR	KUNVARJI FINSTOCK PVT. LTD.	2054742	102737.1
AACCD1313L	DHWAJA SHARES & SECURITIES PVT LTD	DHWAJA SHARES & SECURITIES PRIVATE LIMITED	1723332	86166.6
AACCP0795J	PASHUPATI CAPITAL SERVICES PVT LTD	PASHUPATI CAPITAL SERVICES PW. LTD.	1325640	66282

AAJCS7095K	SREEJI COMPUTECH PVT LTD	RELIGARE SECURITIES LTD.	1193076	59653.8
AABCA1156D	ADROIT FINANCIAL SERVICES PVT LTD	ADROIT FINANCIAL SERVICES PRIVATE LIMITED	1060512	53025.6
AACPC7789E	SACHI INVESTMENT(SARITA DEVI CHOUDHARY)	PASHUPATI CAPITAL SERVICES PVT. LTD.	894807	44740.35
AAGCS9057G	SARVAGYA COMM I PVT LTD	PASHUPATI CAPITAL SERVICES PVT. LTD.	828525	41426.25
AABCT8250H	TRANSGLOBAL SECURITIES LTD	TRANSGLOBAL SECURITIES LTD.	762243	38112.15
ALPPA5918B	TOSIF YUNIJSBHAI AMRONIYA	BANSAL FINSTOCK PRIVATE LIMITED	331410	16570.5
EUZPS7592Q	NISHA CHANDRAKANT SUCHAK	PRAGYA SECURITIES PRIVATE LIMITED	231987	11599.35
AAOCS0302C	SURYA SHAKTI RESOURCES PRIVATE LIMITED	NARAYAN SECURITIES LIMITED	132564	6628.2
AFGPD7998M	DESAI SURESH PIRABHAI	PRAGYA SECURITIES PRIVATE LIMITED	99423	4971.15
ABKPS1092B	SHAH & COMPANY	BGSE FINANCIALS LIMITED	66282	3314.1
Grand Total			**57035661**	**2851783.05**

30. I note from the above table that Het Enterprise was the top seller of Put Option (Strike Price: Rs. 17.50; Expiry: 23.02.2017) for trading date 23.02.2017. Het Enterprise has traded through Sunflower Broking Pvt Ltd. Het Enterprise (Partners Paresh Lavjibhai Mehta and Kavitaben Pareshbhai Mehta) benefited from the fraud and earned a profit to the tune of Rs. 8,94,807/-.

Impact of misleading Bulk SMS –Spurt in Open Interest:

31. On analyzing open interest in the said contract, it was observed that the SMS recommending the recipients to buy PUT option (strike price 17.50, Expiry date 23.02.2017), had successfully lured potential investors to trade in the said contract as can be seen from the table below.

Table No. 7

Date	Open Interest	Underlying Value/Cash market price
17-Feb-17	0	20.00
20-Feb-17	33141	20.70
21-Feb-17	33141	20.80
22-Feb-17	33141	20.45
23-Feb-17	**56903097**	20.60

Thus, there was a 171600% rise in the Open Interest of the contract on 23.02.2017 within a span of 5 days.

32. On the day of expiry i.e. 23.02.2017, scrip opened at Rs.20.55/- (in Cash segment) indicating that for the contract to be in "In-the-Money" (with Strike Price of Rs. 17.50), the underlying had to fall by more than 10%. A comparative analysis of price of the scrip of South Indian Bank Ltd. for the period January 01, 2017 to March 31, 2017 is provided in table below:

Table No. 8

Period	Open	High	Low	Close
1st Jan 2017 – 22nd Feb 2017	20	23.6 (9th Feb)	19.5 (2nd Jan)	20.45
23rd Feb 2017	20.55	20.75	20.35	20.60
24th Feb 2017 – 31st March 2017	20.35	21.6 (31st March)	19.65	21.35

As can be seen from the table above, price of the scrip of South Indian Bank Ltd. has not undergone any significant fluctuation/movement in the pre or post- SMS period. The lowest price of the scrip during the three-month period had not reached below Rs 19.50. Hence, it was highly unlikely that price of the scrip would have fallen to Rs 17.50 in the absence of any negative news about the stock on the expiry date i.e. February 23, 2017. For the said scrip, the strike prices available for contract with expiry date February 23, 2017 were 22.65, 22.50, 20.35, 20, 18.10, 17.50 and 15.85. However, huge trade volumes i.e. 5,70,35,661 out of total 6,40,28,412 (i.e. 89.07%) trade quantity took place at the strike price 17.50 on the day of Expiry i.e. February 23, 2017.

It is evident from the price and volume data that there was virtually nil or negligible interest in the market in the scrip till the expiry date i.e. on 23.02.2017. However, a sudden overwhelming spurt is obvious on the Expiry Date i.e. 23.02.2017, which is not in tandem with the historical price movement of the scrip and therefore this confirms the finding of the investigation that it is the result of the misleading Bulk SMS.

33. Noticee No. 1, in his reply dated 29.04.2022 stated that Het Enterprise was a constituent of the Sunflower Broking Pvt Ltd. through its branch /franchise viz. Roofone Securities Pvt Ltd. The same can be deduced from the contract note of Sunflower Broking Pvt Ltd. issued to Het Enterprise for its trades carried out on 23.02.2017. From the contract note, it is seen that; a) UCC is ROS012 (ROS stands for Branch code Roofone Securities, b) Branch Code: ROS; c) Family Code: ROS. Noticee No. 2 stated in his reply dated 24.04.2022 that Roofone Securities Pvt Ltd. is an Authorized Person of SEBI Registered stock broker i.e. Sunflower Broking Pvt Ltd. Inter-se connection amongst the Noticees is further elaborated in the later part of this order.

34. Noticee No. 1 in his reply dated 29.04.2022 stated that Het Enterprise was allowed to trade based on margin deposit of Rs. 50,00,000/- . The constituent Het Enterprise was only permitted to sell 540 lots i.e. 1,78,96,140 shares of South Indian Bank Ltd. by the compliance department of Sunflower and not 800 lots as ordered by Het Enterprise (1 lot = 33,141 shares).

