

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 20-22 /2013-14]

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

Against

- 1. Sterling Greenwoods Limited [PAN AACCS6819A]**
- 2. Paksh Developers Private Limited [PAN AAECs0872M]**

And

- 3. Shri. Anurag Dineshchandra Agrwal [PAN ACDPA4964G]**

In the matter of
Sterling Greenwoods Limited

Background

- 1.** Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into alleged irregularity in the trading in the scrip of Sterling Green Woods Limited (hereinafter referred to as SGWL / Noticee No.1), a company listed on the Bombay Stock Exchange (BSE) and Ahmedabad Stock Exchange (ASE), for the period from April 01, 2009 to July 24, 2009. The investigation, inter alia, revealed that during the relevant period, the scrip of SGWL was traded in 'Z' group till June 19, 2009, in B group during June 22, 2009 to July 09, 2009 and in T group during July 10, 2009 to July 24, 2009. During the investigation period, the price of the scrip of SGWL rose by ₹52 in 74 trading days with average daily volume of 8,520 shares. During the period from April 01, 2009 to June 23, 2009, the scrip of SGWL traded with an average daily volume of 4,448 shares and during period from June 24, 2009

to July 24, 2009, the average daily volume were 17,903 shares. During the pre-investigation period (i.e. from February 01, 2009 to March 31, 2009), the scrip of SGWL traded in the range of ₹10.50 and ₹13.86 with average daily volume of 623 shares and a total of 445 trades for 79,340 shares had been executed.

2. During the investigation period, 15 entities namely, M/s Radhekrishna Broking (RKB), Shri Harshad Panchal, Shri Hemang Shah, Mrs. Hetal Hemang Shah, Ms. Tarunaben Panchal, Shri Kalpesh Panchal, Shri Abhishek Soni, Shri Vinodbhai Soni, Ms Kinnari Soni, Shri Mayank Soni, Shri Devang Patel, Ms. Urvashi Patel, Shri Umesh Patel, Ms Sonal Patel and Shri Dhaval Soni (collectively referred to as Hemang Shah Group), connected to /related with SGWL/Noticee No. 1 and to each other, had collectively bought and sold shares of SGWL which represented 58% and 53%, respectively, of total market gross volume. Some of these entities had received funds from Noticee No. 1 and Paksh Developers Pvt. Ltd (hereinafter referred to as Noticee No. 2) through Shri Anurag Agarwal(hereinafter referred to as Noticee No. 3) who is the then Managing Director of Noticee No. 1 and the Managing Director of Noticee No. 2. Noticee No.3 held 829000 shares out of 830000 shares, constituting 99.88% of the total share capital of Noticee No. 2. The Noticee Nos. 2 and 3 are Persons Acting in Concert (PACs). The Noticee Nos. 1 to 3 is hereinafter collectively referred to as Noticees.
3. The Hemang Shah Group had dealt in the scrip of SGWL in a fraudulent and manipulative manner that led to artificial increase/rigging the price of the scrip. They also executed trades at a price higher than the last traded price and executed first trade of the day at a higher price than previous day close price and thus, were instrumental in establishing higher prices in the scrip. The Noticees by providing funds and shares of SGWL to certain entities of the Hemang Shah Group have aided, facilitated and abetted the said manipulation in the scrip of SGWL and therefore, are alleged to have violated the provisions of Regulations 3 (a), (b), (c), (d), 4 (1) and 4 (2) (a), (b) & (e) of

the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "PFUTP Regulations").

4. Further, the Noticee Nos. 2 and 3 being PACs had acquired the shares of SGWL from the quarter June 2005 onwards. Upon the said acquisition of shares, their combined shareholding crossed 5%, 10% and 14% of the paid capital or voting rights in SGWL on three occasions i.e. August 18, 2005 (acquired 200000 shares making the combined holding 396800 i.e. 9.20%), July 01, 2006 (acquired 103200 shares making the combined holding 500000 i.e. 11.79%) and September 20, 2007 (acquired 200000 shares making the combined holding 700000 i.e. 16.51%), respectively, which required them to make necessary disclosures as mentioned under Regulation 7(1) of the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the SAST Regulations). However, no disclosures were made by the said Noticees.
5. Upon acquiring 200000 shares of SGWL on August 18, 2005, the shareholding of Noticee No. 3 crossed the 5% benchmark and therefore, he was required to make necessary disclosures within two working days of the said acquisition as prescribed under Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations). Further, the Noticee No. 3 being the Director of Noticee No. 1 at the relevant period, was required to make necessary disclosures of the increase in his shareholding to SGWL and the stock exchange as prescribed under Regulation 13(4) of the PIT Regulations when he acquired 200000 shares of SGWL on August 18, 2005 and 103200 shares on July 01, 2006, which exceeded 25000 shares and above in number, within the time specified under Regulation 13(5) of the PIT Regulations. However, the Noticee Nos. 2 and 3 failed to make the requisite disclosures under the SAST Regulations and Noticee No. 3 failed to make the necessary disclosures under the PIT Regulations.