35. Noticee No. 1 in his reply dated 29.04.2022 also stated that the trade confirmation/information w.r.t. 540 lots was passed on to the constituent – Het Enterprise, by one Mr. Ashwin from head office –Rajkot of Sunflower. The voice recording and duly certified transcript in this regard were also attached. The extract of the transcript is reproduced below:

R.Hello?
M. Hello? Het Enterprise
R.Yes.
M. I am Ashwin from Sunflower Broking, Rajkot

R. Tell me

M. In the morning, you asked me to trade, there were 800 lots of South Indian Banks. The lots were kept for sale @ INR17.50 which 1 cr.78 lakhs …1 mins, I will give net quantity- 1 cr 78 lakhs 96 thousand 140 are sold, 540 lots are sold and rest are cancelled because Mr. Maulik bhai from compliance department go it cancelled. So all others have got cancelled.

R. Ok

M. Ok

36. The Noticee No. 1 emphasized that it is evident that the broking house viz. Sunflower, whose director is the Noticee was vigilant at the relevant time and stopped the trades of Het Enterprise beyond 540 lots. It was argued by Noticee No. 1 that, had the Noticee been instrumental in any wrongdoing then Het Enterprise's trades would not have been stopped. It was further stated that the Noticee lost Het Enterprise as a client of Sunflower Broking Pvt. Ltd. since then. The Noticee stated that Het Enterprise is a HNI Client and is having trading account with other brokerages.

37. I note that Het enterprise placed all its sell orders for 800 lots (Put option contracts) at 09:15 to 09:20 i.e. at the very beginning of the last day of Expiry day i.e. 23.02.2017 of the said PUT option contract. On 23.02.2017, 9836 SMSs were sent to 1401 unique mobile numbers at 9:52:01 AM giving SMS tip as:

FOBULL special option Buy Buy SOUTHBANK 17.50 PE (Put option- FEB-Exp) At 5-10 Paisa For TGT 50 Paisa Intraday. (Lot Size 33141) For 25k Investment Buy 15 Lots.

The buyers started placing orders from 09:54 A.M. onwards as soon as the SMS got disseminated at 09:52 AM, which goes to indicate that the SMS sender and their connected entities had succeeded in luring potential investors. The trades in the PUT option contract started getting executed immediately. First trade of Het Enterprise was executed at 09:54:19 and by 11:01:29 all the trades of Het Enterprise got executed for 1,78,96,140 quantity of shares i.e. 540 lots. (1 lot= 33,141 shares).

38. Thus, Het Enterprise had placed its sell orders at the very beginning of the last day of Expiry Day i.e. 23.02.2017. As soon as buyers started placing orders at 09:54 onwards, trade in the said put contract started getting executed. All the trades of Het Enterprises were executed between 09:54:19 to 11:01:29 am. This indicates that Bulk SMS sender and their connected entities fraudulently lured potential investors to buy out of the money contract on expiry date i.e. February 23, 2017 for a strike price (Rs 17.50). Het Enterprise had put such heavy sell orders as soon as the market opened which probabilises the fact that it had knowledge of the bulk SMS that was circulated and that it anticipated the recipients of the bulk SMS to buy put options in the South Indian Bank in large quantities.

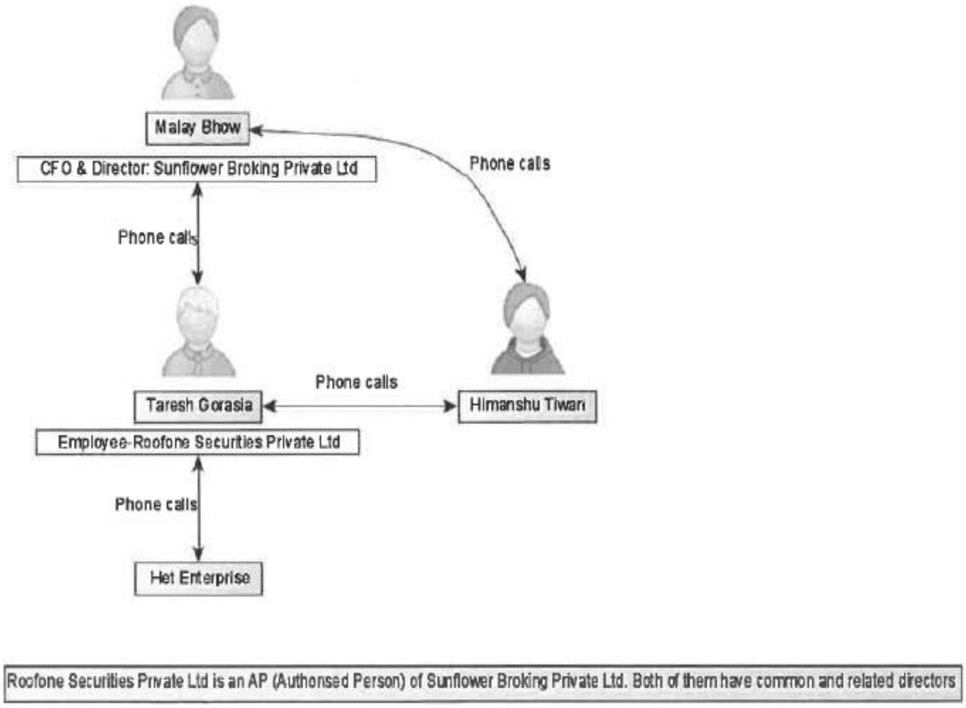
39. Further, I also note from the records that Het Enterprise opened an account with Sunflower Broking Pvt. Ltd. on 04.01.2017 through its A.P. Roofone Securities Pvt. Ltd. for which the contact person was Taresh Gorasia. Het Enterprise traded in the account for the first time on 23.02.2017 in F&O segment. No trades in F&O segment before and after the Expiry Date i.e. 23.02.2017 were observed. In other words, Het Enterprise opened the account with broking firm in January 2017 and after that executed trades on the Expiry date i.e. 23.02.2017 and had not traded in F&O segment in the account at all on other days. Het Enterprise closed its account with SBPL on 25.07.2017. Strangely, no other trades were executed in F&O segment through SBPL by Het Enterprise.

40. I note from the sequence of events that Het Enterprise opened account with SBPL on 04.01.2017, deposited Rs. 50 lakh towards margin on 22.02.2017, executed trades in Put option of South Indian Bank Ltd. on 23.02.2017 and closed the account on 25.07.2017. The unusual and/or abnormal circumstances surrounding the date of account opening, margin deposit and closing by Het Enterprise is too apparent to ignore. Moreover, the account has been opened with an A.P. (Roofone) of SBPL. It is relevant to also connect the fact that Malay Bhow i.e. Noticee No. 1, is the director of SBPL.

Noticee No. 2 was an employee of Roofone Securities Pvt. Ltd. Another fact is that there were 4 (four) calls between Noticee No. 2 and Het Enterprise after the trading hours on the Expiry Date. Het Enterprise has explained that the calls were with respect to settlement of trades. However, this explanation is not convincing enough for the reason that settlement obligation in respect of market trades takes place in the normal course of settlement cycle via trading account and the linked bank account and the settlement process normally does not warrant any telephonic conversation. The calls made post the business hours are certainly casting a shade of doubt on the nature of the discussions. The additional evidence adduced by Noticee No. 1 during the course of hearing, in the form of cancellation of orders beyond 540 lots also does not go to prove the genuineness of the transactions, because the reason for cancellation has not been brought out. In this connection, it is seen from the investigation report and other records that NSE had made intraday calls to five brokers including SBPL to exercise necessary caution. Hence, I find that the trades of Het Enterprise are fraudulent in nature, executed with an intention to capitalize on the anticipated buy orders triggered by the Bulk SMS.

Inter-se connection amongst Noticees

41. The investigation report has brought out the connection between the person involved in circulating SMSs to investors, the broker involved and the top net seller who benefited from the said fraud diagrammatically as represented below:



Reply of Malay Bhow (Noticee No. 1)

42. Replies of Malay Bhow: Malay Bhow has filed replies dated 12.04.2022, 21.04.2022 and 29.04.2022.

The Noticee vide his reply dated 12.04.02022 requested for copy of investigation report and also requested for cross examination of complainant. Scanned copy of the investigation report was provided vide email dated 18.04.2022. Relevant extracts of replies are given below:

42.1. Preliminary objections:

a. The allegations framed in the SCN relate to SMSs sent by Noticee No. 3 in February 2017, which were more than 5 years ago. The SCN does not provide any explanation to justify the inordinate delay in initiation of proceedings against Noticee No. 1. As such, the SEBI had started investigation in February 2017 itself. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of Noticee No. 1 to put up an adequate response to the allegations made by SEBI. In fact, Noticee No. 1 is made to adduce evidence so belatedly in respect of events which had transpired 5 years ago.

b. The Hon'ble Supreme Court of India has held in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim1 that wherever a power is vested in a statutorily authority without prescribing any time limit, such power should be exercised within a reasonable time.

c. The Noticee also quoted case laws viz. HB Stockholdings Ltd. v SEBI (Hon'ble SAT order dated 27.08.2013), Sanjay Soni v SEBI (Hon'ble SAT order dated 14.11.2019) Libord Finance Ltd. v SEBI (Hon'ble SAT order dated 03.03.2008).

Cross – examination not provided

d. By way of my letter dated April 12, 2022, a request to cross-examine the complainant was sought. Through email dated April 19, 2022, the SEBI did provide copy of the investigation report, however, the SEBI has not acceded to the request of Noticee No. 1 to allow for cross-examination of the complainant, whose complaint the SEBI has relied upon to rope in Noticee No. 1 in the present case. As such, the complaint has been misread to point accusations at Noticee No. 1. To address this explicit situation, it is vital that Noticee No. 1 be allowed to cross-examination of the complainant referred in the SCN, as the complaint forms an integral piece of evidence to base a charge against Noticee No. 1. It would, therefore, follow that the veracity of the complaint be tested by way of cross-examination.

42.2. Objections on merit:

e. No inter-se connection with each other and therefore no fraud

f. The SCN alleges that Noticee No. 1 is connected with Noticee Nos. 2 and 3 through phone calls between each other and trades of Het Enterprises through Sunflower.

g. In the present case, direct evidence is available where Noticee No. 3 has categorically stated that he had discussions with Noticee No. 1 for starting a new Authorized Person relationship with Sunflower. Insofar as discussions with Noticee No. 2 is concerned, the said discussions were in ordinary course of business as he was an employee of one of the Authorized Person of Sunflower.

h. It was made abundantly clear to the investigating authority that he had a brief conversation with:

   i Noticee No. 3 on 2 occasions i.e. January 12, 2017 and February 19, 2017, for a total of **2 minutes 24 seconds**, as Noticee No. 3 was desirous of obtaining Authorized Person registration through Sunflower; and

   ii Noticee No. 2 on 6 occasions i.e. January 27, 2017 and February 12, 2017, for a total of **5 minutes 16 seconds**, in ordinary course of business as Noticee No. 2 was an employee of Authorized Person of Sunflower.

i. It is not clear as to how in a short conversation of about 2 minutes with Noticee No. 3 and 5 minutes with Noticee No. 2, Noticee No. 1 facilitated a fraud. In fact, the conversations were also not held in and around the day (i.e. February 23, 2017) when SMSes were sent by Noticee No. 3. Further, the conversations were held long before the expiry day of the 'PUT' in the scrip of the Bank. It is common sense that no person could determine a price of a scrip more than 1 month before the expiry of the said PUT option in the scrip of the Bank. In the circumstance, Noticee No. 1 cannot be charged for fraud under the PFUTP Regulations on the basis of the far-fetched theory that just because Noticee No. 1 had conversations with Noticee Nos. 2 and 3, he was part of some scheme to defraud innocent investors. The phone calls between the parties are purely coincidental.

j. In any event, there is no logical basis for Noticee No. 1 to facilitate a fraud where he gets no benefit. Clearly there is nothing on record to show that Noticee No. 1 got any benefit. Thus, no intention to defraud can be attributed to Noticee No. 1 in the present case

42.3. No evidence for alleging fraud – Case laws:

k. The Hon'ble Supreme Court has also held that, "*charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises.*".Further, in *Union of India v. Chaturbhai M. Patel & Co.* the Hon'ble Supreme Court had referred to *A.L.N, Narayanan Chettyar v. Official Assignee,* wherein it was held that "*...However suspicious may be the circumstances, however, strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof…*".