6. In addition to the above, Noticee No. 3 was holding 11.79% shares of SGWL for the quarter ended June 2007 and September 2007. Noticee No. 2 in which Noticee No. 3 is a Director acquired 4.72% shares of SGWL which made the combined holding of the PACs 16.51% (11.79% + 4.72%). The Noticees being acquirers acting in concert acquired shares more than 15% of the paid up capital/ voting rights of SGWL but failed to make public announcement to acquire shares in accordance with Regulation 10 of the SAST Regulations.
7. For the quarter ending on June 2005, September 2005, December 2005 and March 2006 the Noticee No. 3 was shown as a promoter in the shareholding pattern of SGWL but later he along with Noticee No. 2 were shown as shareholders under the public category by Noticee No. 1. As per the submissions made by Noticee No. 1 during the investigation period, it was noted that Noticee No. 3 had acquired shares of SGWL as professional Managing Director. However, Noticee No. 1 reported the shareholding of Noticee No. 3 as promoter shareholding while filing the shareholding pattern under Clause 35 of the Listing Agreement. Therefore, the Noticee No. 1 by submitting false / incorrect shareholding pattern to BSE during the mentioned quarters had violated Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the SCRA) and Clause 35 of the Listing Agreement.
8. SEBI has, therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred as the "SEBI Act") and SCRA to inquire into and adjudge the alleged violation of the provisions of Regulation 3(a), (b), (c) & (d), 4(1) and 4(2) (a) (b) and (e) of SEBI PFUTP Regulations by all the Noticees, Regulation 7(1) and 10 of the SAST Regulations by Noticee Nos. 2 and 3, Regulation 13(1) and 13(4) of PIT Regulations by Noticee No. 3 and Section 21 of SCRA and Clause 35 of Listing Agreement by Noticee No. 1, respectively.

Appointment of Adjudicating Officer:

9. SEBI vide Order dated April 16, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') and Rule 3 of the Securities Contracts (Regulation (Procedure for Holding Inquiry and Imposing of Penalties by Adjudicating Officer) Rules, 2005 to enquire into and adjudge under Sections 15A(b), 15H and 15HA of the SEBI Act, 1992 and Section 23A(a) of the SCRA for the alleged violations by the Noticees as mentioned above.

Notice, Reply & Personal Hearing

10. The AO issued separate notices dated July 27, 2012 to the Noticees (hereinafter referred to as the "SCNs") in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against them for the alleged violations. The SCNs were sent to the Noticees by Registered Post Acknowledgment Due and the same were duly delivered.
11. The Noticee No. 1 replied to the SCN vide its letter dated August 14, 2012 and denied all the charges leveled against it. It submitted that it is not a party to any fund transfers or shares to the Hemang Shah Group and requested further time till October 31, 2012 to file its detailed reply. In response to the said request, vide letter dated September 05, 2012, the undersigned granted an extension of time to file the detailed reply by September 14, 2012 to the Noticee. The Noticee vide letters dated September 10, 2012 and November 24, 2011 reiterated the submissions made in its reply dated August 14, 2012 and requested for copies of the various documents / records relied upon by the investigation department in the said matter along with an inspection of documents. As the Noticee did not file any detailed reply, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the

Adjudication Rules, the undersigned vide letter dated November 19, 2012 granted an opportunity of personal hearing to the Noticee on December 05, 2012. The Noticee did not attend the said hearing. Further, the request made by the Noticee vide its two letters mentioned above was accepted by the AO and accordingly, inspection of documents was granted to the Noticee vide letter dated December 06, 2012 and advised the Noticee to complete the inspection not later than December 31, 2012. Since, the Noticee did not revert back even after December 31, 2012, another opportunity of hearing was granted to the Noticee on January 22, 2013 vide letter dated January 14, 2013. However, vide letter dated January 18, 2013, the Noticee informed the office of the AO that SEBI has so far not provided it the opportunity of inspection of documents and therefore, requested for an adjournment of the hearing.

12. Accordingly, vide letter dated February 14, 2013 the Noticee was advised to complete the inspection of documents before February 25, 2013 and granted another opportunity of hearing to the Noticee on February 28, 2013. Again, vide letter dated February 19, 2013, the Noticee informed the office of the AO that SEBI has not granted it the opportunity of inspection yet and though the AO has advised it to complete the inspection of documents before February 25, 2013, its Directors being preoccupied on the said date, it will try and complete the said inspection by first week of March, 2013. Another request was made to reschedule the personal hearing. Later, vide letter dated March 11, 2013, the Noticee mentioned about some correspondence by investigation department dated March 04, 2013 with the Noticee which had no connection with the present adjudication proceedings. In spite of the delaying tactics employed by the Noticee, vide letter dated April 02, 2013 a last and final opportunity of hearing was granted to the Noticee on April 16, 2013. The Noticee once again vide its letter dated April 10, 2013 requested to postpone the said date of hearing on account of certain correspondences with the investigation department. In reply to the said letter, vide e-mail dated April 05, 2013 it was clarified to the Noticee that the adjudication proceedings initiated and pending against the Noticee are independent in nature and have no

connection with the correspondences from investigation department. The Noticee was also advised to be present for the hearing scheduled on April 16, 2013. However, the Noticee did not attend the said hearing. Vide letter dated April 15, 2013, received by the office of AO on April 18, 2013, the Noticee once again requested for an adjournment of personal hearing to anytime between May 10, 2013 to May 14, 2013 as the authorized representative of the Noticee was not available on the scheduled date of hearing. The said request for adjournment was not granted as ample opportunities of personal hearing were already granted and that the said request was only one of the repeated delaying tactics employed by the Noticee.