SEBI has incorrectly relied on the complaints to proceed against Noticee No. 1

l. It is pertinent to note that the complaint relied by the SEBI was made on February 23, 2017 viz. the day of expiry of the PUT option. How a complaint would be received on the same day as the expiry of contract further demonstrates that the complaint was with an ulterior motive to cast aspersions on Noticee No. 1. As stated above, Noticee No.1 has clearly shown that other than short legitimate phone-calls there is nothing on record to show that he participated in some alleged scheme. It does not stand to reason that Noticee No. 1 would orchestrate a fraud sitting in Ahmedabad with someone sitting in Ajmer over a phone call which lasted only about 2 minutes and that also much before the circulation of SMSes.

m. Noticee No. 1 has not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. In fact, the present cause of action is the first time that a regulator has questioned Noticee No. 1.

Noticee made post hearing submissions vide letter dated 29.04.2022 which has been dealt with appropriately at relevant paragraph of this order i.e. sell transaction of HET Enterprise.

43. Reply of Taresh Gorasia (Noticee No. 2)

a. The Noticee respectfully submits that the proceedings against him ought to be dropped for the following reasons, each of which is without prejudice to the other:

i *There is no connection between the Noticee and the seller clients and/ or other noticees in the present SCN.*

ii *Other than the out of context call records, there is no other evidence adduced by SEBI to prove a charge of fraud against the Noticee.*

iii *The SCN is merely on suspicion, surmises and conjectures.*

b. *The Noticee graduated in Commerce in the year 1988. The Noticee joined the sales team of Roofone Securities Pvt. Ltd. in and around 2015. The job of the Noticee was to create and generate reports for sales meetings with direction from market managers, to provide assistance to internal and external sales personnel, to liaison with other departments to coordinate and resolve any customer issues. Along with sales, the Noticee was also engaged in client management. At the relevant time, the Noticee was paid salary of Rs15 K per month. It is pertinent to note that as on today, the Noticee continues to work for Roofone and receives a salary of Rs. 30k per month.*

c. *Roofone is an AP of a SEBI registered stock broker i.e. Sunflower Broking Private Limited.*

d. *In and around January 2017, Mr. Himanshu Tiwari reached out to the Noticee, inter alia, to enquire about obtaining a franchisee of Sunflower. As the Noticee was working with Roofone and not Sunflower, he asked Mr. Himanshu Tiwari to speak to Mr. Malay Bhow from Sunflower.*
e. *From the call data record produced by SEBI, it appears that Mr. Tiwari spoke to Mr. Malay Bhow on January 12, 2017.*
f. *Since then the Noticee has had several discussions with Mr. Tiwari in relation to him operating as an approved user under the umbrella of Roofone.*
g. *On February 23, 2017, it appears from the SCN, that some SMSs were sent to certain persons. These SMSs pertained to trades in PUT option of South Indian Bank Limited (SIBL). It was also the contract expiry day for PUT option of SBIL.*

Explanation on Call Data Record

h. *SEBI has based its entire case against the Noticee based on telephonic conversations between:*

   i). The Noticee and Mr. Malay Bhow on 6 occasions on two dates i.e. January 27, 2017 and February 12, 2017;

   ii). The Noticee and Het Enterprises (i.e. sellers of contract) on 4 occasions on February 23, 2017 after market hours; and

   iii). The Noticee and Mr. Himanshu Tiwari on 23 occasions between January 8, 2017 and February 15, 2017.

i. *As is clear from the above analysis, there have been no calls between the Noticee and any of the above referred entities after February 15, 2017 and until end of trading hours on February 23, 2017.*
j. *As such, the conversations between the Noticee and the above referred individuals have also been for a legitimate purpose.*
k. *The conversations with Mr. Malay Bhow were in ordinary course of business as Roofone is an Authorized Person of Sunflower. SEBI has only obtained data for a very short period of time. If SEBI had obtained data of a longer period, it would have been clear that Mr. Malay Bhow and the Noticee would have conversations for the business purposes. There is nothing abnormal about it. These short conversations could not be for facilitating the alleged fraud.*

l. *The conversations between Het Enterprises and the Noticee has occurred after the trade was over. It does not stand to reason that the Noticee would interact with Het Enterprises after the trades if the whole purpose of the concerned trade was perpetration of some fraud. In such circumstances, basing an allegation of fraud on account of some discussions between Het Enterprises and the Noticee is inherently flawed.*

m. *Insofar as conversations with Mr. Tiwari, those were more in the nature of business development. Mr. Himanshu had reached out to Roofone to get an introduction with somebody from Sunflower as he was also interested in procuring Authorized Person registration from Sunflower. It is for this purpose that the Noticee had phone calls with Mr. Himanshu. The Noticee has never had any monetary dealings with Mr. Himanshu. Mr. Tiwari and the Noticee do not even reside in the same city, i.e. one resides in Ajmer and the other in Ahmedabad.*

n. *In view of the aforesaid, it is humbly submitted that the purported reliance on the call data record to pin a charge of fraud is not maintainable as the content of the referred call logs is not provide which can prove fraud. This is not even a case of relying on preponderance of probability given that there is nothing more than certain phone calls to suggest that there was some fraud. The SCN does not allege any fund transfer any other connection through social media or otherwise, any benefit being given to the Noticee etc.*