13. However, the Noticee No. 1 vide letter dated April 18, 2013 made further written submissions and stated that the company has not done any manipulative or unlawful activity during the relevant period. The Noticee No. 3 was the managing Director of SGWL and had done the alleged transactions without referring or reporting the same to the Board of the company at prevalent point of time and thereby, exceeded his scope and authority. Noticee No. 3 resigned from the said post on March 31, 2010. Further, with respect to the amount of Rs. 4,00,000 given to RKB was towards loan advance for purchase of land and was not used to transact the shares of the company. The Noticee states that for what purpose the ultimate recipient uses the money cannot be attributed to the Company after the money has been given to recipient. The omissions and commissions on part of Noticee No. 3 cannot be attributed to the company as the said transactions were not in the knowledge of the Board.
14. With respect to the Noticee Nos. 2 and 3, vide their letters dated August 08, 2012, they requested for one month's extension of time to submit their replies to the SCNs. Accordingly, the AO, vide letter dated August 28, 2012, granted them time till September 14, 2012 to file their replies, if any. However, the Noticees vide letters dated September 13, 2012 requested further time till September 30, 2012 as they were in the process of compiling documents in

support of their replies. Further, vide another letter dated September 29, 2012, the Noticees informed the office of the AO that their lawyer will be taking some more time to compile the documents in the matter and therefore, made a request of extension of time for another two weeks to file their replies. However, no replies were submitted by the Noticees. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, the undersigned vide letter dated November 19, 2012 granted an opportunity of personal hearing to the Noticees on December 04, 2012. The Legal Representative for the Noticees attended the hearing and made oral submissions. The representative requested for inspection of documents and thereafter another opportunity of personal hearing. The AO accepted the request made by the Noticees and accordingly, inspection of documents was granted vide letters dated December 06, 2012 and advised them to complete the inspection not later than December 31, 2012.

- 15.** Meanwhile, vide letters dated December 04, 2012 the Noticees filed separate replies but in similar lines to the SCN. The Noticees, inter alia, denied their relation / connect with the Hemang Shah Group stating that the cash transfers were for the purpose of land dealings. Further, the trades executed by them in the scrip of SGWL are well within the circuit filter limits and the price increase in the scrip cannot be attributed to the trades executed by the Noticees. The Noticees denied involvement in any fraudulent and manipulative trades with the connected/ related entities and have executed trades on the terminal of BSE in a bonafide manner and have not created any artificial volume and increase in the price of the scrip of SGWL.
- 16.** Since the Noticee Nos. 2 and 3 did not revert back even after December 31, 2012, another opportunity of hearing was granted to them on January 22, 2013 vide letter dated January 14, 2013. However, vide e-mail dated January 22, 2013 the legal representative for the Noticees informed the office of the AO that the SEBI has so far not provided them the opportunity of inspection of documents, requested for an adjournment of the hearing in the third week of February 2013 and further, had requested for inspection of documents on

January 25, 2013 or January 31, 2013 or February 01, 2013. However, I note that SEBI, vide e-mails dated January 14, 2013 and January 22, 2013, had advised the Noticees to provide the list of documents which they would like to inspect to which the Noticees did not respond. In spite of the non response towards inspection and the delay tactics employed by Noticee as above, I have vide letter dated February 14, 2013, advised the Noticees to complete the inspection of documents before February 25, 2013 and granted another opportunity of personal hearing on February 28, 2013.

17. Thereafter, the legal representative vide e-mail dated February 21, 2013 informed that they shall be coming to SEBI, Mumbai on February 22, 2013 for inspection of various records, reports, evidences, etc. On receipt of the said mail the Investigation Department, SEBI, vide e-mail dated February 22, 2013 informed them that despite requesting repeatedly for the list of documents for inspection, the Noticees have not provided any list of documents to the Department. However, the legal representative visited SEBI, Mumbai for inspection of documents on February 22, 2013 and inspected some documents but due to paucity of time they could not complete the inspection. Therefore, another inspection of various records and documents was granted to the Noticees on March 01, 2013. The Noticees were further advised to provide the list of documents which they would like to inspect latest by February 27, 2013 failing which the opportunity of inspection granted to them would be treated as cancelled.
18. The legal representative vide e-mail dated February 28, 2013 requested for an adjournment of further inspection of documents granted to the Noticees on March 01, 2013 on grounds of medical emergencies and requested for an opportunity of inspection on March 05, 2013. The said request was granted by the Investigation Department and accordingly, inspection of documents was fixed on March 05, 2013. However, due to bulky nature of the documents and various records, the inspection could not be completed on the said date and the rest of the inspection was scheduled on March 22, 2013. Vide e-mail

dated March 25, 2013; the Investigation Department informed me that the inspection of documents was finally completed on March 22, 2013.

19. Though the inspection has been completed on March 22, 2013 the Noticees have not made any additional submissions to defend their case. In view of the same, vide notice dated April 02, 2013, a last and final opportunity of hearing was granted to the Noticees on April 16, 2013 failing which it will be presumed that the Noticees have no submissions to offer in their defense. The Noticees neither attended the said hearing nor made any written submissions but the legal representative vide his e-mail dated April 16, 2013 (16:26 hrs) sought postponement of the hearing to the second week of May, 2013 (i.e. a postponement of one month) on the pretext of hospitalization of wife/ death in the family for which they have not submitted any evidence in support thereof.
20. From the sequence of events after the initiation of adjudication proceedings as narrated above, I am convinced that requests for repetitive adjournments of personal hearings, without making any additional submissions in defense of their case but on vague and frivolous reasons is merely delaying tactic on the part of all the Noticees. Therefore, I am of the view that ample time and opportunities were given to the Noticees to appear for personal hearing and present their case in this matter to meet the ends of natural justice. I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

21. I have carefully perused the charges against the Noticees mentioned in the SCN, the written & oral submissions made by them and the documents as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticees have violated Regulation 3(a), (b), (c) & (d), 4(1) and 4(2) (a), (b) & (e) of PFUTP Regulations? Whether the Noticee Nos. 2

and 3 have violated Regulation 7(1) and Regulation 10 of the SAST Regulations, 1997? Whether the Noticee No. 3 has violated Regulations 13(1) and (4) of the PIT Regulations, 1992? And whether the Noticee No. 1 has violated Section 21 of the SCRA and Clause 35 of the Listing Agreement?

(b) Does the violations, if any, on the part of the Noticees attract any penalty under Sections 15A(b), 15 H and 15HA of the SEBI Act, 1992, respectively?

(c) If yes, what should be the quantum of penalty?

22. Before moving forward, it will be appropriate to refer to the relevant provisions which read as under:-

Relevant provisions of 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) indulge in an act which creates false or misleading appearance of trading in the securities market;*
 - (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;*
 - (c).....*
 - (d).....*

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

Relevant provisions of SAST Regulations:-

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

7(1) Any acquirer, who acquires shares or voting rights which taken together with shares or voting rights, if any, held by him would entitle him to more than five per cent or ten percent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose to the company and to the stock exchanges where the shares of the target company are listed.

Acquisition of fifteen per cent or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which taken together with the shares or voting rights, if any, held by him or by persons acting in concert with him, entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire the shares of such company in accordance with the regulations.

Relevant provisions of PIT Regulations:-

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

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

13.(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Relevant provisions of SCRA:-

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Relevant provisions of Listing Agreement:-

35. The issuer company agrees to file with the exchange the following details, separately for each class of equity shares/ securities in the formats specified in this clause, in compliance with the following timelines, namely:-

- (a) One day prior to the listing of its securities on the stock exchange.
(b) On a quarterly basis, within 21 days from the end of each quarter.
(c) Within 10 days of any capital restructuring of the company resulting in a change exceeding $\pm 2\%$ of the total paid-up share capital.

23. I find from the SCN that the Noticee No. 1 is listed on BSE and ASE. During the period from April 01, 2009 to June 23, 2009, the scrip of SGWL traded with an average daily volume of 4,448 shares and during period from June 24, 2009 to July 24, 2009, the average daily volume were 17,903 shares. During the investigation period the price of the scrip of SGWL rose by ₹52 in 74 trading days with average daily volume of 8,520 shares. The scrip of SGWL was traded in 'Z' group till June 19, 2009, in B group during June 22, 2009 to July 09, 2009 and in T group during July 10, 2009 to July 24, 2009.

24. I further find from Annexure I to the SCN that during the investigation period, 15 entities collectively referred to as Hemang Shah Group, connected inter-se and with Noticees, had collectively bought and sold shares of SGWL which represented 58% and 53% respectively of total market gross volume. The detailed chart showing the connection between the 15 entities is given below:

Name	Details of inter-se connection/relation with the Noticees and other entities of Hemang shah Group.
1. Radhe Krishna Broking (RKB), partnership firm Partners: Hemang S. Shah (50%) Harshad A. Panchal (25%) Abhishek V. Soni (25%)	1. RKB had received funds from Noticee Nos. 1 and 2 2. Hemang Shah (partner of RKB) had received funds from Noticee No. 2 through his wife Hetal H Shah and Mahavir Enterprises (Prop. Hemang Shah)
2. Hemang S. Shah 3. Hetal Hemang Shah	1. Entity at Sr. 2 is partner of RKB 2. Entities at Sr. 2 & 3 are husband and wife

Name	Details of inter-se connection/relation with the Noticees and other entities of Hemang shah Group.
4. Harshad A. Panchal 5. Tarunaben Panchal 6. Kalpesh Panchal	1. Entity at Sr.4 is partner of RKB 2. Entity at Sr.4 & 5 are husband and wife 3. Entity at Sr.4 & 6 are brothers
7. Abhishek V. Soni 8. Vinodbhai Soni 9. Kinnari Soni 10. Mayank Soni 11. Dhaval Soni	1. Entity at Sr.7 is partner of RKB 2. Entity at Sr.7 & 8 is son and father 3. Entity at Sr.7 and 9 are husband and wife 4. Entity at Sr.7, 10 & 11 are brothers 5. All are sharing same address
12. Devang Patel 13. Urvashi Patel 14. Umesh Patel 15. Sonal Patel	1. Entity at 12 & 13 received funds from RKB. And entity at S. No 14 transferred fund to RKB 2. Entity at Sr.12 & 15 are husband and wife 3. Entity at 12 & 14 are brothers 4. Entity at Sr.13 & 14 are husband and wife. 5. All are sharing same address