o. *In fact, Noticee has presented with facts and evidences which indicates that Noticee had no role to play in sending of the SMSes. Thus, there is evidence to the contrary. It is also SEBI's own case that the SMSs were circulated by Mr. Himanshu and nobody else. In absence of any involvement of the Noticee in sending of SMSs by the Noticee, SEB' has erred in grouping, clubbing and mixing the Noticee with other Noticees in the SCN. Accordingly, charge of PFUTP Regulations and the SEBI Act is not attracted in the present case.*

p. *A very essential facet of this matter is seeking an explanation of the contents of phone calls between the Noticee and other Noticees. SEBI has had knowledge of this alleged fraud since February 23, 2017 i.e. date of complaint. However, the Noticee is made to give an explanation of phone calls at such belated stage i.e. after 5 years. The SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against the Noticee. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of the Noticee to adequately respond to the SCN especially the entire charge is only premised on phone calls of February 2017.*

Reply of Himanshu Tiwari (Noticee No. 3): The reply of Himanshu Tiwari on merit has been elucidated in para 25 of this order. Hence, it is not repeated here for the purpose of deciding inter se connection between these Noticees.

Reply of HET Enterprise (Noticee Nos. 4 & 5)

44. Partners of Het Enterprise viz. Paresh Lavjibhai Mehta & Kavitaben Pareshbhai Mehta filed common replies vide letters dated 17.01.2022, 22.03.2022, 01.04.2022 (email), 13.04.2022 and detailed reply dated 26.04.2022. Relevant Extract is reproduced below:

a. *Trades were executed by Het Enterprise, a partnership firm in which we were partners. We would like to submit that the partnership firm, Het Enterprise, has been dissolved vide Dissolution Deed dated 01.01.2019 and it is no longer in existence. Since no proceedings can be initiated against an entity which has already been dissolved, no proceedings can be initiated against partners of such firm which has been dissolved and is no longer in existence.*
b. *The present SCN is issued after a gap of almost 5 years from the date of alleged transactions in put options of SBIL. However, no reasons have been mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay of almost 5 years. Hence, there is an inordinate delay in initiation of proceedings by SEBI.*
c. *On plain reading of said Show Cause Notice dated 30.12.2021, we understand that the allegations of 'fraudulent' practice is made against us on the basis that Het Enterprise sold put options of SBIL on the date of expiry.*
d. *Further, we submit that we have no relation whatsoever with either of the co-noticees i.e. Malay Bhow, Taresh Gorasia or Himanshu Tiwari. The only relation if any, is a simple Client — Broker relationship with Malay of SBPL and nothing else. Hence, no allegation of any connection can be alleged against us.*
e. *It is alleged that we are connected to Mr. Taresh Gorasia and Mr. Malay Bhow, based on some call record. In this regard, we request your kind selves to provide us cross examination of Mr. Taresh Gorasia and Mr. Malay Bhow which will assist us to prove that we are not connected to Mr. Taresh Gorasia and Mr. Malay Bhow in respect of alleged fraudulent activities.*
f. *On perusal of the SCN, we observe that during the course of investigation, call data records of calls made by Mr. Taresh Gorasia to Het is referred to and relied upon. (Ref. Para 15(o) on internal page no. 12 of SCN). In our respectful submissions, without conducting thorough investigation of Taresh more particularly about 4 times calls made by him to us on 23.02.2017 post trading hours i.e. between 15.47.51 to 16.14.12 hours, no adverse inferences ought to be drawn against us since SCN issued us is based only on those 4 calls made by him to us.*
g. *Notably during the course of personal hearing held on 21.04.2022, we noticed that authorized representative of Taresh had appeared and he has been directed to file written submissions. Besides, authorized representative of Mr. Malay Bhow has also relied upon certain documents viz. Contract Note, email sent to SEBI along with call recording etc. Thus post investigation and after issuance of SCN, oral and written submissions of Taresh and additional documents and records submitted by Malay are taken on record. In view thereof, in the interest of justice present proceeding continuing against us be withdrawn.*
h. *Inspection of documents was granted to us by SEBI on 15.03.2022. However complete inspection of documents as requested by us is not given.*
i. *Notably none of the complainants have mentioned our name in the numerous complaints filed with NSE/SEBI and we have no connection with any service providers in any manner whatsoever and also with the users of such service providers in circulation of SMSs.*