- 25.** I find from the SCN that the Noticee No. 1 had transferred ₹4,00,000/- to RKB on April 28, 2009. RKB had later transferred the same to its broker Ajmer Associate on May 01, 2009. Similarly, Noticee No. 2 had transferred ₹2,00,000 on April 15, 2009 and ₹2,70,000 on April 29, 2009 to RKB which in turn transferred ₹2,00,000 to its broker Ajmer Associate on April 16, 2009. RKB had traded only in the scrip of SGWL through the broker. The contention of Noticee No. 1 that the amount of ₹4,00,000 was given it to RKB was towards loan advance towards purchase of land and was not used to transact in the shares of the company and for what purpose the ultimate recipient uses the money for cannot be attributed to the company is not acceptable as the RKB did transfer the said money to its broker and did deal in the shares of SGWL with the funds received from the Noticee No. 1.
- 26.** During February 12, 2009 to March 03, 2009, Noticee No. 2 transferred ₹2,70,000 to the account of Mrs. Hetal Hemang Shah, wife of Hemang Shah.

RKB had transferred ₹50,000 to one Mr. Devang Patel on April 08, 2009. Devang Patel further transferred ₹25,000 on April 25, 2009 to a broker Asit C Mehata through which he traded in the scrip of SGWL. RKB also transferred another ₹50,000 on April 08, 2009 in the joint bank account of Mr. Umesh Patel and his wife, Mrs. Urvashi Patel. After receipt of said amount on April 09, 2009, further cash was deposited in their joint account. Thereafter, Mr. Umesh Patel transferred ₹75,000 (₹25,000 on April 18, 2009, ₹25,000 on April 20, 2009 and ₹25,000 April 22, 2009) to broker Munoth Capital Market Ltd. through which he traded in the scrip of SGWL. The submission of the Noticee No. 2 that it had given Rs. 3,25,000 to Mahavir Enterprises and that the said transaction pertains for the purpose of procurement of land but the due to some difficulties the deal did not go through and therefore, the money was returned back are equally unacceptable and not supported by any documentary evidences. The stories of unsuccessful land dealings with various connected entities who had dealt in the scrip of SGWL are nothing but mere afterthoughts.

- 27.** During the pre investigation period, Noticee No. 2 had sold 25000 shares of SGWL at BSE of which 24,600 shares were purchased by Mr. Hemang Shah. At the beginning of investigation period, Noticee No. 2 had sold 15000 shares of SGWL to Mr. Harshad Panchal on April 02, 2009. Thus, out of 40,000 shares sold by Noticee No. 2 during February 2009 to April 2009, 39,600 shares had been purchased by Hemang Shah Group.
- 28.** From the foregoing, it is established beyond doubt that the Hemang Shah Group entities are connected / related to each other and with the Noticees.
- 29.** I find that during the investigation period, the total valid buy orders and total valid sell orders were for 12,08,471 and 12,33,512 shares, respectively. Out of the above buy and sell orders, the Hemang Shah group had altogether placed buy orders for 7,04,709 shares and sell orders for 7,18,087 shares. Hemang Shah Group while trading in the shares of SGWL had entered into

synchronized trades/ matched trades. I find from Annexure 4 of the SCN that the Hemang Shah Group made gross purchases and sales to the extent of 377842 and 343514 shares, respectively. There were 6,47,513 shares traded during the 76 trading days out of which the Hemang Shah group contributed for 1,37,536 shares constituting 21.24% of market gross volume. 38.22% of gross traded quantity by Hemang Shah Group was executed among themselves. I take a note that there is a large concentration of trading by the group and also amongst themselves. For example, on 31 trading days, trades constituting more than 25% of gross market volumes were matched by Hemang Shah Group. On 26 trading days, volume of matched trades by Hemang Shah Group accounted in the range of 51.31% to 100% of gross market volume and on 12 trading days, volume through their matched trades accounted in the range of 90% to 100% of gross market volume.

- 30.** I find that trades for 71,124 shares constituting 11% of the gross market volume, were having less than 1 minute time difference between buy order time and sell order time therefore, executed by synchronized deals. Hemang Shah Group had also executed reversal / circular trades on certain days when the scrip was in 'B' group. Out of 76 trading days, the scrip was traded in Trade to Trade segment on 62 trading days and only on 14 trading days it was traded in normal segment.

- 31.** The month-wise wise trading pattern of Hemang Shah Group is as under:

April, 2009

Total market traded volume was 1,20,773 shares in April 2009. Out of this total market volume, total buy quantity by the Hemang Shah group was 1,14,818 shares, which constituted 95% of the total market purchase volume and total sell by the Hemang group was 49,439 shares, which constituted 41% of the total market sell volume. Hemang Shah Group executed 116 matched trades for 48,341 shares, wherein buyer and seller were Hemang Shah Group entities, and these matched trades accounted for around 40.03 % of total market volume and 58.86 % of total traded quantity. Out of 116

matched trades for 48,341 shares, 41 trades for 16,106 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price has increased from ₹13.24 (opening price on April 01, 2009) to ₹20.95 (Closing Price on April 29, 2009) and period high was ₹21.92 on April 29, 2009. During the month, average daily volume was 7104 shares.

May, 2009

Total market traded volume was 75,973 shares in May 2009. Of this total market volume, total buy quantity by the Hemang Shah group was 67,692 shares, which constituted 89.10 % of the total market purchase volume and total sell by the Hemang group was 32,425 shares, which constituted 42.68 % of the total market sell volume. Hemang Shah Group executed 155 matched trades for 24,537 shares, wherein buyer and seller were Hemang Shah Group entities, and these matched trades accounted for around 32.30 % of total market volume and 49 % of total traded quantity. Out of 155 matched trades for 24,537 shares, 35 trades for 7056 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price had increased from ₹21.30 (opening price on May 04, 2009) to ₹25.25 (on May 07, 2009) then decreased to ₹18.40 (Closing Price on May 29, 2009). During the month, average daily volume was 3999 shares.

June, 2009

Total market traded volume was 1,33,287 shares in June 2009. Of this total market volume, total buy quantity by the Hemang Shah group was 1,09,446 shares, which constituted 82.11 % of the total market purchase volume and total sell by the Hemang group was 47,610 shares, which constituted 35.72 % of the total market sell volume. Hemang Shah group executed 85 matched trades for 39,182 shares, wherein buyer and seller were Hemang Shah Group entities, and these matched trades accounted for around 29.40 % of total market volume and 49.90 % of total traded quantity by them. Out of 155 trades for 24537 shares, 38 trades for 25992 shares were having less than 1

minute time difference between buy order time and sell order time. During this period, the price had increased from ₹19.30 (opening price on June 01, 2009) to ₹ 44.65 (Closing Price on June 30, 2009 and it was also period high price). During the month, average daily volume was 6059 shares. Majority of trades (i.e. for 94291 shares) were executed in last 5 trading days.

July 2009

Total market traded volume was 3,17,480 shares in July 2009. Of this total market volume, total buy quantity by the Hemang Shah group was 84,174 shares, which constituted 26.51 % of the total market purchase volume and total sell by the Hemang group was 2,13,939 shares, which constituted 67.39 % of the total market sell volume. Further it is observed that Hemang Shah Group executed 141 matched trades for 25,375 shares, wherein buyer and seller were Hemang Shah Group entities, and these matched trades accounted for around 7.99 % of total market volume and 17.02 % of total traded quantity by them. Out of 141 matched trades for 25375 shares, 78 trades for 21970 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price had increased from ₹46 (opening price on July 01, 2009) to ₹61.05 (Closing Price on July 24, 2009). The period high price was ₹66 on July 22, 2009. During the month, average daily volume was 17638 shares.

- 32.** Further, I note that out of 76 trading days, on 43 trading days the first trades had been executed at a price higher than the previous day closing price. Out of 43 trading days, price difference was 1% and was higher than the previous day's closing price in first trades on 39 trading days. Out of 39 first trades, 33 trades had been executed by Hemang Shah Group on buy side. Out of 33 first trades, there were 13 first trades where both buyers and sellers were Hemang Shah Group entities. Out of 39 trading days, on 29 trading days the price difference was 3% and higher than the previous day closing price which clearly shows that the price of the scrip was substantially increased by executing first trades. Out of 29 first trades, 22 trades had been executed by

Hemang Shah Group on buy side. In seven such first trades, both buyers and sellers were Hemang Shah Group. The first trades executed by Hemang Shah Group had contributed to price rise substantially as more than 70% first trades establishing higher price to previous day closing price had been executed by the said Group.

- 33.** I further note that 132 trades resulted into discovery of new high price during the investigation period and sum of price difference of such trades was ₹ 52.76. The contribution of Hemang Shah group entities was ₹ 30.40 through 100 such trades on buy side. Hemang Shah group was also on sell side for 43 such trades. Out of the 100 trades by Hemang Shah group, Hemang Shah group entities appeared both as buyers and sellers for 28 trades.
- 34.** I note that a total of 3661 trades for 6,47,513 shares have been executed during the relevant period. Out of these trades, 1047 trades had been executed at a price higher than the last traded price. Out of 1047 trades, 719 trades had been executed by Hemang Shah Group. 398 trades had been executed at a price higher than 1% or more to last traded price. Out of 398 trades, Hemang Shah group entities were observed for 284 trades on buy side and 139 trades on sell side. Further, for 80 trades both buyers and sellers were Hemang Shah group entities. 145 trades had been executed at a price greater than 3 % or more to last traded price. Out of 145 trades, Hemang Shah group were observed in such trades for 99 trades on buy side and 45 trades on sell side. 24 trades were such that Hemang Shah group entities appeared both as buyers and sellers. Thus, I find that Hemang Shah Group including the Noticees had rigged the price up by placing orders at higher price on both buy and sell sides.
- 35.** It is thus clear that the Noticee Nos. 1 and 2 transferred funds to the various entities of Hemang Group and ultimately the said entities used the funds for trading in the scrip of SGWL and thereby indulged in manipulative and fraudulent trades which resulted into creation artificial volumes in the scrip of

SGWL in the market. The Group even executed first trades of the day at a price higher than the last traded price, punched orders at higher than the last traded price, etc and thereby, influenced the price of the scrip positively. Upon increase in the price of the scrip to almost ₹66 in the month of July 2009, these entities offloaded large quantities of shares and made undue profits.