j. *Importantly our mobile number is picked up from UCC as can be seen from Table 5 under Para 15(k) (internal page no. 10 and 11) of SCN. Therefore involving our name in circulation of SMSs is inexplicable and without shred of any evidence.*
k. *Notably, besides Het, other major sellers were Kailash Shares and Securities Pvt. Ltd., Manan Bhavesh Sanghvi HUF, Nutanben Kishorkumar Prajapati and Chiudhary Investments (Ref. Para 12 on page no. 5 and 6 of the SCN). Strangely, proceedings are not initiated against any one of them even through as per SCN, they were amongst major Sellers.*
l. *Het was constituted as a Partnership firm mainly for dealing and trading in shares and securities, financial and other derivatives products, agro commodity derivatives products and other related activities. Importantly gross turnover of Het for financial years 2015-2016 and 2016-2017 was Rs. 240.14 crore and Rs. 571.71 crore respectively.*
m. *With respect to transactions executed by Het, we state that all the transactions were carried out in line with large number of other transactions executed by Het at the relevant time.*
n. *Notably, during financial year 2016-17, total turnover in F&O segment was around Rs. 5,297 Lakhs. In relation thereto, our transaction in SIBL option is merely Rs. 8.94 Lakh which constitutes only 0.17% of turnover in F&O segment and meager 0.015% of total turnover. Hence value of said transaction is negligible as compared to our business volumes executed at the relevant time.*
o. *Under Table 7 on internal page no. 12 of the SCN, details of 4 call records from Taresh to Het is mentioned. In this regard, we would like to state that Het had carried out large number of transactions through SBPL at the relevant time. Pertinently Taresh was authorized person of SBPL so calls made by Taresh to Het after the market hours were necessarily in relation to obligations towards pay in and pay out of securities in the trading account of Het as on 23.02.2017.*
p. *With regard to placement of orders in SIBL, we state that orders of similar nature were also placed at a strike price equivalent to Rs 17.50/- and/or lower than strike price of Rs 17.50/- on 20.02.2017, 22.02.2017, 27.02.2017 and 28.02.2017 i.e. Pre and Post Investigation Period i.e. 23.02.2017. In fact, resultant trades were also executed at Rs 0.05/- (Rs 5 paisa).*
q. *In fact we had opened account in name of Het with SBPL on 06.01.2017 and started transacting in small volumes as the said broker was new to us and we were trying to get used to their system. Since after execution of trades for around 2 months, we didn't find satisfied by their service so we had decided not to proceed further with the said broker. Therefore our last transaction was executed on 17.03.2017 and we had closed our account with SBPL on 25.07.2017.*
r. *W.r.t our relationship with Taresh, at the outset we state that, vide Email dated 13.01.2021, SBPL has inter alia informed SEBI about their association with Taresh. At the instance of SBPL only, for the purpose of pay in and pay out of funds and securities, Taresh had called us. Pertinently, we had a receivable from SBPL at the relevant point of time and accordingly on 28.02.2017, we had received a sum of Rs. 59 Lakhs approximately.*
s. *We had no relationship with Mr. Himanshu Tiwari ("Himanshu"). Importantly, on perusal of the Email dated 11.01.2021 from Mr. Himanshu to SEBI, it can be apparently inferred that Himanshu has relations with Malay and the Employees of SBPL (possibly Taresh) and not at all with us.*

t. *Het have dealt in Put options of SIBL within their financial and risk bearing capacity. While dealing in Put Options of SIBL, Het had followed and complied with all the procedures and requirements as statutorily required.*

Call data analysis:

45. I note that information about mobile numbers was collected during the course of investigation from various sources viz. service providers/UCC/complaints and the same is tabulated below:

Table No. 9

S No.	Mobile No.	User Name	Source of Information
1	8030636021	Subodh	Onering.in
2	7226871219	Subodh	Onering.in
3	8441836823	Himanshu Tiwari	Complainant (Helpingyouindia@yahoo.com)
4	7043606442	Malay Bhow	Complainant (Helpingyouindia@yahoo.com)
5	9924920206	Malay Bhow	Complainant (Helpingyouindia@yahoo.com)
6	9979411911	Het Enterprise	UCC

46. Subsequently, Customer Application Forms (CAFs) and Call Data Records (CDRs) with respect to above mentioned mobile numbers were sought from Telecom Service Providers (TSPs). From the CAFs, it was observed that the mobile numbers as provided in the earlier table actually belong to the following entities as provided in table below:

Table No. 10

S No.	Mobile No.	TSP/Service Providers	Registered Name
1	8030636021	Onering.in	Subodh. Mobile number used for registration is *7226871219.
2	*7226871219	Airtel	*Chiranjiv Harishbhai Pavar
3	8441836823	Idea	Himanshu Tiwari
4	7043606442	Airtel	Taresh Girodharlal Gorasia
5	9924920206	Idea	Malay RohitKumar Bhow
6	9979411911	Idea	Paresh Lavji Mehta (Partner- Het Enterprise)

47. The facts surrounding mobile no. 7226871219 being used by Noticee No. 3 disguising himself as 'Subodh' for availing the services of Telemarketing agencies for circulation of misleading SMSs, has already been brought out in the paragraph Nos. 12 - 28 above. Analysis of Call Data Records for mobile numbers as mentioned in above table revealed the following:

47.1. Taresh Gorasia (7043606442) had spoken 23 times with Himanshu Tiwari (8441836823) during January 1, 2017 to February 15, 2017 as shown in table below.

Table No. 11

Calling No	Called No	Date	Time	Dur(s)
8441836823	7043606442	08-Jan-17	11:12:00	1515
7043606442	8441836823	12-Jan-17	10:47:56	645
7043606442	8441836823	12-Jan-17	12:42:37	441
8441836823	7043606442	13-Jan-17	14:31:23	81
8441836823	7043606442	13-Jan-17	18:10:02	8
7043606442	8441836823	13-Jan-17	17:31:29	11
7043606442	8441836823	13-Jan-17	18:29:34	925
7043606442	8441836823	13-Jan-17	20:45:39	148
7043606442	8441836823	17-Jan-17	13:26:44	278
8441836823	7043606442	20-Jan-17	11:11:11	410
8441836823	7043606442	23-Jan-17	20:28:11	236
8441836823	7043606442	30-Jan-17	20:41:50	344
7043606442	8441836823	30-Jan-17	19:15:34	642
7043606442	8441836823	30-Jan-17	20:31:25	468
8441836823	7043606442	06-Feb-17	17:04:24	1632
7043606442	8441836823	06-Feb-17	17:31:58	3372
8441836823	7043606442	08-Feb-17	13:52:32	212
8441836823	7043606442	08-Feb-17	14:45:44	1278
8441836823	7043606442	09-Feb-17	17:45:52	1588
8441836823	7043606442	11-Feb-17	15:01:42	1074
7043606442	8441836823	13-Feb-17	20:18:01	0
8441836823	7043606442	15-Feb-17	15:57:08	1062
7043606442	8441836823	15-Feb-17	19:21:09	135

47.2. Himanshu Tiwari (8441836823) spoke to Malay Bhow (9924920206) on the following instances:

Table No. 12

Calling No	**Called No**	**Date**	**Time**	**Dur(s)**
8441836823	9924920206	12-Jan-17	10:47:15	18
8441836823	9924920206	19-Feb-17	20:40:44	126

47.2.1. It is seen from the above Table Nos. 11 & 12 that on 15.02.2017, Taresh Gorasia spoke to Himanshu Tiwari (Subodh) for 1197 seconds. I note that 15.02.2017 was the date from which the persons who gave missed calls to the designated number started receiving Auto SMS.