- 36.** From the foregoing, it is established beyond doubt that the Noticees are connected with the Hemang Shah Group entities one way or the other (by business relationships and inter se transfers of funds for trading in SGWL) and ultimately aided, facilitated and abetted in the fraudulent and manipulative activities indulged into by the group entities while dealing the scrip of SGWL thereby violating Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(a), (b) and (e) of PFUTP Regulations warranting penalty under Section 15HA of the SEBI Act, 1992.
- 37.** As mentioned in paras above, Noticee No. 2 and 3 are the PACs in terms of SAST Regulations by virtue of inter-se connection and common motive to buy shares of SGWL. I find that the Noticees had acquired shares of SGWL from June 2005 quarter onwards, the details of which are as under:

Date	Name of Entity	Buy Qty.(No of shares)	Sell Qty.	Combined holding of Anurag and Paksh at the end of day (No of shares)	% of their holding to Total Share number of shares of company (4311288)
24-5-2005	Anurag	196800	-	196800	4.56
18-8-2005	Anurag	200000	-	396800	9.20
01-7-2006	Anurag	103200	-	500000	11.79
20-9-2007	Paksh	200000	-	700000	16.51

- 38.** From above table, it is observed that on three different occasions i.e. on August 18, 2005 (Noticee No. 3 acquired 200000 shares making the combined holding of Noticee No. 2 and 3 - 396800 i.e. 9.20%), July 01, 2006 (Noticee No. 3 acquired 103200 shares making the combined holding of Noticee Nos. 2 and 3 - 500000 i.e. 11.79%) and September 20, 2007 (Noticee

No. 2 acquired 200000 shares making the combined holding of Noticee Nos. 2 and 3 - 700000 i.e. 16.51%), respectively. Thus, the Noticees crossed 5%, 10% and 14% mark, on the said dates respectively, which required them to make necessary disclosures as mentioned under Regulation 7(1) of the SAST Regulations, 1997 to the company and to the stock exchange within 2 working days of the said acquisition. The Noticee Nos. 2 and 3 vide their replies dated December 04, 2012 have submitted that they had intimated SGWL as and when the shares were bought and the said information is reflected in the Registrar of Companies - Government of India, Income Tax Returns of SGWL and BSE. However, I note that the Noticees have not submitted any documentary evidences in support of their submissions and therefore, the contentions of the Noticees cannot be accepted. Therefore, I find that the Noticees have failed to make the said disclosures and the same was admitted by the Noticees. It is therefore, established that the Noticee Nos. 2 and 3 have violated Regulation 7(1) of the SAST Regulations, 1997 warranting imposition of monetary penalty under Section 15H of the SEBI Act, 1992.

- 39.** Upon acquiring 200000 shares of SGWL on August 18, 2005 the shareholding of Noticee No. 3 increased from 4.56% to 9.20% thereby crossing the 5% benchmark. In terms of Regulation 13(1) of Insider Trading Regulations, he was required to make disclosure this increase in the shareholding to SGWL within two working days from such acquisition. However, I find that the Noticee No. 3 has failed to make the requisite disclosure which is in violation of Regulation 13(1) of the PIT Regulations, 1992. Further, The Noticee No. 3 was the Director of SGWL when he acquired 200000 shares of SGWL on August 18, 2005 and 103200 shares on July 01, 2006 which exceeded 25000 shares in number and therefore, in terms of Regulation 13(4) of PIT Regulations, 1992, he was required to make disclosure of his share holding and change in his share holding to SGWL and BSE within the time specifies in Regulation 13(5) of the said Regulations. I note from the investigation report and the material on record that in the statement recorded on July 12, 2011 during the investigation, Noticee No. 3 has admitted that no disclosures had been made for the said transactions under SAST and PIT Regulations. The Noticee vide its replies dated December 04, 2012, mentioned in the above

para, has submitted that he did inform the company as and when the shares were bought and the said information is reflected in the Registrar of Companies - Government of India, Income Tax Returns of SGWL and BSE. However, I note that the Noticee has also not submitted any documentary evidences in support of his submissions and therefore, the contentions of the Noticees cannot be accepted. It is thus, established beyond doubt that the Noticee No. 3, by failing to make the required disclosures, violated Regulation 13(1) and 13(4) of the Insider Trading Regulations warranting imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992.

- 40.** In this regard the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd Vs. SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006) stated the importance of disclosure and observed that:

“the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market”.

- 41.** I note from the investigation report that Noticee Nos. 2 and 3 are connected to each other. The Noticee No. 3 is the Managing Director of Noticee No. 2. As per annual returns for the year ended March 2008 filed by Noticee No. 2 with the Registrar of Companies, Noticee No. 3 was holding 829000 shares constituting for 99.88% of the share capital, out of the total share capital of 830000 of Noticee No. 2. During the investigation period, the Noticee No. 3 has even submitted that he has placed orders on behalf of Noticee No. 2 for the transactions in the scrip of SGWL with the broker. Thus, the Noticees are admittedly PACs under Regulation 2(e) of the SAST Regulations, 1997. I further note that the Noticee No. 2 and 3 had acquired shares of SGWL from June 2005 quarter onwards, the details of the same are mentioned in Para 36 above. The Noticee No. 3 was holding 11.79 % shares of SGWL for the quarter ended June 2007 and September 2007. Noticee No. 2 in which Noticee No. 3 is a Director acquired 4.72% shares of SGWL on September 20, 2007 which made the combined holding of the PACs 16.51% (11.79% +

4.72%). Thus, the total combined holding of both the Noticees triggered the 15% limit and therefore, in terms of Regulation 10 of SAST Regulation they were required to make public announcement to acquire the shares of the company. The Noticee vide their replies dated December 04, 2012 have merely submitted that they have not violated the provisions of Regulation 10 of the SAST Regulations without any substantiation. From the above facts, I find that the Noticees have failed to make such public announcement for acquiring the shares of SGWL and therefore, have violated Regulation 10 of SAST Regulations, 1997 warranting imposition of monetary penalty under Section 15H of the SEBI Act, 1992.

42. I further find that in the shareholding pattern filed under Clause 35 of the Listing Agreement by Noticee No. 1 for the quarters ending on June 2005, September 2005, December 2005 and March 2006 shown Noticee No. 3 as a promoter of SGWL. In their later filings of shareholding pattern Noticee No. 2 and 3 were shown as shareholders under the public category. The Noticee No. 1 submitted to the investigating authority that Noticee No. 3 had acquired shares of SGWL as professional Managing Director and there was an oversight mistake in the filings made by the company. Therefore, by submitting false / incorrect shareholding pattern to BSE during the said quarters, the Noticee No. 1 violated Section 21 of the SCRA read with Clause 35 of the Listing Agreement warranting imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992.

43. In light of the above paras, the Noticees are liable for imposition of monetary penalties under sections 15A(b), 15H and 15HA of the SEBI Act, 1992 respectively, which reads as under:

15A. Penalty for failure to furnish information, return, etc.

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

(a).....

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to*

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

15H. *Penalty for non – disclosure of acquisition of shares and takeovers.- If any person, who is required under this Act or any rules or regulations made there under, fails to-*

(i).....

(ii) *make a public announcement to acquire shares at a minimum price; or*

(iii).....

he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices.

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

44. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

45. While determining the quantum of penalties under section 15A(b), 15H and 15HA of the SEBI Act,1992, it is important to consider the factors stipulated in section 15J of the SEBI Act,1992 which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

- 45.** I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees. It will suffice to state that keeping in mind the practices indulged in by the Hemang Shah Group, were ultimately meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. In fact, liquidity/volumes in particular scrip raise the issue of 'demand' in the securities market. The greater the liquidity, the higher is the investors' attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volumes and price of the scrip and ultimately, induced into investing in the said scrip. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions.

46. Further, the disclosures under the SAST and PIT Regulations mandating disclosure of acquisitions beyond certain quantity are to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. Failure to make disclosure within the stipulated time period provided in the regulation cannot be treated as trivial or of no consequence to be overlooked. Also, the violation of Regulation 10 of the SAST Regulation is a grave. The SAST Regulations mandates an acquirer to make a public announcement if the acquirer acquires 15% or more of the voting rights in a company. This would provide an exit opportunity to the remaining shareholders at a specified price if they so desire in case of any new acquirer acquires substantial shareholding/control in the company. By failing to make the public announcement with respect to the said acquisition the investors and the shareholders at large were denied of the opportunity to exit from the company. The available records do not indicate the amount of disproportionate gain or unfair advantage, made by the Noticee Nos. 2 and 3 or the amount of loss caused to an investor or group of investors as a result of the default. However, the said default cannot be overlooked and is to be viewed seriously.

Order

47. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby, impose a-
- (a) monetary penalty of ₹ 10,00,000 (Rupees Ten Lakhs Only) on Sterling Greenwoods Limited (Noticee No. 1) and ₹5,00,000 (Rupees Five Lakhs Only) each on Paksh Developers Private Limited and Shri. Anurag Agrwal (Noticee Nos. 2 and 3) thus, a total of ₹20,00,000 (Rupees Twenty Lakhs Only) under Section 15HA of the SEBI Act, 1992,
 - (b) monetary penalty of ₹1,50,000 (Rupees One Lakh Fifty Thousand Only) each on Paksh Developers Private Limited and Shri. Anurag Agrwal (Noticee Nos.

2 and 3) thus, a total of ₹3,00,000 (Rupees Three Lakhs Only) for non-disclosures under Regulation 7(1) of SAST Regulations and ₹1,00,00,000 (Rupees One Crore Only) on Paksh Developers Private Limited and Shri. Anurag Agrwal (Noticee Nos. 2 and 3), payable jointly and severally, for failure to make public announcement under Regulation 10 of the SAST Regulations, under Section 15H of the SEBI Act, 1992,

- (c) monetary penalty of ₹2,00,000 (Rupees Two Lakhs Only) on Shri Anurag Agrwal (Noticee No. 3) for violation of Regulation 13(1) and 13(4) of PIT Regulations and ₹50,000 (Rupees Fifty Thousand Only) on Sterling Greenwoods Limited (Noticee No. 1) for violating Section 21 read with Clause 35 of Listing Agreement thus, a total of ₹2,50,000 (Rupees Two Lakhs Fifty Thousand Only) under Section 15A(b) of the SEBI Act, 1992.

48. The penalty amount as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID-10, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

49. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: June 05, 2013

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**