47.2.2. I also note that on 12.01.2017, Noticee No. 3 spoke to Noticee No. 1 at 10:47:15 for 18 seconds. Immediately thereafter, Noticee No. 3 had spoken to Noticee No. 2 at 10:47:56 for 645 seconds and later at 12:42:37 for 441 seconds. This sequence of inter-se calls made within the circle of Noticee No.s 1, 2 & 3 shows that they were in touch with each other. This shows that the both the employee of Roofone and Malay Bhow were in touch with Himanshu Tiwari.

47.2.3. Going by the circumstances surrounding the allegations, I feel that the story of seeking franchiseeship of SBPL advanced by Himanshu Tiwari, is an afterthought. I also note that the replies of the Noticee Nos. 1 to 3 are conspicuously silent on what happened finally to the franchiseeship conversation. This confirms that the franchiseeship story is a ruse to justify the phone calls.

47.3. Malay Bhow (9924920206) spoke to Taresh Gorasia (7043606442) 6 times on the following dates.

Table No. 13

Calling No	**Called No**	**Date**	**Time**	**Duration (sec)**
7043606442	9924920206	27-Jan-17	**23:53:47**	21
7043606442	9924920206	12-Feb-17	**20:42:29**	121

7043606442	9924920206	12-Feb-17	**21:41:38**	78
7043606442	9924920206	12-Feb-17	**21:45:35**	13
7043606442	9924920206	12-Feb-17	**21:46:15**	89
7043606442	9924920206	12-Feb-17	**22:20:01**	15

It is seen from the above that on 12.02.2017, Taresh Gorasia called Malay Bhow 5 times and spoke for a total of 316 seconds. I also note that all the calls were made after business hours. Both Noticee No.1 and Noticee No. 2 in their replies stated that the calls were made in the ordinary course of business. However, the time of the day at which the conversation have happened on all the occasions indicate otherwise.

47.4. Mobile number 7043606442 (Taresh Gorasia) called Het Enterprise (9979411911) 4 times on the expiry day i.e. February 23, 2017.

Table No. 14

Calling No	**Called No**	**Date**	**Time**	**Dur(sec)**
7043606442	9979411911	23-Feb-17	15:47:51	32
7043606442	9979411911	23-Feb-17	16:00:10	16
7043606442	9979411911	23-Feb-17	16:00:45	13
7043606442	9979411911	23-Feb-17	16:14:12	91

The calls between the employee of Roofone and the client viz. Het Enterprise at the end of the trading hours on the Expiry date, claimed to be in connection with settlement, does not instill credibility as normal market trades are not settled in consultation with the clients.

48. I note from all the calls brought out in the above tables that Noticee No. 1 spoke to Noticee No. 2 and Noticee No. 3 multiple times. Noticee No.2 spoke to Het Enterprise and also spoke to Noticee No. 3. It is thus clear that they knew each other and had been speaking to each other multiple times in and around the time when SMSs were being sent. It is noted that the Net Seller - Het Enterprise placed orders through only one broker namely: Sunflower Broking Pvt. Ltd and Malay Bhow is one of the directors of Sunflower Broking Private Ltd). In short, the call data records shows that each Noticee was in touch with the other Noticee at various points in time between 08.01.2017 to 23.02.2017 and were in fact connected to each other in the capacity of a Broker, or an A.P. or an employee of an A.P. or a client of the A.P., or as a person seeking to become the A.P. of Sunflower Broking Pvt. Ltd. etc. These connections have been either borne out of records and/or have also been admitted by the Noticees themselves.

49. As regard the issue of not granting cross examination of the complainant, it is stated that a copy of the complaints was furnished to all the Noticees. The complaints were the trigger at the initial stage. Thereafter, SEBI did its investigation independently and did not rely solely on the complaint. Moreover, none of the complainants was summoned or examined during the course of investigation. Hence the request for cross examination was rejected.

50. As regards allowing Noticee No. 1 to produce contract note and the voice recording to prove cancellation of the trades of Het Enterprise beyond 540 lots, it is stated that this piece of evidence causes no potential damage to the interests of the other Noticees. The fact of cancellation of orders is also corroborated by the order log. I am of the view that taking the said evidence as part of the records for the limited purpose of proving cancellation does not prejudice Het Enterprise in any manner. Moreover, this information was furnished to SEBI –Integrated Surveillance Department (ISD) on an earlier occasion i.e. on 25.02.2017 and was not some document that was produced as a surprise. Het Enterprise's request for cross examination of Malay Bhow and Taresh Gorasia came in the written submissions forwarded post the hearing. Since, I am not relying on any of the possible contradictions that may arise between the submission/proof of Malay Bhow and the reply of Het Enterprise, I do not think that Het Enterprise is in any manner prejudiced by not providing cross examination. Accordingly, I find that the instant proceedings have been concluded after giving sufficient opportunity to all the

Noticees to the present their case, adduce evidence and provide inspection of documents etc. as part of the mandate of natural justice principles.

51. CDR analysis as brought out in the preceding paragraphs, clearly shows that all the Noticees were making calls to each other. Noticee No. 1, Noticee No. 2 & Noticee No. 3 have brought to my attention that Noticee No. 3 had enquired about taking a franchiseeship of Sunflower Broking Pvt Ltd. Noticee No. 3 had reached out to Roofone Securities Pvt Ltd. to get an introduction with somebody from Sunflower Broking Pvt Ltd. somewhere in and around January 2017. So Noticee Nos. 1 & 2 had phone calls with Noticee No. 3 in the nature of business development. I do not find any merit in the contention of the Noticees as no supporting documents was produced before me to corroborate the statements made by the Noticees. Moreover, the story of discussion of franchise could not have coincided with the date/month of opening of account by Het Enterprise with Sunflower Broking Pvt Ltd. (AP-Roofone Securities Ltd.).

52. I also note that Noticee No.2 did not cooperate with the investigating Authority at the investigation stage and did not respond to the summons issued to him by Investigating Authority. In the instant adjudication proceedings also, he made his appearance in the last moment. Therefore, his conduct does not give a good indication about his regulatory compliance behavior.

Miscellaneous Objections

53. The Noticees raised the legal objections such as delay in the initiation of proceedings, not providing cross examination etc. I note that the transactions took place in February 2017 and the SCN was issued in December 2021. As a matter of fact, I do not find any delay or latches on the side of SEBI which can be stated to vitiate the SCN or the proceedings. I note from the investigation report that Noticee No. 2 is also partly responsible for the delay in completing the investigation by not providing the information/details sought by SEBI during the course of investigation. The time taken for investigation and initiation of proceedings is certainly reasonable and hence the ground of delay pleaded does not merit consideration.

E. CONCLUSION

54. The picture leading to the SMS circulation and the consequent fraud operated on the securities market was revealed through a complaint. Even though SEBI received a bunch of complaints in this respect, the complaint received on 23.02.2017 appears to have been taken as the basis for investigation. The said complaint had brought out the contents of the SMS; the names of persons behind the SMS circulation; the modus operandi of the SMS circulation; name of person who had disguised as Subodh; how the fraud in the F&O segment in the scrip of South Indian Bank was planned and would be executed on the Expiry Date. Relying on the complaint that was so vivid with details, SEBI conducted its own investigation to find out whether the strategy and sequence pointed out in the complaint regarding bulk SMS circulation was true and correct. I note that in this case, the investigation was provided with a template of the strategy that was stated to have been devised by Noticee No.1 using Noticee No.3 in the form of complaint. Noticee No.2 is the employee of Noticee No.1. Therefore the links and connection between Noticee No. 1, Noticee No. 2 and Noticee No. 3 were sought to be established by the investigation. Once this was established, then the investigation looked at who benefitted out of the said SMS circulation. The trade log analysis brought out the top 10 sellers in which HET Enterprises was at the top most position. On an analysis, the investigation could establish connection in the form of exchange of calls between HET Enterprise and Noticee No.2, who was the employee of Roofone Securities Pvt. Ltd. an Authorized Person of Sunflower Broking Pvt. Ltd. in which Noticee No.1 is a director. Investigation further revealed that Het Enterprise had opened trading account with Sunflower Broking Pvt. Ltd. on 04.01.2017 and closed the account on 25.07.2017. It is relevant to note that during this period, the trading account was operated only on 23.02.2017 i.e. Expiry Date in the F&O Segment. Investigation observed that though there were 3 other major net sellers, upon analysis of bank statements, UCC details, call data records and directors' details, they could not establish any connection with the alleged perpetrators of the SMSs namely Himanshu Tiwari, Malay Bhow and Taresh Gorasia. Accordingly, the investigation roped in Het Enterprises along with Noticee Nos. 1 to 3 as part of the fraudulent scheme. It is also relevant to state that Noticee No. 1 contended that no person could determine a price of a scrip more than 1 month before the expiry of the said PUT option in the scrip of the Bank. This contention is not acceptable, as the strike price of Rs. 17.50, if seen in the light of historic price movement shown in Table No. 8, shows that the scrip of South Indian Bank Ltd. could not have reached down to that level, in the absence of any negative news about the scrip in the market. It is relevant to state that the SMS circulation was targeted at uninformed investors in F&O segment, who bought PUT options on the Expiry date.

55. When the whole case, as made out by the investigation is put before me, the question that arises is one of the strength of evidence against each of the Noticees and the *inter se* connections that are made out amongst the Noticees who are alleged to be part of the scheme. The evidence given by independent sources such as TSPs, Call data records, communications with ICICI bank, verification done with Onering.in and Walkover Web solutions, identification of 'Subodh' (exactly as narrated in the complaint), identification of source sender IDs used for the SMS circulation, KYCs and trade data of Het Enterprise, the correlation of tower locations of Himanshu Tiwari's mobile number and the fraudulently obtained mobile number, price and volume data and impact of bulk SMS on the market volume of the scrip are weaving in to recreate the scenario of alleged fraud planted in the scrip of South Indian Bank Ltd. through Bulk SMS circulation as brought out in the complaint. I am convinced that the Noticees have been aware of the scheme and were instrumental in perpetrating the scheme as per the strategy brought out in the investigation report.

56. In view of the above, I find that the Noticees have violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992, read with Regulation 3 (a), (b) (c) and (d) and Regulation 4 (1), 4 (2) (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003.

Applicable provisions of SEBI Act, 1992 and SEBI (PFUTP) Regulations, 2003 are extracted below:

Securities and Exchange Board of India Act, 1992

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;

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

Chapter II

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:-

(a)…

(b)…

(c)…

.

.

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

(m)…

(n)…

.

.

.

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

57. The facts of the case, as brought out in the operative part of the order show that it falls within the ambit of the Prohibition contained in Regulation 3 and Regulation 4 (1), 4 (2) (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to securities market) Regulations, 2003. I am convinced that it is a fit case for imposition of monetary penalty under the provisions of Section 15 HA of SEBI Act which reads as under:

SEBI Act, 1992
"Penalty for fraudulent and unfair trade practices.

15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

F. ORDER

58. Having considered 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 power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticees:

Noticee No.	Name of the Entities	Amount
1	Malay Bhow	Rs. 10,00,000 (Rupees Ten Lakh Only) *(to be paid, jointly and severally by Noticee Nos.1 to 5)*
2	Taresh Gorasia	
3	Himanshu Tiwari	
4	Paresh Lavjibhai Mehta (Partner- HET Enterprise)	
5	Kavitaben Pareshbhai Mehta(Partner- HET Enterprise)	

59. The Noticees 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

60. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in following table should be sent to "The Division Chief, EFD-DRA-5, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

61. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

62. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

DATE: JUNE 03, 2022
PLACE: MUMBAI

GEETHA G.
ADJUDICATING OFFICER